

## CITY COUNCIL REGULAR MEETING

City Council Chambers

Monday, January 10, 2022 at 7:00 PM

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### AGENDA

**Please note, that all present for the Council meeting are required to wear a mask.**

#### Call to Order, Prayer, Pledge of Allegiance

**Adjustment and Approval of the Agenda** — *Items will only be added or removed with the approval of the Mayor and City Council.*

**Request to Speak/Opportunity for Public Comment** — *This is an opportunity for members of the public to express items of interest to the Mayor and City Council. This is not a time to respond or take action. Any necessary action will be taken under advisement. Speakers are asked to use proper decorum and to limit comments to no more than three minutes.*

**Consent Agenda** — *The items of the Consent Agenda are adopted on a single motion and vote, unless the Mayor and City Council wish to withdraw an item for separate vote and/or discussion.*

- 1. Approval of Minutes:** City Council will consider adopting the Regular Meeting Minutes of the December 13, 2021 meeting.
- 2. Approval of Minutes:** City Council will consider adopting the Special Meeting Minutes of the December 16, 2021 meeting.

#### Business Items

- 3. Proclamation - Dr. Martin Luther King Jr. Day:** City Council will consider the adoption of a Proclamation for Dr. Martin Luther King, Jr. Day Monday, January 17, 2022.
- 4. Establish A Public Hearing- Rezoning Request:** City Council will establish a public hearing on Monday, February 14, 2022 at 7:00 PM to consider a request to the Zoning Map to rezone Tax Parcel #220086, #151795, and Portion of Parcel #305559 from Rural (R) and I-2 (Gaston Co. Zoning Jurisdiction) to Urban Residential (UR).
- 5. Public Hearing - Table of Uses:** City Council will hold a public hearing regarding a text change to the table of uses.
- 6. Ordinance Adopting Text Amendments -** City Council will consider adopting ordinances to amend the table of uses of the Land Development Code (LDC).
- 7. Public Hearing - Rezoning Request:** City Council will hold a public hearing regarding a rezoning request of property located on N. 14th Street.

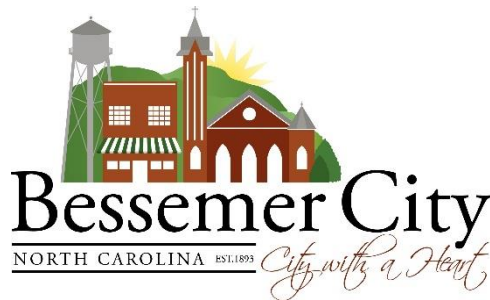
8. **Ordinance for Zoning Map Amendment:** City Council will consider approving a rezoning request for property located at tax parcels #119975, #214728, and #214726.
9. **Ordinance Adopting Text Amendments** - City Council will consider adopting ordinances to amend several sections of the Land Development Code (LDC): Section 3.2.B Accessory Structures, 3.3.F Garages and Carports, and Section 10.1 General Definitions.
10. **Resolution- Providing for the Issuance of a \$4,998,000 Water and Sewer System Revenue Bond:** City Council will consider approving a resolution regarding Water and Sewer System Revenue Bond.
11. **Ordinance Adopting Text Amendments** - City Council will consider adopting an ordinance to amend Chapter 94, Noise Regulation of the Code of Ordinances.
12. **Resolution to Proceed** - City Council will consider approving a resolution regarding Stinger Park lighting financing.

### **City Manager's Report**

13. **Budget Amendment:** City Council will consider adopting a Budget Amendment.
14. **Capital Project Ordinance:** City Council will consider approving a Capital Project Amendment regarding the sale of general fund property.
15. **Award Water Plant Project Bid:** City Manager Inman will request that City Council award the Water Plant Project Bid award to Harper in the amount of \$7,403,780 with a 5% contingency \$370,189.

**Council General Discussion** — *This is an opportunity for the Mayor and City Council to ask questions for clarification, provide information to staff, request staff to report back, or place a matter on a future agenda.*

### **Adjourn**



## CITY COUNCIL REGULAR MEETING

City Council Chambers

Monday, December 13, 2021 at 7:00 PM (Pre-Sine)

### MINUTES

#### Members Present

Mayor, Becky S. Smith, Council Members: Alfred Carpenter, Kay McCathen, Brenda Boyd, Dan Boling, Joe Will, and Donnie Griffin were all present. City Manager, James Inman and City Attorney, David Smith were present as well.

#### Call to Order, Prayer, Pledge of Allegiance

Mayor Smith called the meeting to order at 7:00 PM. Concord United Methodist Church Pastor, Van Spencer led the audience in prayer. Mayor Smith led the audience in the Pledge of Allegiance.

#### Adjustment and Approval of the Agenda

By motion of Alfred Carpenter and unanimous vote, the December agenda was approved with the following revisions:

- Remove items number #5 (Public Hearing – Rezoning Request) and #6 (Ordinance for Zoning Map Amendment) as the applicant Lennar Homes has withdrawn their rezoning application.

**Special Presentations - Recognition of Council Member** – Mayor Smith and City Council recognized Council Member, Alfred Carpenter for his 10 years of service to the City. All present were asked to commend him on his service to the City.

#### Approval of Minutes

The following items were unanimously approved by motion of Brenda Boyd:

1. **Approval of Minutes:** City Council will consider adopting the Regular Meeting Minutes of the November 8, 2021 meeting.
2. **Approval of Minutes:** City Council will consider adopting the Work Session Meeting Minutes of the November 30, 2021 meeting.

#### Gaston County Official Canvass

**Acceptance of Official Canvass** – By motion of Alfred Carpenter, and unanimous vote the official canvass of the Tuesday, November 2nd, 2021 election was accepted.

The votes are as follows:

Kay McCathen, Ward 2 (231 votes)

Brent Guffey, Ward 5 (220 votes)  
Donnie Griffin, Ward 6 (263 votes)

### **Public Hearing –Junk Vehicle & Noise Ordinance:**

By motion of Kay McCathen and unanimous vote, the public hearing was opened at 7:08 PM.

Mayor Smith asked if there was anyone present to speak in favor of the ordinance text amendment. There was none.

Mayor Smith asked if there was anyone present to speak in opposition of the ordinance text amendment. There was none.

City Planner, Nathan Hester addressed Council regarding the ordinance amendments. Mr. Hester informed Council that the amendments to the junk vehicle ordinance would no longer allow for a junk vehicles to be permissible. By definition a junk vehicle is more than 5 years old, cannot be self-propelled, and is worth less than \$500.

By motion of Donnie Griffin and unanimous vote, the public hearing was closed at 7:12 PM.

### **Ordinance for Adopting Text Amendments:**

By motion of Alfred Carpenter and a 3:3 vote, with Donnie Griffin, Dan Boling, and Joe Will in opposition, Mayor Smith voting in favor, the text amendments to the Junk Vehicle ordinance were adopted. A copy of the ordinance is on file at City Hall.

### **Ordinance Adopting Text Amendments**

Code Enforcement Officer, Nathan Hester addressed Council regarding several Land Development Code (LDC) amendments: Section 3.2.B Accessory Structures, 3.3.F Garages and Carports, and Section 10.1 General Definitions.

Light discussion ensued between Council and City Staff.

By motion of Joe Will and unanimous vote, the text amendments were tabled for 30 days.

### **Ordinance for Zoning Map Amendment**

Code Enforcement Officer, Nathan Hester addressed Council regarding a zoning map amendment of property located at 801 W. Highway 161. This property is located near Livent and the property owner has request a conditional use permit. The owner plans to use this as a convenience store. A site plan has been submitted to the City Planner along with their application.

By motion of Dan Boling and unanimous vote, the ordinance for zoning map amendment regarding property at 801 W. Highway 161 was approved with the condition that the property can only be used as a convenience store. This action is consistent and reasonable of the character of the City of Bessemer City per NCGS 160 D. The City's zoning map will be amended to show Parcel #121181 as HC/CD.

### **Council General Discussion**

Mayor Smith opened the floor for Council general discussion. Council member, Brenda Boyd commended and thanked Council member, Alfred Carpenter for his hard work. Council member, Joe Will showed his appreciation for working with Mr. Alfred Carpenter over the years. Council member, Kay McCathen thanked Mr. Alfred for being so kind.



**Adjournment Sine Die of the 2019-2021 Council Session**

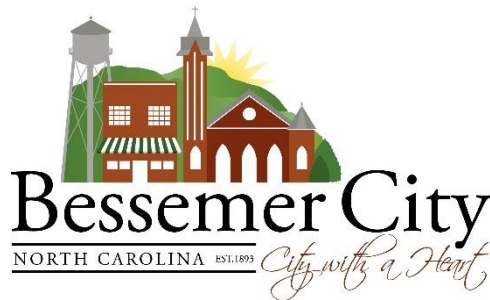
Being no further business to come before the board, by motion of Alfred and unanimous vote, the meeting was adjourned at 7:21 PM.

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Becky S. Smith, Mayor

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Hydeia Y. Hayes, City Clerk



## CITY COUNCIL REGULAR MEETING

City Council Chambers

Monday, December 13, 2021 at 7:25 PM (After-Sine)

### MINUTES

#### Members Present

Mayor, Becky S. Smith, Council Members: Brent Guffey, Kay McCathen, Brenda Boyd, Dan Boling, Joe Will, and Donnie Griffin were all present. City Manager, James Inman and City Attorney, David Smith were present as well.

#### Oath of Office

Mayor Smith administered the Oath of Office to Donnie Griffin, Kay McCathen, and Brent Guffey.

#### Call to Order

Mayor Smith called the meeting to order at 7:25 PM.

#### Adjustment and Approval of the Agenda

By motion of Donnie Griffin and unanimous vote, the December agenda was approved with the following revisions:

- Add #9 for a called Special Meeting. The purpose of this meeting is the negotiation of property for sale on Edgewood Rd and the approval of an Economic Development grant.

**Mayor Pro Tem** – General Statutes direct that the City Council, at its organizational meeting, elect a mayor pro tempore, who is to serve at its pleasure. The direct role of the pro tem is to preside over council meetings in the mayor's absence. While presiding, the mayor pro tem may vote as a council member but may not, as chairing officer, vote to break a tie. (In the absence of both the Mayor and Pro Tem, the council members present may select a temporary presiding officer). City Council will select a Mayor Pro Tem for the 2021- 2023 Council session.

By motion of Dan Boling and unanimous vote, Donnie Griffin was selected as the Mayor Pro Tem.

#### Appointments

The following appointments were unanimously approved by motion of Dan Boling:

Centralina Council of Governments- This delegate serves as Bessemer City's member of the COG Board, which oversees the operation of the local Council of Governments. Meetings are held every other month. Council should appoint a delegate and an alternate delegate to the CCOG Board. Kay McCathen was appointed to serve as the representative for the Board.

Metropolitan Planning Organization- The Gaston-Cleveland-Lincoln Metropolitan Planning Organization (GCLMPO) is a multi-jurisdictional entity made up of 34 local governments,

NCDOT, USDOT, and other providers of transportation services. Mayor Smith was appointed to serve as the representative, and Donnie Griffin as the alternate.

ABC Board Liaison- While not a formal position, the ABC Board has requested for a number of years that a Council member be appointed to serve as a liaison between the City and the ABC Board. Board meetings are held monthly on the fourth Monday at 5:00 PM. Joe Will was appointed to serve as the representative for the Board.

Parks & Recreation Advisory Board- This Board is dedicated to making a great community and committed to providing a safe and inviting parks and facilities in Bessemer City. Brenda Boyd was appointed to serve as the representative for the Board.

Downtown Development Board- This Board is designed to inspire place making through building asset-based economic development strategies that achieve measurable results such as investment, business growth, and jobs. Dan Boling was appointed to serve as the representative for the Board.

### **Request to Speak/Opportunity for Public Comment**

Mayor Smith opened the floor for public comment. There was none.

### **Consent Agenda**

The following items on the Consent Agenda were unanimously approved by motion of Donnie Griffin:

- 2022 Annual Meeting and Holiday Schedule- The annual meeting schedule for Council Regular Meetings, Council Work Sessions, Planning Board/Board of Adjustments Meetings and holiday schedule for the City of Bessemer City.
- Resolution of Authorization: City Council will consider approving a resolution that authorizes the Ridge Runners to hold their annual event with certain guidelines on New Year's Eve. A copy of this resolution is on file at City Hall.

### **Establish Public Hearing:**

City Staff is requesting the establishment of a public hearing for the addition of the use of a cemetery in the highway commercial district to aid with land development on Edgewood Rd.

By motion of Brent Guffey and unanimous vote, a public hearing regarding a text amendment to the Land Development Code's (LDC) table of uses on Monday, January 10, 2022 at 7:00PM in Council Chambers.

### **Establish Public Hearing:**

By motion of Joe Will and unanimous vote, a public hearing regarding a request to the Zoning Map to rezone Tax Parcel #119975, #214728, and #214726 from NR to NR/CD will be held on Monday, January 10, 2022 at 7:00 PM in Council Chambers.

### **Special Meeting:**

Mayor Smith has called a special meeting for Thursday, December 16<sup>th</sup>, 2021 at 3:00 PM in Council Chambers.

### **Council General Discussion**

Mayor Smith opened the floor for Council general discussion. Council member, Dan Boling wished everyone a Merry Christmas.

**Closed Session**

By motion of Kay McCathen and unanimous vote, City Council entered Closed Session to consult with the City Attorney in accordance with NCGS 143-318.11(3) at 7:39 PM.

By motion of Brenda Boyd and unanimous vote, City Council came out of Closed Session at 7:52 PM. No action was taken.

**Settlement Agreement**

By motion of Brenda Boyd and unanimous vote, the attorney is authorized to negotiate a settlement of the matter up to a confidential amount, with the actual settlement amount to be disclosed of record as soon as practicable after the settlement terms are agreed-upon by the parties.

**Adjournment**

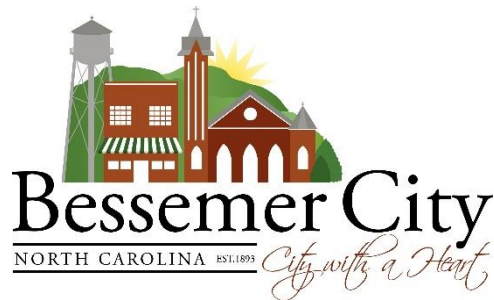
Being no further business to come before the board, by motion of Brenda Boyd and unanimous vote, the meeting was adjourned at 7:54 PM.

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Becky S. Smith, Mayor

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Hydeia Y. Hayes, City Clerk



## CITY COUNCIL SPECIAL MEETING

City Council Chambers

Thursday, December 16, 2021 at 3:00 PM

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### MINUTES

#### Members Present

Mayor, Becky S. Smith, Council Members: Brent Guffey, Brenda Boyd, Dan Boling, Joe Will, and Donnie Griffin were all present. Council member, Kay McCathen was absent. City Manager, James Inman and City Attorney, Dan O'Shea were present as well.

#### Call to Order

Mayor Smith called the meeting to order and stated that the purpose of this meeting was discuss the negotiation of property for sale on Edgewood Rd. and the approval of an Economic Development Grant.

#### Building Rehabilitation Incentive Grant (BRIG) Approval – 102 W. Virginia Avenue (The Venue at Blossom)

An application from Blossom was received for the BRIG grant. Blossom has started to lease said property, in hopes of turning it in to a venue hall. This venue would be open for parties and corporate events. The property is not ADA accessible currently. The property owner would like to receive the grant to aid in making the property ADA accessible. A ramp is needed on the 12<sup>th</sup> Street side. If approved, the owner would receive a dollar for dollar match up to \$10,000 per grant guidelines. The property owners would have to provide a certificate of occupancy before grant funds are released.

By motion of Joe Will and unanimous vote, the BRIG grant was approved for property at 102 W. Virginia Avenue.

#### Negotiation of Property Sale for Economic Development Project

The City purchased property on Edgewood Rd for \$180,000 for an Economic Development Project. This property has a house on it. A contract has been negotiated with a developer to purchase the property for \$185,000 and a discount on utility cost that the developer would incur. Said developer will create jobs that pay above the County's median wage. City Staff is seeking Council's approval regarding the sale of property. Attorney O'Shea explained the provisions of the sale in accordance with NCGS.

By motion of Dan Boling and unanimous vote, the sale of property at 806 Edgewood Rd. Tax Parcel #152646 for \$185,000.

#### Council General Discussion

Mayor Smith opened the floor for Council general discussion. General discussion was held regarding new town home development, landscaping on Sunset Lane, and the Annual Retreat, which will be held February 17<sup>th</sup> and February 18<sup>th</sup>.

### **Adjournment**

Being no further business to come before the board, by motion of Brenda Boyd and unanimous vote, the meeting was adjourned at 3:54 PM.

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Becky S. Smith, Mayor

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Hydeia Y. Hayes, City Clerk



**A PROCLAMATION IN HONOR OF  
DR. MARTIN LUTHER KING, JR.**

**WHEREAS**, the Reverend Dr. Martin Luther King, Jr. believed that a person's worth should not be measured by his or her color, culture, or class, but rather by his or her commitment to creating a better life for all by living a life of service for others, and

**WHEREAS**, Dr. King showed courage, endurance and patience in the face of hostility, criticism and adversity working to promote freedom, justice and peace, and

**WHEREAS**, Dr. King's message of peace and service and his dream of pursuing a world free from prejudice and injustice lives on since his tragic death on April 4, 1968, and

**WHEREAS**, Dr. Martin Luther King, Jr.'s dream of racial equality, understanding, service and social justice is an inspiration to all of us, and

**WHEREAS**, the City of Bessemer City encourages all citizens to remember and pay tribute to Dr. King and his ideals.

**NOW, THEREFORE**, I, Becky S. Smith, Mayor, and the members of the Bessemer City Council do hereby resolve that Monday, January 17, 2022 be set aside as a day to remember Dr. King and to promote appropriate activities to further enhance the democratic ideals and concepts advanced by this great American.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Bessemer City to be affixed this 10<sup>th</sup> day of January 2022.

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Becky S. Smith, Mayor

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Hydeia Y. Hayes, City Clerk



# City of Bessemer City

A RESOLUTION SETTING A PUBLIC HEARING ON THE QUESTION OF A ZONING MAP AMENDMENT (TAX ID PARCEL #220086, #151795, AND PORTION OF PARCEL #305559)

WHEREAS, the applicant, Lennar Corporation, is requesting a Zoning Map Amendment to rezone Tax Parcel #220086, #151795, and Portion of Parcel #305559, 3200 Bessemer City Hwy, from Rural (R) and I-2 (Gaston Co. Zoning Jurisdiction) to Urban Residential.

WHEREAS, the city has accepted the application and desires to set a Public Hearing on the same in accordance with the requirements of the Bessemer City LDC (Land Development Code)

BE IT THEREFORE RESOLVED that a Public Hearing be set for February 14th, 2022 at 7:00 PM in the Bessemer City Council Chambers.

BE IT FURTHER RESOLVED that staff shall provide legal notice of this Hearing in accordance with the LDC.

ADOPTED THIS THE 10<sup>th</sup> DAY OF January, 2022.

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Becky S. Smith, Mayor

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Hydeia Y. Hayes, City Clerk

FILE#: ZA 03-2021





## **City of Bessemer City, North Carolina**

### **Text Amendment Staff Report**

Planning Board Recommendation December 6, 2021

City Council Agenda Item January 10, 2022

**Applicant:** Bessemer City Planning Staff

**Request:**

Proposal to amend Section 2.7.B Table of Uses of the City of Bessemer City Land Development Code. Application is to permit the use of Cemetery in the Highway Commercial District with additional standards.

Currently the use of a Cemetery is only permitted within zoning districts designated as Rural (R) with additional standards. The additional standards required are to provide screening and separation from the public right of way and adjacent properties with a masonry wall, decorative fencing, or evergreen hedge maintained between a three (3) and four (4) foot height.

The use of Cemetery on land designated as Highway Commercial according to the City of Bessemer City Land Development Code would require the same additional standards as cemeteries used within Rural zoning districts.

Article 9 "North Carolina Cemetery Act" of North Carolina General Statute 65-69 requires that each licensee shall set aside a minimum of thirty (30) acres of land for use by said licensee as a cemetery.

The proposed text change would allow for the current cemetery on Edgewood Rd. to maintain their state required minimum additional acreage while allowing for

future business expansion with the Business Park located along South Ridge Parkway.

**Staff Recommendation:**

Approve as submitted.

**Exhibits:**

1. Plan Consistency Statement
2. Document of proposed text changes

Recommended Effective Date: January 10, 2022

## TA 03-2021 Supporting Document

Key:

Existing Text

Additional Text

Institutional/Civic/Educational	R	NR	UR	CC	HC	BCP	I	Additional Standards
Cemetery	AS				AS			2.8.20
Cultural/Community Center		P	P	P	P			
Day Care			AS	P	P			2.8.P
Educational Facility		SUP	SUP	SUP	SUP			2.8.Q
Fire and Police Station	P	P	P	P	P	P	P	
Government Service			P	P	P	P	P	
Religious Institution	AS	AS	AS	AS	AS	AS	AS	2.8.R

The additional text is what will be added to the table of uses pending the approval of City Council.

PLAN CONSISTENCY & STATEMENT OF REASONABLENESS  
TEXT AMENDMENT 03-2021  
January 10, 2022

Pursuant to N.C. Gen. Stat. §160D-605 the City of Bessemer City Council hereby approves and adopts the following Plan Consistency and Statement of Reasonableness for the text amendment of the Land Development Code of the City of Bessemer City, North Carolina.

- 1) Said text change is **consistent** with the goals and values established by the City Council adopted in 2019.
  - a. The City Council created a mission and vision statement that included the following seven values: 1. Open, Honest and Accessible Government, 2. Fiscal Accountability and Sustainability, 3. Public Safety and Safe and Accessible Neighborhoods, 4. Keeping True to Our Small-Town Character and Traditions, 5. Focused on Quality and Customer Service, 6. Family Oriented, 7. Promote a Healthy Quality of Life. These text amendments are consistent with these values.
  - b. The City Council created a mission and vision statement that included the following eight goals: 1. A desirable place to live and work that is open to growth, 2. A safe and secure community for residents and visitors, 3. A sustainable community with high quality and dependable infrastructure and utilities, 4. A thriving, viable and diverse economy, 5. Provide opportunities for our citizens, 6. Sustainable organizational capacity, 7. Embrace innovation and promote creativity, 8. Promote a healthy quality of life. These text amendments are consistent with these goals.
  
- 2) The text amendments **would not be detrimental** to the city and ETJ.
  - a. The physical condition that make the text amendments reasonable are:
    - Cemeteries are required by North Carolina General Statute 65-69 to set aside a minimum of 30 acres of land for use by said licensee of cemetery.
    - Additional Standards required by the City of Bessemer City Land Development Code would ensure future cemeteries located within the Highway Commercial Zoning District to be properly screened from current and future land uses.
  - b. The text amendments are in the best interest of the public to increase and maximize property values in order to provide for future infrastructure and amenities.

Therefore, the requested text amendments are **reasonable** and **in the public interest**.

Upon a motion that the application is **consistent** with the Bessemer City Planning and Economic Development Comprehensive Land Use Vision.

Read, approved and adopted this the 10<sup>th</sup> day of January, 2022.

ATTEST

CITY COUNCIL FOR THE  
CITY OF BESSEMER CITY

\_\_\_\_\_  
Hydeia Hayes, City Clerk

BY \_\_\_\_\_  
Becky S. Smith, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
David W. Smith, City Attorney



**AN ORDINANCE AMENDING SECTION 2.7.B OF THE CITY OF  
BESSEMER CITY LAND DEVELOPMENT CODE.**

**WHEREAS**, after proper notification a Public Hearing was held before the Bessemer City Council on December 13th, 2021 to consider a proposed amendment to the City of Bessemer City Land Development Code.

**WHEREAS**, after a \_\_\_\_\_ vote, the City Council of Bessemer City approved a text change to the City of Bessemer City Land Development Code reflected in section 2.7.B Table of Uses of the City of Bessemer City Land Development Code.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Bessemer City, that the City of Bessemer City Land Development Code is amended to reflect the adopted changes as written below.

1. Land Use of "Cemetery" is now permitted within the Highway Commercial (HC) zoning district with additional standards.

Effective Date

This Ordinance shall become effective upon its adoption by the City Council of the City of Bessemer City, North Carolina.

Adopted by City Council this 10<sup>th</sup> Day of January, 2022.

\_\_\_\_\_  
Becky S. Smith, Mayor

\_\_\_\_\_  
Hydeia Y. Hayes, City Clerk



132 W. Virginia Ave.  
Bessemer City, NC 28016  
(704) 629 – 5542 Ext. 1003

**Staff Only:**

Date Rec'd: \_\_\_\_\_  
Rec'd by: \_\_\_\_\_  
Case #: \_\_\_\_\_

## LAND DEVELOPMENT APPLICATION FORM

1. Application Type	✓	Fee	✓	Fee
• Sketch Plan/Plat (Major Sub):	_____		• Conditional Zoning (CZ)	150.00
• Preliminary Plat (Major Sub):	_____		• Special Use Permit (SUP)	_____
• Final Plat (Major Sub):	_____		• Text Amendment	_____
• Major Site Plan	_____		• Minor Site Plan	_____
• Construction Documents:	_____		• Minor Subdivision Plat	_____
• Recombination Plat	_____		• General Rezoning	_____
• Other: _____	_____			
Fee Total:				150.00

### 2. Project Information

Date of Application: 11/30/2021 Name of Project: 14 N. Bessemer

Location: North 14th Street, Bessemer City, NC Property Size (acres): 12.11 # of Units/Lots: Up to 100

Current Zoning: UR (Urban Residential) Proposed Zoning: CD

Current Land Use: Vacant/Wooded Proposed Land Use: Townhouses

Tax Parcel Number(s): 119975 & 214726

Square Footage: N/A

**3. Contact Information**

Owner, Applicant, or Developer

Development Solutions Group, LLC

Address

11121 Carmel Commons Blvd. #360

City, State Zip

Charlotte, NC 28226

Telephone

704-543-0760

Email

kent@olsondevelopment.com

Agent(s) (Engineer, Architect, Etc.)

McKim & Creed, Inc.

Address

8020 Tower Point Drive

City, State Zip

Charlotte, NC 28227

Telephone

704-841-2588

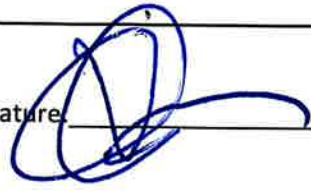
Email

kcrowe@mckimcreed.com

**4. The following items may also be required to be considered part of a complete application, please check all that apply on this list:**

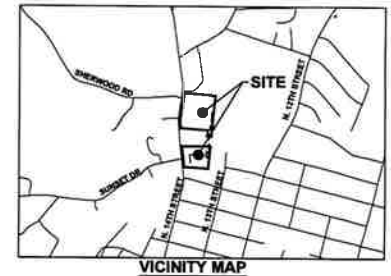
- ☒ **Signed "Original" application**
- ☐ **Project Fee(s)** – See Fee Schedule
- ☐ **Written Summary/Description of Request** can be on company letterhead. Shall include requested use or uses, sq. feet of non-residential space, or density and number of units/lots for residential, or any other applicable information. For CZ's, must also describe any variations proposed from the Land Development Code
- ☐ **Property Survey** (at least one copy), including existing buildings, topography, wetlands, streams, vegetation (trees over 18" in diameter), and other natural features.
- ☐ **Site/sketch plan** (at least one copy), may contain multiple pages and must be drawn to scale by an engineer or landscape architect. Shall include locations of buildings and/or lots, streets, parking, proposed grading, landscaping/screening, open space, watershed/storm water information, associated storm water measures, and proposed utilities and lighting. Shall also include general information from adjoining lots
- ☐ **Illustrative (color) site/sketch plan** for presentation purposes with same layers as described above
- ☐ **Architectural elevations, Perspective Renderings, and Architectural Review Board Checklist** may include multiple pages and must be drawn to scale by an architect. Include all primary and accessory buildings (all building sides), an illustrative color package, and black and white w/dimensions. Other architectural elements/features of the site such as gazebos, trellis's, garden walls, retaining walls, or other items over 4-feet in height must also be included (NOT REQUIRED, BUT OPTIONAL FOR SINGLE-FAMILY RESIDENTIAL DEVELOPMENTS).
- ☐ **Illustrative (color) elevations** for presentation purposes for all items described above, as well as perspective (3D) renderings and photograph examples
- ☐ **Digital Files** of all items listed above

Last Update: 07/06/2021

Signature: Printed Name: Kent OlsonDate: 11/30/2021

Development  
Solutions  
Group





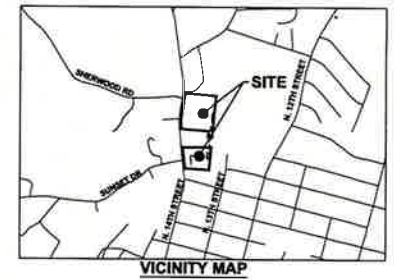
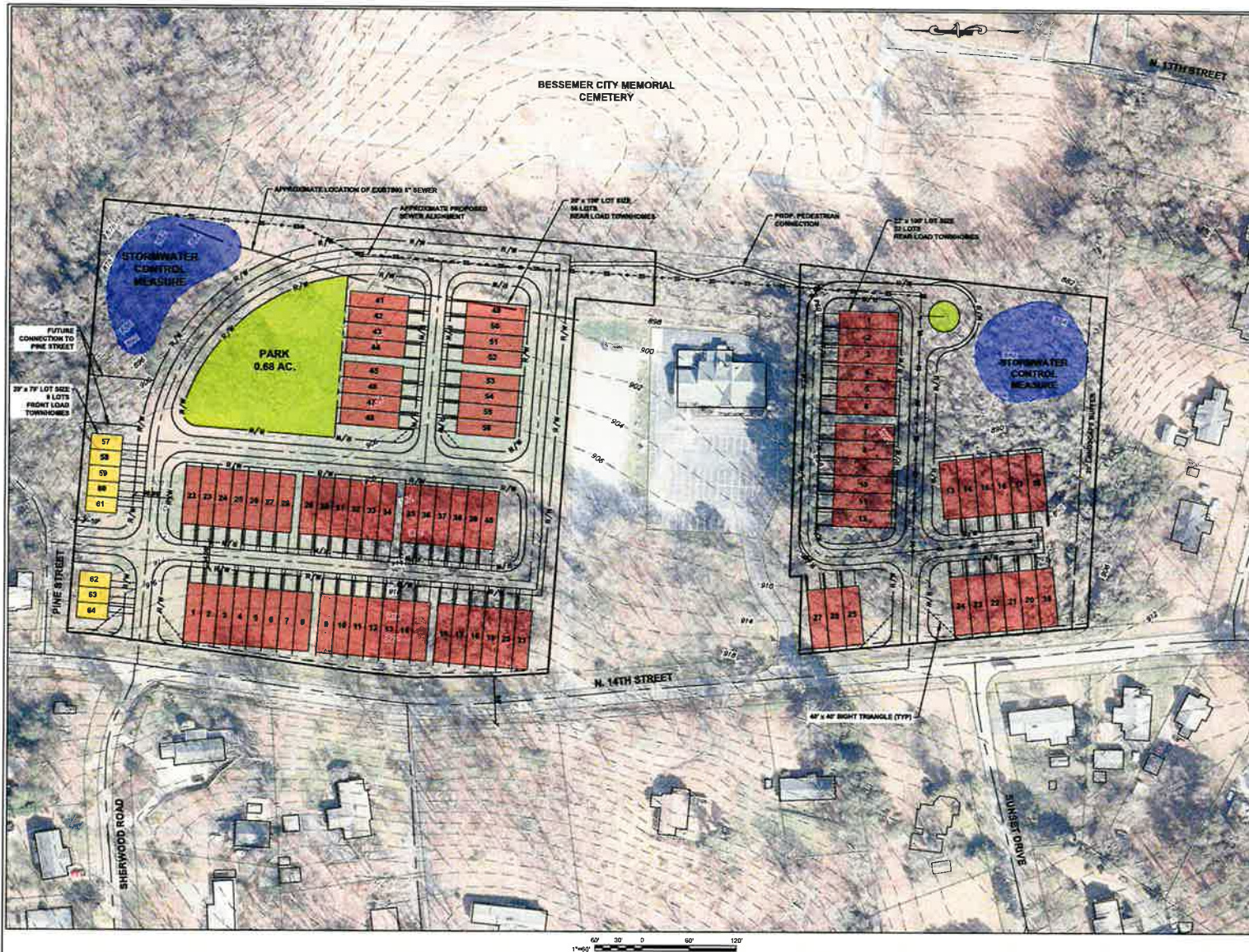
119075 & 214728  
12.11 ACRES (PER GIS)  
C-1  
CZ (CONDITIONAL ZONING)  
LONG CREEK  
VACANT/WOODED

THIS EXISTING CONDITIONS PLAN WAS PREPARED  
USING GASTON COUNTY GIS DATA AND AERIAL  
IMAGERY. NO SURVEYED DATA WAS USED.

DATE: OCTOBER 2011	SCALE	1
ISSUE NO. 1: 07/28/2011	HORIZONTAL:	
DRAWN: JCB	$1" = 60'$	
DESIGNED: JCB	VERTICAL:	
CHECKED: KJC	NSA	
PROJECT NO. KJC		

STATUS: PRELIMINARY DRAWING





**SITE STATISTICS**

PARCEL ID:	119975 & 214726
TOTAL SITE AREA:	12.11 ACRES (PER GIS)
CURRENT ZONING:	C-3
PERIODIC ZONING (PER DRAFT LDC):	C-2 (CONDITIONAL ZONING)
WATERSHED:	LONG CREEK
EXISTING LAND USE:	VACANT/TWO-UNIT TOWNHOUSES
PROPOSED LAND USE:	21
NUMBER OF UNITS:	60
MAXIMUM DENSITY:	4.9 UNITS/ACRE
PROPOSED DENSITY:	7.51 UNITS/ACRE
REQUIRED COMMON OPEN SPACE:	2.00 ACRES (176 ACRE PER UNIT)
PROPOSED COMMON OPEN SPACE:	2.00 ACRES
MINIMUM SETBACKS FOR TOWNHOUSES:	
FRONT:	15'
SIDE:	9'
REAR:	10'

**NOTE:**  
SITE TO BE DEVELOPED AFTER PUMP STATION INSTALLATION

DATE	DESCRIPTION

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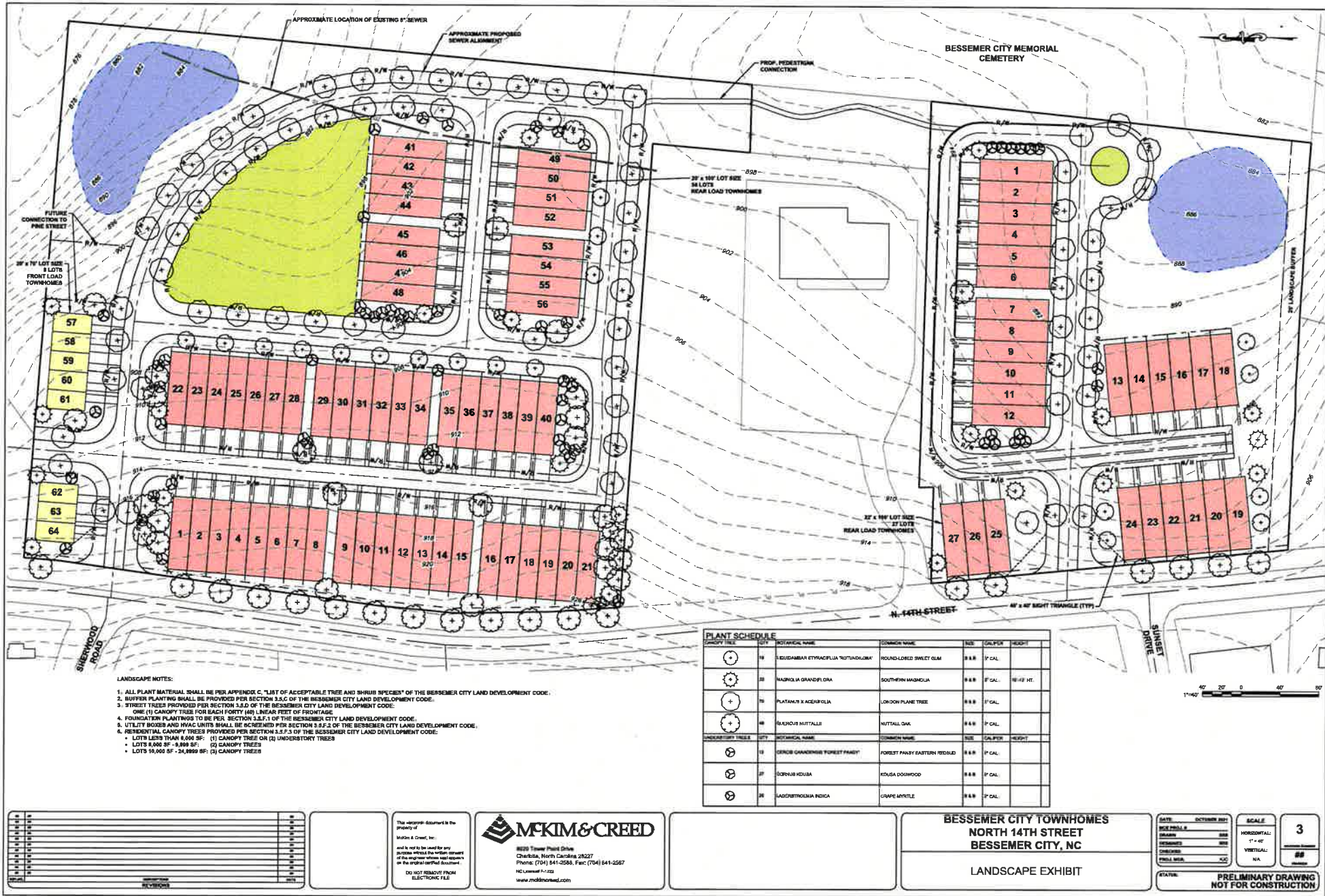
**MCKIM & CREED**  
 8020 Tower Point Drive  
 Charlotte, North Carolina 28227  
 Phone: (704) 841-2588 Fax: (704) 841-2587  
 NC License # 1122  
 www.mckimcreed.com

**BESSEMER CITY TOWNHOMES  
 NORTH 14TH STREET  
 BESSEMER CITY, NC**

**SKETCH PLAN**

DATE	10/20/2021	SCALE	2
DESIGNED BY	AT/MS/SS	HORIZONTAL:	1" = 40'
DRAWN BY	SS	VERTICAL:	N/A
CHECKED BY	SS		
IN CHARGE	SS		
STATUS	PRELIMINARY DRAWING NOT FOR CONSTRUCTION		





December 2, 2021

Bessemer City  
132 W. Virginia Ave  
Bessemer City, NC 28016

RE: Preliminary Traffic Analysis for 14 N Bessemer Project

Dear Planning Board, Council, and Staff:

McKim and Creed has done a preliminary analysis of the impact anticipated to the surrounding traffic for this project and have determined the following based on the current edition of the ITE:

- Proposed Trips Per Day from Development: 656
- Proposed New Trips During Peak AM: 83
- Proposed New Trips During Peak PM: 74

Due to the threshold requiring a TIA has not been met per City Code, a traffic impact study is not required.

Please let me know if you need further clarification.



Kyle Crowe, PE

8020 Tower Point Drive

Charlotte, NC 28227

704.841.2588

Fax 704.841.2567

[www.mckimcreed.com](http://www.mckimcreed.com)















**City of Bessemer City, North Carolina**  
**Conditional District Rezoning Staff Report**  
 Planning Board Agenda Item December 6, 2021  
 City Council Agenda Item January 10, 2022

Applicant: Design Development Solutions

Request:

To review and make a recommendation on the rezoning of two parcels of land that are currently zoned Urban Residential to Urban Residential Conditional District to accommodate the development of a multifamily townhome community.

Background Information:

The preliminary site plan for the development includes two separate parcels of land located on N. 14<sup>th</sup> St. Bessemer City, NC 28016. Parcel #214726 is approximately 8.07 acres and parcel #119975 is approximately 4.04 acres for a total of 12.11. Parcel #214728 is approximately 0.30 acres and will not be developed for residential housing but potentially developed for pedestrian access between the two developed parcels. Applicant is proposing to develop approximately 91 townhomes, the majority of which are rear entry with approximately 2.60 acres of open space.

Current regulations within section 2.8.C of the Bessemer City Land Development Code state that no multifamily development is to be developed on a site larger than three (3) acres and that all garages on multifamily buildings shall not face a street. The purpose of this application for a conditional district is to develop a multifamily community on a site approximately 12.11 acres and for a percentage of the units to have front loaded garage entries. Approximately eight (8) of the sixty four (64) units within the northern development site are proposed to have front entry garages.

Proposal: The Applicants have submitted a Conditional District application proposing to develop a multifamily residential community of townhomes on two separate sites. A summary of the proposal is as follows:



<i>Parcel</i>	<i>Site Area</i>	<i>Watershed</i>	<i>Existing Use</i>	<i>Proposed Use</i>	<i>Number of Units</i>	<i>Maximum Density</i>	<i>Proposed Density</i>	<i>Required Open Space</i>	<i>Proposed Open Space</i>
119975	8.07	Long Creek	Vacant	Townhome	64	8 units/acre	7.51/acre	2.60 acres	2.60acres
214726	4.04	Long Creek	Vacant	Townhome	27	8 units/acre	7.51/acre	N/A	N/A

The lots within the northern site are proposed as 20' x 100' for 2,000 sqft and 20' x 70' for 1,400 sqft. The lots within the southern site are proposed as 22' x 100' for 2,200 sqft. The required setbacks and proposed setbacks are depicted in the following table:

	Front	Side	Rear	Corner
Required	15'	0'	15'	15'
Proposed	15'	5'	10'	N/A

Roads: The proposal of both sites involve the creation of right of ways within the communities that include streets, sidewalks on both sides, and green strips. All right of ways and streets will be dedicated to the city upon development completion. Primary ingress and egress from the sites will be off of N. 14<sup>th</sup> St. and one point of ingress and egress off of Pine St. There is a proposed future connection to Pine St. for future realignment of Pine St.

- A five (5) foot wide sidewalk shall be constructed alongside all roadways, existing or proposed, as well as a six (6) foot green strip.

Utilities – Water and Sewer: The applicant is proposing the development to be served by City of Bessemer City Water and Sewer services.

- Public Works Director has indicated that there is City water and sewer availability for the sites but there will need to be an additional sewer pump station to adequately service both of the development sites.
- Applicants will pay the water, sewer tap fees, and system development fees.

Stormwater Drainage: Drainage will be engineered according to the best management practices at the time of construction and will be handled through a curb and gutter system located within the proposed road right-of-way as well as two storm water control measure ponds. The property is subject to adopted stormwater management guidelines.

Open Space: Open Space requirements for the proposed site are 2.60 acres of open space. Applicant proposes 2.60 acres of open space.

Land Use Buffer: The preliminary site plan indicates there will be a six (6) foot greenstrip along all main roadways within the residential community. The greenstrip shall have Canopy, Understory, or a combination of both. Number of trees required to be determined at the time of

permitting. All roadways utilized for driveway entry will not be required to have equal planting density as main roadways, this is depicted within the proposed landscape plan submitted by the applicant. There is a 20 ft. landscape buffer proposed between the south side of the southern development and existing single family residential structures.

Staff Recommendation:

1. Approve preliminary site plan as submitted.
2. Recommend that City Council rezone requested parcels to Urban Residential Conditional District (URCD).

Exhibits:

1. 14<sup>th</sup> N. Bessemer Application Packet.

Recommended Effective Date: January 10, 2021

PLAN CONSISTENCY & STATEMENT OF REASONABLENESS  
ZONING MAP AMENDMENT CD 01-2021  
January 10, 2022

Pursuant to N.C. Gen. Stat. §160D-605 the City of Bessemer City Council hereby approves and adopts the following Plan Consistency and Statement of Reasonableness for the rezoning of the City limits and Extra Territorial Jurisdiction of Bessemer City, North Carolina as noted and depicted on the proposed Official Zoning Map.

- 1) Said zoning change is **consistent** with the goals and values established by the City Council adopted in 2019.
  - a. The City Council created a mission and vision statement that included the following seven values: 1. Open, Honest and Accessible Government, 2. Fiscal Accountability and Sustainability, 3. Public Safety and Safe and Accessible Neighborhoods, 4. Keeping True to Our Small-Town Character and Traditions, 5. Focused on Quality and Customer Service, 6. Family Oriented, 7. Promote a Healthy Quality of Life. This rezoning is consistent with these values.
  - b. The City Council created a mission and vision statement that included the following eight goals: 1. A desirable place to live and work that is open to growth, 2. A safe and secure community for residents and visitors, 3. A sustainable community with high quality and dependable infrastructure and utilities, 4. A thriving, viable and diverse economy, 5. Provide opportunities for our citizens, 6. Sustainable organizational capacity, 7. Embrace innovation and promote creativity, 8. Promote a healthy quality of life. This rezoning is consistent with these goals.
- 2) Said rezoning is **consistent** with the City of Bessemer City Planning and Economic Development Comprehensive Land Use Vision Map adopted by the City Council in 2019. The proposed rezoning is:
  - a. Consistent with the future land use as designated on the official land use map.
- 3) The proposed map amendment **would not be detrimental** to the city and ETJ.
  - a. The physical conditions that make the rezoning reasonable is:
    - Provides Economic Development growth opportunities with new development in an area that is currently zoned to accommodate the proposed land use and level of density.
    - Provides for systematic residential growth that preserves and protects our existing neighborhoods and promotes quality opens space, walkability, streetscapes, and diverse housing types that do not take away from our small town character.
  - b. The rezoning is in the best interest of the public to increase and maximize property values in order to provide for future infrastructure and amenities.

Therefore, the requested rezoning is **reasonable** and **in the public interest**.

Upon a motion that the application is **consistent** with the Bessemer City Planning and Economic Development Comprehensive Land Use Vision.

Read, approved and adopted this the 10<sup>th</sup> day of January, 2022.

ATTEST

CITY COUNCIL FOR THE  
CITY OF BESSEMER CITY

\_\_\_\_\_  
Hydeia Hayes, City Clerk

BY \_\_\_\_\_  
Becky S. Smith, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
David W. Smith, City Attorney



**AN ORDINANCE AMENDING OFFICIAL ZONING MAP OF THE  
CITY OF BESSEMER CITY.**

**WHEREAS**, after proper notification a Public Hearing was held before the Bessemer City Council on January 10, 2022 to consider a proposed amendment to the City of Bessemer City Zoning Map. On December 6, 2021 the Bessemer City Planning Board voted to recommend the City Council approve the proposed zoning map amendment.

**WHEREAS**, after a \_\_\_\_\_ vote, the City Council of Bessemer City approved a zoning map change to the Official City of Bessemer City Zoning Map reflected in application CD 01-2021.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Bessemer City, that the Official City of Bessemer City Zoning Map is amended to reflect the adopted changes as written below.

1. Tax Parcel #214726 is rezoned from Urban Residential (UR) to Urban Residential Conditional District (URCD).
2. Tax Parcel #214728 is rezoned from Urban Residential (UR) to Urban Residential Conditional District (URCD).
3. Tax Parcel #119975 is rezoned from Urban Residential (UR) to Urban Residential Conditional District (URCD).

Effective Date

This Ordinance shall become effective upon its adoption by the City Council of the City of Bessemer City, North Carolina.

Adopted by City Council this 10<sup>th</sup> Day of January, 2022.

\_\_\_\_\_  
Becky S. Smith, Mayor

\_\_\_\_\_  
Hydeia Y. Hayes, City Clerk

**Exhibit A**  
**Areas of Relief and Conditions of Approval**

1. The proposed development shall be in compliance with the requirements of the City of Bessemer City Land Development Code with the added relief of:
  - a. Allowing the development for multifamily uses on two lots that are in excess of three (3) acres.
  - b. Allowing for eight (8) townhomes constructed parallel to Pine St. at the intersection of N. 14<sup>th</sup> St. to have front facing garage entry.
  - c. All streets and street networks within the developed community will be established a private streets. The developer will be responsible for establishing an HOA that will assume responsibility of all future street, sidewalk, and landscaping maintenance, as well as, future improvements.
2. All other multifamily design standards stated within the City of Bessemer City Land Development Code shall be adhered to.
3. Developer shall construct the pedestrian access way between the northern townhome community and the southern townhome community.
4. Developer to install “no on-street parking” signs throughout development.
5. Developer shall extend City of Bessemer City water and sewer to the site, at their expense. The development will be served by City utilities: water and sewer.
6. All off-site utility easements, if necessary to provide utilities to the site, must be obtained by the developer, at their expense, prior to approval of construction plans, issuance of permits, or commencement of construction.
7. Conditional Zoning approval is valid for a period of twenty four (24) months from the date of approval.



### Written Consent for Zoning Conditions

The petitioner hereby expressly consents to all zoning conditions listed in this report and attached to this as Exhibit A:

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ATTEST:

\_\_\_\_\_  
Authorized Agent/Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorized Agent/Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name



## AN ORDINANCE AMENDING SECTION 3.2.B OF THE BESSEMER CITY

### LAND DEVELOPMENT CODE

**WHEREAS**, after proper notification a Public Hearing was held before the Bessemer City Council on November 8<sup>th</sup>, 2021 to consider a proposed amendment to the Bessemer City, NC Land Development Code (LDC) Section 3.2.B Accessory Structures. On September 7<sup>th</sup>, 2021 the Bessemer City Planning Board voted to recommend the City Council approve the proposed LDC text change.

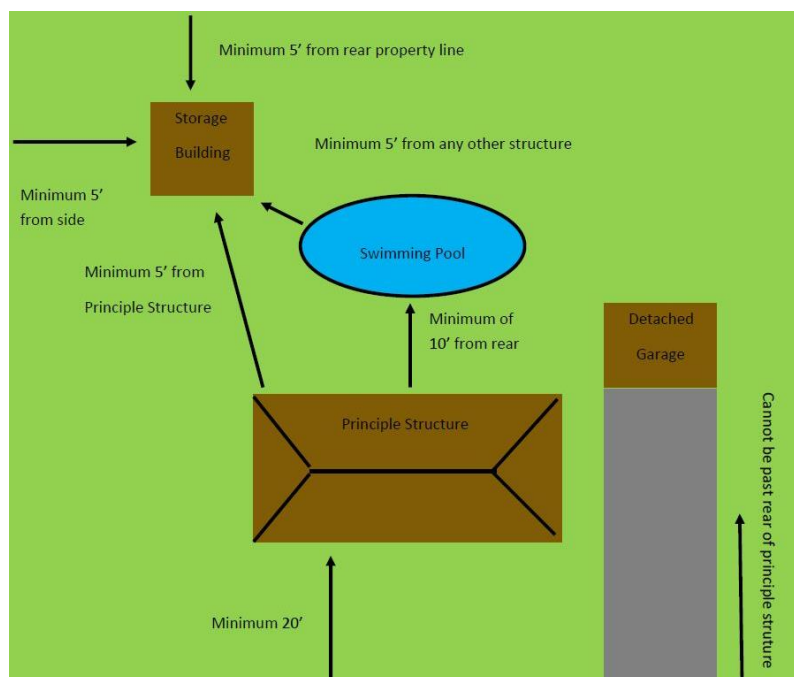
**WHEREAS**, after a \_\_\_\_\_ vote, the City Council of Bessemer City approved a text change to the Bessemer City LDC proposed by text change request TA2021-0001.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Bessemer City, that Section 3.2.B of the Bessemer City, NC Land Development Code is amended to reflect the adopted changes as written below.

### BESSEMER CITY LAND DEVELOPMENT CODE –CHAPTER 3.2.B Accessory Structures

#### 3.2.B Accessory Structures

*Figure 0-1 Diagram of Accessory Structures*





1. Unless otherwise specified, accessory structures shall be set back at least five (5) feet from and side lot lines.
2. The accessory structure shall be clearly incidental to the primary use. Accessory structures shall not exceed the height, length, or the width of the principal structure on the lot.
3. With the exception of Section accessory structures must be located in the rear yard unless, upon the determination of the Zoning Administrator, no practical location exists.
4. Each lot shall be permitted up to three (3) accessory structures.
5. Lots that are one (1) acre or less shall only be permitted one (1) accessory structure that may be used for storage purposes.
6. A detached garage shall not be counted towards the one (1) permitted accessory structure used for storage purposes.
7. Lots greater than one (1) acre shall be permitted up to four (4) accessory structures.
8. The square footage of accessory structures must not exceed fifty (50) percent of the square footage of the primary structure on a lot.
9. Garage buildings, both attached and detached, shall be regulated as an accessory structure.

Item 9.

Effective Date

This Ordinance shall become effective upon its adoption by the City Council of the City of Bessemer City, North Carolina.

Adopted by City Council this 10<sup>th</sup> Day of January, 2022.

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Becky S. Smith, Mayor

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Hydeia Y. Hayes, City Clerk



**AN ORDINANCE AMENDING SECTION 3.3.F OF THE BESSEMER  
CITY LAND DEVELOPMENT CODE**

**WHEREAS**, after proper notification a Public Hearing was held before the Bessemer City Council on November 8<sup>th</sup>, 2021 to consider a proposed amendment to the Bessemer City, NC Land Development Code (LDC) Section 3.3.F Garages and Carports. On September 7<sup>th</sup>, 2021 the Bessemer City Planning Board voted to recommend the City Council approve the proposed LDC text change.

**WHEREAS**, after a \_\_\_\_\_ vote, the City Council of Bessemer City approved a text change to the Bessemer City LDC proposed by text change request TA2021-0001.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Bessemer City, that Section 3.3.F of the Bessemer City, NC Land Development Code is amended to reflect the adopted changes as written below.

**BESSEMER CITY LAND DEVELOPMENT CODE –CHAPTER 3.2.B Accessory Structures**

**3.3.F Garages and Carports**

1. Garage doors are not permitted on the front elevation of any multi-family dwelling.
2. Attached garages or garage buildings shall be located in the side or rear yard only. Attached garage buildings that front a public street shall be and recessed a minimum of six (6) feet from the front façade.
3. Detached garages shall be located in the rear yard. Side yard detached garages are permitted if attached by a minimum six (6) foot wide covered breezeway to match principal roof structure.
4. If a detached garage is located within the side yard, it shall not protrude beyond the frontage of the principal structure.
5. Detached carports shall be located in the rear yard only.

6. Carport roofs shall be either boxed eave or vertical style.

*Figure 5-1 Example of Boxed Eave Style Carport Roof*



*Figure 6-2 Example of Vertical Roof Style Carport Roof*



7. Carports must be located on a paved surface or a contained gravel surface.
8. Attached carports must match the roof of the principal structure.

Effective Date

This Ordinance shall become effective upon its adoption by the City Council of the City of Bessemer City, North Carolina.

Adopted by City Council this 10<sup>th</sup> Day of January, 2022.

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Becky S. Smith, Mayor

---

Hydeia Y. Hayes, City Clerk



## AN ORDINANCE AMENDING SECTION 10.1 OF THE BESSEMER CITY LAND DEVELOPMENT CODE

**WHEREAS**, after proper notification a Public Hearing was held before the Bessemer City Council on November 8<sup>th</sup>, 2021 to consider a proposed amendment to the Bessemer City, NC Land Development Code (LDC) Section 10.1 General Definitions. On September 7<sup>th</sup>, 2021 the Bessemer City Planning Board voted to recommend the City Council approve the proposed LDC text change.

**WHEREAS**, after a \_\_\_\_\_ vote, the City Council of Bessemer City approved a text change to the Bessemer City LDC proposed by text change request TA2021-0001.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Bessemer City, that Section 10.1 of the Bessemer City, NC Land Development Code is amended to reflect the adopted changes as written below.

### **BESSEMER CITY LAND DEVELOPMENT CODE –CHAPTER 10.1 General Definitions**

#### **Structure, Accessory**

A structure clearly subordinate to the principal structure located on the same lot as the principal structure used for purposes customarily incidental to the principal structure. An accessory structure may also be referred to as an "accessory building." Accessory structures may be attached to or detached from the principal structure.

#### Effective Date

This Ordinance shall become effective upon its adoption by the City Council of the City of Bessemer City, North Carolina.

Adopted by City Council this 10<sup>th</sup> Day of January, 2022.

\_\_\_\_\_  
Becky S. Smith, Mayor

\_\_\_\_\_  
Hydeia Y. Hayes, City Clerk

**RESOLUTION OF THE  
CITY COUNCIL OF THE CITY OF BESSEMER CITY, NORTH CAROLINA  
PROVIDING FOR THE ISSUANCE OF A \$4,998,000 WATER AND SEWER SYSTEM REVENUE BOND  
ANTICIPATION NOTE OF THE CITY OF BESSEMER CITY, NORTH CAROLINA**

**WHEREAS**, the Bond Order hereinafter described was approved on January 10, 2022 and is in force and effect approving the issuance of water and sewer system revenue bonds of the City of Bessemer City, North Carolina (the “City”);

**WHEREAS**, the City desires to finance various improvements to the City’s water and sanitary sewer systems (the “Project”) as permitted by Section 159-161 of the General Statutes of North Carolina, as amended;

**WHEREAS**, the City desires to finance a portion of the Project through the issuance of \$4,998,000 Water and Sewer System Revenue Bonds (the “Bonds”) which may be issued in one or more series and are Initial Bonds under the Bond Order, and will initially finance the Project through the issuance of the Notes (as defined herein);

**WHEREAS**, First-Citizens Bank & Trust Company (the “Bank”) has agreed to purchase the Notes (as defined herein) in the principal amount of \$4,998,000 to evidence a loan to the City, which sum will be applied to the payment of a portion of the cost of the Project and the United States of America [Department of Agriculture, Rural Development \(“USDA”\)](#) has agreed to purchase the Bonds in the aggregate principal amount of \$4,998,000 after completion of the Project, all of the proceeds of which will be applied to the repayment of the principal amount of the Notes;

**WHEREAS**, the Local Government Commission of North Carolina (the “LGC”) is expected to approve the application of the City for approval of the Bonds as required by Section 159-85 of the General Statutes of North Carolina, as amended, and the issuance and private sale of the Bonds at its January 11, 2022 meeting;

**WHEREAS**, the LGC is expected to approve the issuance and private sale of the Note under the provisions of Article 9 of Chapter 159 of the General Statutes of North Carolina, as amended, at its January 11, 2022 meeting.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Bessemer City, North Carolina (the “City Council”), as follows:

1. For purposes of this Resolution, the following words have the meanings ascribed to them below:

“Bond Order” means the Bond Order authorizing the Bonds adopted by the City Council on January 10, 2022 and effective thereon

“City” means the City of Bessemer City, North Carolina, and its successors or assigns.

“City Council” means the City Council of Commissioners of the City.

“Note” means the City’s \$4,998,000 Water and Sewer System Revenue Bond Anticipation Note.

2. The City shall issue its Note in the total aggregate principal amount not to exceed \$4,998,000.

3. The Note is being issued to provide funds to pay a portion of the funding to finance various improvements to the City's water and sanitary sewer systems (the "Project") pursuant to and in accordance with the Bond Order.

4. Unless otherwise changed by a certificate delivered at closing by the City Manager or the Finance Director, the Note shall be dated January 20, 2022 and shall mature on April 20, 2023, at which time the principal shall be due and payable. It shall bear interest at the rate of 1.06% per annum, which interest shall be payable at the maturity of the Note and shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. No interest coupons shall be attached to the Note. ~~The~~ Upon ten days written notice to the Registered Owner of the Note, the principal amount of the Note may be prepaid in whole on any date prior to the Maturity Date without penalty with the proceeds of the Bonds.

5. The Note will be payable as to both principal and interest to the Bank and both the principal of and interest on the Note shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

6. The Note shall be sold to the Bank at a purchase price of \$4,998,000, such purchase price and the interest rate set forth above being in the best interests of the City.

7. The Note, which shall be in the form attached hereto as Exhibit A, shall bear the original or facsimile signatures of the Mayor or City Manager of the City and the City Clerk. An original or facsimile of the seal of the City is to be imprinted on the Note.

8. Unless otherwise changed by a certificate delivered at closing by the City Manager or the Finance Director, the proceeds of the Note shall be deposited into an account to be held by the City. The moneys held in such account shall be used to pay the costs of the Project or costs incurred in connection with the issuance of the Note. Funds may not be used to pay costs of the Project until the City has delivered written approval of such specific use by USDA to the Registered Owner of the Note. Funds in such account shall be invested in compliance with Section 159-30 of the North Carolina General Statutes, as amended, with interest earnings to be applied to the costs of the Project.

9. The City designates the Note as a "qualified tax-exempt obligation" eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code. The City does not reasonably anticipate issuing more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3), including all entities which issue obligations on behalf of the City and all subordinate entities of the City, during calendar year 2022 and will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3) during calendar year 2022.

10. The Mayor, the City Manager, the Finance Director and the City Clerk, each acting on behalf of the City, are hereby authorized and directed to cause the Notes to be prepared and to execute the Notes and deliver it to the respective Bank.

11. The Mayor, the City Manager, the Finance Director and the City Clerk, or their respective designees, each acting on behalf of the City, are authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the documents contemplated hereinabove or as may be deemed necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution. Any and all acts of the authorized officers of the City may be done individually or collectively.

12. If the maturity date of the Note occurs prior to the date that the Project is completed or substantially completed enough such that the United States of America, United States Department of Agriculture, Rural Development is willing to purchase the Bonds expected to be used to pay off the Note, then the Mayor, the City Manager, the Finance Director and the Clerk, and their respective designees, each acting on behalf of the City, are authorized and directed to execute and deliver another note or notes in substantially the form of Exhibit A with such terms as they deem necessary to keep such note or notes outstanding until such time as ~~the United States of America, United States Department of Agriculture, Rural Development~~ USDA is willing to purchase the Bonds to pay off the note or notes.

13. After the close of each Fiscal Year, the City will cause an audit to be made of its books and accounts relating to the System by a firm of independent certified public accountants to be chosen by the City and will cause an annual report of operations of the System to be prepared, such annual report to cover the matters usually contained in annual reports for similar systems. Within 180 days after the close of such Fiscal Year, the City Clerk shall mail reports of each such audit and copies of each such annual report to the Registered Owner of the Note.

***READ, APPROVED AND ADOPTED*** this 10th day of January, 2022.

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

(SEAL)

**CERTIFICATE**

I, **HYDEIA HAYES, CITY CLERK OF THE CITY OF BESSEMER CITY, NORTH CAROLINA** *DO HEREBY CERTIFY* that the foregoing is a true and accurate copy of the Resolution entitled “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BESSEMER CITY, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A \$4,998,000 WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE OF THE CITY OF BESSEMER CITY, NORTH CAROLINA**” which was adopted by the City Council at its regular meeting held on the 10th day of January, 2022, to become effective on thereon.

---

HYDEIA HAYES  
CITY CLERK



# **EXTRACTS FROM MINUTES OF THE CITY COUNCIL OF COMMISSIONERS**

A regular meeting of the City Council (the “*City Council*”) of the City of Bessemer City, North Carolina was held on January 10, 2022, in the City Council Chambers, Bessemer City, North Carolina,, Mayor Becky S. Smith presiding and the following Council Members present:

Council Members Absent:

\* \* \* \* \*

\_\_\_\_\_ moved that the resolution entitled, “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BESSEMER CITY, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A \$4,998,000 WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE OF THE CITY OF BESSEMER CITY, NORTH CAROLINA**”, copies of which having been made available to the City Council, be adopted.

The motion was adopted by a vote of \_\_\_\_\_.

AYES:

NAYS:

***PASSED, ADOPTED AND APPROVED*** this 10th day of January, 2022.

**CITY COUNCIL OF THE CITY OF BESSEMER CITY,  
NORTH CAROLINA**

BY: \_\_\_\_\_  
HYDEIA Y. HAYES  
CITY CLERK

**EXHIBIT A**

(Form of Note)

NO. R-1

**\$4,998,000**

UNITED STATES OF AMERICA  
 STATE OF NORTH CAROLINA  
 CITY OF BESSEMER CITY, NORTH CAROLINA  
 WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE

<b>INTEREST RATE</b>	<b>MATURITY DATE</b>	<b>DATED DATE</b>
1.06%	April 20, 2023	January 20, 2022

**OWNER: FIRST-CITIZENS BANK & TRUST COMPANY**

**PRINCIPAL SUM: FOUR MILLION NINE HUNDRED NINETY-EIGHT THOUSAND DOLLARS**

The **CITY OF BESSEMER CITY, NORTH CAROLINA** (the “City”) acknowledges itself indebted and for value received hereby promises to pay to the Owner named above, on the Maturity Date specified above, ~~on surrender hereof~~, the Principal Sum shown above and to pay to the Owner hereof interest thereon from the date of this Note on April 20, 2023, the date on which it shall mature, each payment at the Interest Rate per annum specified above calculated on the basis of a 360-day year consisting of twelve 30-day months. Principal of and interest on this Note is payable in immediately available funds and is payable in U.S. dollars to the Owner of the Note ~~on presentation and surrender of the Note to the City on the date specified above~~. The principal amount of the Note may be prepaid in whole on any date prior to the Maturity Date without penalty with the proceeds of the Bonds (as defined in the Note Resolution) purchased by the United States [of America](#) Department of Agriculture, [Rural Development](#).

This Note is issued pursuant to and in accordance with Article 5 and Article 9 of Chapter 159 of the General Statutes of North Carolina, both as amended, a bond order (the “*Bond Order*”) adopted by the City Council of the City on January 10, 2022 and effective thereon and a resolution adopted by the City Council of the City on January 10, 2022 (the “*Note Resolution*”). This Note is issued in anticipation of the receipt of the proceeds of the sale of a like amount of the City’s Water and Sewer System Revenue Bonds, and the proceeds hereof shall be used to pay a portion of the cost of the Project (as defined in the Bond Order).

The Note is a special obligation of the City payable solely from the Net Revenues (as defined in the Bond Order) and from the proceeds of said Water and Sewer System Revenue Bonds of the City. Neither the credit nor the taxing power of the City is pledged for the payment of this Note and no holder of this Note has the right to compel exercise of the taxing power by the City or the forfeiture of any of the City’s property in connection with any default hereon. Reference is hereby made to the Bond Order and the Note Resolution and to all amendments and supplements thereto for a description of the provisions, among others, respecting the nature and extent of the security, the rights, duties and obligations of the City, the rights of the holder of this Note and the terms upon which this Note is issued and secured.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of North Carolina to exist, be performed or happen precedent to or in the issuance of this Note, exist, have been performed and have happened, and that the amount of this Note, together with all other indebtedness of the City, is within every debt and other limit prescribed by said Constitution or statutes.

This Note is not valid or obligatory for any purpose until the certification hereon has been signed by an authorized representative of the Local Government Commission of North Carolina.

***IN WITNESS WHEREOF***, the City has caused this Note to bear the original or facsimile of the signatures of the Mayor of the City and the City Clerk and an original or facsimile of the seal of the City to be imprinted hereon.

(SEAL)

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

Date of Execution: \_\_\_\_\_, 2022

The issue hereof has been approved under the provisions of The Local Government Bond Act.

\_\_\_\_\_  
SHARON EDMUNDSON  
Secretary of the Local Government Commission

## FORM OF ASSIGNMENT

## ASSIGNMENT

***FOR VALUE RECEIVED*** the undersigned hereby sells, assigns and transfers unto

---

(Please print or typewrite Name and Address,  
including Zip Code, and Federal Taxpayer Identification or  
Social Security Number of Assignee)

---

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

---

Attorney to register the transfer of the within Note on the books kept for registration thereof,  
with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

***NOTICE:*** Signature must be guaranteed by a Participant in the Securities Transfer Agent Medallion Program (“*STAMP*”) or similar program.

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***NOTICE:*** The signature to this assignment must correspond with the name as it appears on the face of the within Note in every particular, without alteration, enlargement or any change whatever.

TRANSFER FEE MAY BE REQUIRED

Extract of Minutes of a regular meeting of the City Council of the City of  
Bessemer City held in the City Council Chambers on January 10, 2022.

Present:

Absent:

\_\_\_\_\_ moved that the following order, copies of which having been made available  
with the City Council, be adopted:

**BOND ORDER AUTHORIZING THE ISSUANCE OF WATER AND SEWER SYSTEM  
REVENUE BONDS OF THE CITY OF BESSEMER CITY, NORTH CAROLINA TO PROVIDE  
FUNDS TO MAKE CERTAIN IMPROVEMENTS TO THE SYSTEM OF THE CITY;  
PROVIDING FOR THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR THE  
COLLECTION OF SERVICE CHARGES FOR THE USE OF THE SYSTEM; PROVIDING FOR  
THE CREATION OF CERTAIN SPECIAL FUNDS; PLEDGING TO THE PAYMENT OF THE  
PRINCIPAL OF AND INTEREST ON THE REVENUE BONDS CERTAIN REVENUES OF THE  
SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF OWNERS; AND SETTING  
FORTH THE DETAILS OF CERTAIN RELATED MATTERS.**

\* \* \*

The motion to adopt the aforementioned order was seconded by Council Member  
\_\_\_\_\_ and was adopted by the City Council on the following vote:

AYES:

NAYS:

***PASSED, ADOPTED AND APPROVED*** this 10th day of January, 2022.

**CITY OF BESSEMER CITY, NORTH CAROLINA**

BY: \_\_\_\_\_  
HYDEIA Y. HAYES  
CITY CLERK

STATE OF NORTH CAROLINA       )  
  )  
COUNTY OF GASTON               )       **ss:**

**I, HYDEIA Y. HAYES**, City Clerk of the City of Bessemer City, North Carolina, **HEREBY CERTIFY** that the foregoing is a true, correct and complete copy of an order adopted by a majority of the City Council of the City of Bessemer City, North Carolina present and voting at a meeting duly called and held on January 10, 2022, in accordance with law, and that such order has not been repealed, revoked, rescinded or amended but is in full force and effect as of the date hereof.

**WITNESS** my hand, this 10th day of January, 2022.

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CITY CLERK  
CITY OF BESSEMER CITY, NORTH CAROLINA

**BOND ORDER AUTHORIZING THE ISSUANCE OF WATER AND SEWER SYSTEM REVENUE BONDS OF THE CITY OF BESSEMER CITY, NORTH CAROLINA TO PROVIDE FUNDS TO MAKE CERTAIN IMPROVEMENTS TO THE SYSTEM OF THE CITY; PROVIDING FOR THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR THE COLLECTION OF SERVICE CHARGES FOR THE USE OF THE SYSTEM; PROVIDING FOR THE CREATION OF CERTAIN SPECIAL FUNDS; PLEDGING TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE REVENUE BONDS CERTAIN REVENUES OF THE SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF OWNERS; AND SETTING FORTH THE DETAILS OF CERTAIN RELATED MATTERS.**

**WHEREAS**, the City of Bessemer City, North Carolina (the “City”) is authorized by The State and Local Government Revenue Bond Act, General Statutes of North Carolina, Section 159-80 *et seq.* (the “Act”), to issue, subject to the approval of the Local Government Commission of North Carolina, at one time or from time to time revenue bonds and revenue refunding bonds of the City for the purposes as specified in the Act; and

**WHEREAS**, the City Council (the “City Council”) of the City desires to finance the cost of various improvements to the City’s water and sewer system (the “Project”);

**WHEREAS**, the Local Government Commission of North Carolina is expected to approve the application of the City for the issuance of revenue bonds in an amount not exceeding \$4,998,000 to finance the cost of the Project, and, in connection therewith, to issue its bond anticipation notes to be repaid with the proceeds of such bonds;

**NOW THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BESSEMER CITY, NORTH CAROLINA:**

**ARTICLE I  
GENERAL PROVISIONS AND DEFINITIONS**

Section 1.01. **Contract with Holders.** In consideration of the purchase and acceptance of the Bonds by those who hold them from time to time, the provisions of this Bond Order constitute a contract between the City and the Holders from time to time of the Bonds; and the covenants and agreements herein set forth to be performed by or on behalf of the City are for the equal benefit, protection and security of the Holders of any and all of the Bonds so issued or to be issued, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, or otherwise.

Section 1.02. **Definitions.** The following words and terms as used in this Bond Order have the following meanings, unless some other meaning is manifestly intended:

“Act” means The State and Local Government Revenue Bond Act, constituting Article 5 of Chapter 159 of the General Statutes of North Carolina, as amended.

“Additional Bonds” means the Bonds referred to in Article III.

“Annual Budget” means any budget or amended budget of Operating Expenses adopted or in effect pursuant to Section 7.08.

*“Auditors”* means the independent firm of certified public accountants that is employed by the City to audit the City’s books and accounts at the end of each Fiscal Year.

*“Bond”* or *“Bonds”* means any bond or bonds authorized by this Bond Order or a supplement to this Bond Order, and includes the Initial Bonds and any Additional Bonds issued in accordance with this Bond Order, as well as any bond anticipation note or notes authorized and issued pursuant to Article II.

*“Bondholder”* or *“Holder”* or any similar term, when used with reference to a Bond or Bonds means any person who is the registered owner of any outstanding Bond or Bonds.

*“Bond Order”* means this Bond Order, together with all orders amendatory hereof and all orders supplemental hereto as herein permitted.

*“Bond Registrar”* means the Finance Director or any successor as appointed by the City.

*“City”* means the City of Bessemer City, North Carolina.

*“City Clerk”* means the City Clerk of the City of Bessemer City, North Carolina or the officer succeeding to or exercising his or her principal functions and duties.

*“City Representative”* means the person or persons designated to act on behalf of the City by written certificate of the City signed by the Mayor or the City Manager and furnished to the Bond Registrar and the Depositary containing the specimen signature of such person or persons.

*“Commission”* means the Local Government Commission of North Carolina (or its authorized representative).

*“Commission Secretary”* means the Secretary of the Commission or his or her designated assistant.

*“Consultants”* means an independent engineer or engineering firm or consultants otherwise experienced in matters relating to water and sewer revenue bonds at the time employed by the City under the provisions of Sections 5.01 and 7.02 to perform the functions and duties imposed on the Consultants by this Bond Order.

*“Counsel”* means an attorney or firm of attorneys selected by the City.

*“Debt Service Fund”* means the fund or account so designated by Section 5.02.

*“Debt Service Requirement”* means, with respect to Bonds in any Fiscal Year, the sum of (a) the amount required to pay the interest on the Bonds then outstanding which is payable in such Fiscal Year and (b) the amount required to pay the principal of the Bonds then outstanding which is payable in such Fiscal Year, the computation of such amount to be based on the assumption that (a) the Bonds at the time outstanding will be retired according to their stated maturities or mandatory redemption requirements, (b) any bond anticipation notes issued pursuant to this Bond Order and maturing during such Fiscal Year will be refunded with Additional Bonds such that the principal amount of such bond anticipation notes is not due and payable by the City in such Fiscal Year and (c) if the Bonds bear interest at a variable rate, the rate is the maximum rate established in the applicable Series Resolution.

*“Debt Service Reserve Fund”* means the account so designated by Section 5.02.



*“Debt Service Reserve Fund Requirement”* means an amount equal to the maximum Debt Service Requirement for any Fiscal Year, calculated as if all outstanding Bonds were a part of the same series.

*“Depository”* means any bank or trust company duly authorized under the laws of the United States of America or the State to engage in the banking business within the State and designated by the City or the City Manager, as a depository of money under the provisions of this Bond Order.

*“Finance Director”* means the finance director of the City or the officer succeeding to or exercising his or her principal functions and duties.

*“Fiscal Year”* means the period of 12 months commencing on July 1 of any year and ending on June 30 of the following year, or any such other annual period permitted by State law.

*“General Reserve Account”* means the account of the Debt Service Reserve Fund created under Section 5.02 of this Bond Order.

*“Identifiable Bondholder”* means any Holder who has filed with the Bond Registrar a request in writing setting forth such Holder’s name and address and the particular reports, notices or other documents which the Holder desires to receive and which is to be mailed to the Holder under the provisions of this Bond Order.

*“Initial Bonds”* means the Bonds authorized under Section 2.01 of this Bond Order.

*“Mayor”* means the presiding officer of the City or the officer succeeding to or exercising his principal functions and duties.

*“Net Revenues”* means the Revenues received by the City during any period less the Operating Expenses for such Fiscal Year.

*“Note Resolution”* means the resolution of the City adopted on January 10, 2022, authorizing the issuance of the Initial Bonds.

*“Operating Expenses”* means the City’s reasonable and necessary current expenses of maintaining, repairing and operating the System, according to GAAP except as adjusted herein, including, without limiting the generality of the foregoing, all administrative, general and commercial expenses, insurance and surety bond premiums, payments for the billing and collection of Service Charges, architectural and engineering expenses, fees and expenses of the Bond Registrar, legal expenses, any taxes which may be lawfully imposed on the City or its income or operations or the property under its control, ordinary and current rentals of equipment or other property, usual expenses of maintenance and repair, and any other current expenses required to be paid by the City under the provisions of this Bond Order or by law, all to the extent properly and directly attributable to the System, but not including any reserves for operation, maintenance or repair or any allowance for depreciation, amortization, interest or similar charges.

*“Project”* means Project as defined in the preamble to this Bond Order or any additions thereto as described in a Series Resolution.

*“Qualified Investments”* means any investments of political subdivisions of the State permitted under Section 159-30 of the General Statutes of North Carolina, as amended, or any successor provision.

*“Revenue Fund”* means the account so designated by Section 5.02.

*“Revenues”* means all income received by the City from, in connection with, or as a result of, its ownership or operation of the System, according to GAAP except as adjusted herein, including all money received in payment of rates, fees and other charges for the use of and for the services furnished by the System and investment income, but excluding the proceeds of any borrowing for payment of the costs of, or grants or donations intended for, specific System Improvements.

*“Series Resolution”* means the Note Resolution and the resolution of the City providing for the issuance of the Initial Bond and any Additional Bonds and fixing the details thereof.

*“Service Charges”* means rates, fees and charges, including service, connection and other charges, for the use of, and for the services and facilities furnished or to be furnished by the System, as prescribed or fixed by the City.

*“State”* means the State of North Carolina.

*“State Treasurer”* means the Treasurer of the State of North Carolina or his or her designated assistant.

*“Subordinate Obligations”* means indebtedness the terms of which shall provide that it be subordinate and junior in right of payment to the prior payments in full of the Bonds. For purposes of this Bond Order, obligations or debt instruments issued to the State as part of the State Revolving Loan Program or State Clean Water Bond Program are deemed to be Subordinate Obligations. Any Subordinate Obligations shall include a provision prohibiting acceleration thereof while any Bonds are Outstanding hereunder.

*“Surplus Fund”* means the account so designated by Section 5.02.

*“System”* means all plants, works, instrumentalities and properties used or useful in treating and pumping water and wastewater, the Project and any System Improvements.

*“System Improvements”* means any construction, reconstruction, improvement, enlargement, betterment or extension of the System.

*“Trustee”* means the Trustee with respect to the Bonds as identified in any Series Resolution.

*“USDA”* means United States of America, United States Department of Agriculture, Rural Development.

*“USDA Reserve Account”* means the account of the Debt Service Reserve Fund created under Section 5.02 of this Bond Order.

Words of the masculine gender include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, the words *“bond”*, *“owner”*, *“Holder”* and *“person”* includes corporations and associations, including public bodies, as well as natural persons.

**ARTICLE II**  
**AUTHORIZATION OF PROJECT AND INITIAL BONDS;**  
**TERMS, EXECUTION, AUTHENTICATION, DELIVERY AND**  
**REGISTRATION OF BONDS**

Section 2.01. *Authorization of Project and Initial Bonds.* The City shall issue, in accordance with and pursuant to the Act and this Bond Order one or more negotiable bonds in an aggregate principal amount not exceeding \$4,998,000 for the purpose of providing funds, together with other available funds, to finance the cost of the Project.

Section 2.02. *Character of Bonds.* The Bonds are special obligations of the City payable solely from Net Revenues.

Section 2.03. *Terms of Bonds.* The Bonds are issuable as fully registered bonds. The Bonds are to be dated, bear interest until their payment, such interest to the maturity thereof being payable at such rate or rates and at such time or times, and are stated to mature (subject to the right of prior redemption) at such times as set forth in the Resolution providing for the issuance of the Bonds. Both principal of and interest on the Bonds are to be paid by check mailed or wire transfer sent to the Holder thereof except that interest payments are to be made to the person shown as owner on the registration books on the 15th day of the month preceding each interest payment date (whether or not such 15th day is a business day. Each Bond is payable with respect to principal, redemption premium if any, and interest, in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts. The Bonds are redeemable before their respective maturities as provided in Article IV and as additionally provided in the Resolution providing for the issuance of the Bonds.

Section 2.04. *Execution of Bonds.* Each Bond is to be executed in the name of the City by manual or facsimile signatures of the Mayor or City Manager and the City Clerk or any Assistant or Deputy City Clerk and have impressed or printed thereon the official seal of the City or a facsimile thereof; provided, however, that at least one manual signature must appear on each Bond (which may be the signature of the Commission's certificate). Any Bond may be signed, sealed or attested on behalf of the City by any person who, at the date of such act, holds the proper office, notwithstanding that at the date of such Bond or the date of delivery thereof such person did not hold such office. If an officer who has signed or sealed any of the Bonds ceases to be such officer of the City before the Bonds so signed or sealed have been delivered, such Bonds may nevertheless be delivered as herein provided as if the person who so signed or sealed such Bonds had not ceased to be such officer.

Section 2.05. *Registration and Transfer of Bonds.* The City shall cause books for the registration of and for the registration of transfers of the Bonds as provided in this Bond Order to be kept by the Bond Registrar. The transfer of any Bond must be registered on the books kept for the registration of and registration of transfers of Bonds on surrender thereof to the Bond Registrar together with an assignment duly executed by the Holder or his attorney or legal representative in such form as is satisfactory to the Bond Registrar. On any such registration of transfer, the City shall execute and the Bond Registrar shall authenticate and deliver in exchange for such Bond a new Bond of the same series registered in the name of the transferee in an aggregate principal amount equal to the unpaid principal amount of such Bond, having maturities corresponding to the principal installments of such Bond and bearing interest at the same rate. In no event will the Bond Registrar transfer the Bonds to any person other than a bank, an insurance company or a similar financial institution unless the Commission has previously approved such transfer.

When the Bonds are transferred hereunder, the City shall execute, the Bond Registrar shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Bond Order. The City and the Bond Registrar may make a charge for every such transfer of Bonds sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to such transfer. Neither the City nor the Bond Registrar is required to make any such registration of transfer of Bonds during the 15 days immediately preceding an interest payment date on the Bonds or in the case of any proposed redemption of Bonds, immediately preceding the date of mailing of notice of such redemption, or after such Bond or any portion thereof has been selected for redemption.

Section 2.06. ***Ownership of Bonds.*** As to any Bond, the person in whose name the same is registered is deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and the interest on any such Bond will be made only to the Holder thereof or his legal representative. All such payments are valid and effectual to satisfy and discharge the liability on such Bond including the interest thereon to the extent of the sum or sums so paid.

Section 2.07. ***Mutilated, Destroyed, Stolen or Lost Bonds.*** If an outstanding Bond becomes mutilated or be destroyed, stolen or lost, the City may prepare and cause to be executed, authenticated and delivered a new Bond of like tenor, number and amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond and on surrender of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, on the owner furnishing to the satisfaction of the Bond Registrar, the Commission and the City evidence that such Bond has been destroyed, stolen or lost, proof of the ownership thereof, a surety Bond or other indemnification instrument in twice the face amount of the Bond or in such other amount required by applicable law, payment of the cost of preparing and issuing any new Bonds, including the reasonable expenses and charges of the City and the Bond Registrar in connection therewith and evidence of compliance with such other reasonable regulations as the Bond Registrar and City may prescribe. All Bonds surrendered hereunder are to be surrendered to the Bond Registrar and cancelled. All Bonds issued in accordance with this Section are to be signed by the Mayor or City Manager and the City Clerk or any Deputy or Assistant City Clerk who are in office at the time and contain a recital to the effect that they are issued in exchange for or in place of certain Bonds and are to be deemed a part of the same series as such Bonds.

Section 2.08. ***Authentication of Initial Bonds.*** The Initial Bonds are to be executed substantially in the manner hereinabove set forth and are to be deposited with the Bond Registrar for authentication, but before or simultaneously with the authentication by the Bond Registrar and delivery of the Initial Bonds by the State Treasurer there must be filed with the Bond Registrar the following:

- (a) a copy, certified by the City Clerk to be a true and correct copy, of this Bond Order prescribing the details of the Initial Bonds, including form, maturities and redemption provisions;
- (b) a certificate of the Commission showing the award of the Initial Bonds and specifying the interest rate or rates thereof; and
- (c) an opinion of Counsel to the effect that the issuance of the Initial Bonds has been duly authorized.

No Bond is valid or obligatory for any purpose unless authenticated by the Bond Registrar.

When the documents mentioned in clauses (a) to (c), inclusive, of this Section have been filed with the Bond Registrar and when the Initial Bonds have been executed and authenticated as required by this Bond Order, the Bond Registrar shall authenticate and deliver the Initial Bonds to or on the order of

the purchasers thereof, but only on payment to the State Treasurer of the purchase price of the Initial Bonds. The Bond Registrar is entitled to rely on the foregoing certificates with respect to the matters contained therein.

Section 2.09. ***Approval of Issuance and Sale of Initial Bonds.*** None of the Initial Bonds may be issued unless they are approved and sold by the Commission and until the Commission Secretary has endorsed thereon a certificate evidencing approval in accordance with the provisions of the Act.

Section 2.10. ***Issuance of Revenue Bond Anticipation Notes.*** The City is authorized to issue, in anticipation of the receipt of the net proceeds of any Bonds, water and sewer system revenue bond anticipation notes for the purpose of providing funds to pay the cost of the Project or any System Improvements. The payment of the principal of, redemption premium, if any, and interest on such notes shall be secured by a pledge, charge and lien upon the proceeds of any Bonds, if and when issued, and by the pledge of the Net Revenues pursuant to Section 5.03. All covenants, obligations and agreements of the City contained in this Bond Order shall be deemed to be covenants, obligations and agreements of the City with the Holders of any notes hereafter issued.

### ARTICLE III ADDITIONAL BONDS

Section 3.01. ***Refunding of Outstanding Bonds.*** The City may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, Additional Bonds which are payable from the same funds as previously issued Bonds for the purpose of refunding all or any portion of the Initial Bonds or any Additional Bonds. Except as to any difference in the maturities thereof or in the rate or rates of interest or the provisions for redemption, such refunding obligations will be on a parity with and be entitled to the same benefit and security of this Bond Order as other Bonds. The Bond Registrar may not authenticate and deliver any Additional Bonds for this purpose unless theretofore or simultaneously therewith there has been filed with the Bond Registrar the following:

- (a) a copy, certified by the City Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of the Additional Bonds and prescribing the details thereof;
- (b) a certificate of the Commission showing the award of the Additional Bonds and specifying the interest rate or rates thereof;
- (c) a copy, certified by the City Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the City directing the authentication of the Additional Bonds and the delivery thereof to or on the order of the purchasers therein named on payment of the purchase price therein set forth;
- (d) an opinion of Counsel to the effect that the issuance of the Additional Bonds has been duly authorized and that all conditions precedent to the delivery of the Additional Bonds have been fulfilled and further stating that the City is in compliance with all covenants and undertakings in connection with all outstanding Bonds; and
- (e) such documents as the Bond Register, the City or the Commission require to evidence that provision has been satisfactorily made for the redemption of the Bonds to be refunded and the extent to which the net debt service on such new bonds is

less than the debt service on the Bonds to be refunded would have been but for the refunding.

When the documents mentioned in clauses (a) to (e), inclusive, of this Section have been filed with the Bond Registrar and when the Additional Bonds have been executed and authenticated as required by this Bond Order, the Bond Registrar shall deliver said Additional Bonds to or on the order of the purchasers thereof, but only on payment to the State Treasurer of the purchase price of said Additional Bonds.

Section 3.02. ***Financing of System Improvements.*** The City may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, Additional Bonds which are payable from the same funds as previously issued Bonds for the purpose of financing System Improvements. Except as to any difference in the maturities thereof or in the rate or rates of interest or the provisions for redemption, such obligations will be on a parity with and be entitled to the same benefit and security of this Bond Order as all other Bonds. The Bond Registrar may not authenticate and deliver any Additional Bonds for this purpose unless theretofore or simultaneously therewith there has been filed with the Bond Registrar, the following:

(a) a copy, certified by the City Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of the Additional Bonds and prescribing the details thereof and providing that the System Improvements to be financed with the proceeds thereof are thereby made a part of the System and that the revenues of such System Improvements are thereby pledged to the Additional Bonds and as additional security for the outstanding Bonds;

(b) a certificate of the Commission showing the award of said Additional Bonds and specifying the interest rate or rates thereof;

(c) a copy, certified by the City Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the City directing the authentication of said Additional Bonds and the delivery thereof to or on the order of the purchasers therein named on payment of the purchase price therein set forth;

(d) an opinion of Counsel to the effect that the issuance of said Additional Bonds has been duly authorized and that all conditions precedent to the delivery of said Additional Bonds have been fulfilled and further stating that the City is in compliance with all covenants and undertakings in connection with all outstanding Bonds;

(e) a certificate, signed by the City Representative stating that all payments required by Section 5.05 into the Debt Service Fund and into the Debt Service Reserve Fund before the beginning of the month during which the Additional Bonds are issued have been made;

(f) a certificate, signed by the City Representative, stating that the Net Revenues for each of the two complete Fiscal Years next preceding the issuance of the proposed Additional Bonds were equal to at least 110% of the average annual requirements for principal and interest on all Bonds then outstanding and 100% of the amount necessary to pay annual debt service obligations coming due in that Fiscal Year with respect to Subordinate Obligations and City general obligation bonds and installment financing obligations used to finance or refinance System Improvements, if any; and

(g) a statement, signed by the City Representative, to the effect that the estimated Net Revenues for the first two Fiscal Years following the Fiscal Year in which the Improvements

being financed will be placed in service will be at least 110% of the average annual Debt Service Requirements on all outstanding Bonds, including the proposed Additional Bonds and 100% of the amount necessary to pay annual debt service obligations coming due in that Fiscal Year with respect to Subordinate Obligations and City general obligation bonds and installment financing obligations used to finance or refinance System Improvements, if any.

Section 3.03. ***Approval by Local Government Commission.*** Additional Bonds may not be issued unless they are approved and sold by the Commission and until the Commission Secretary has endorsed thereon a certificate evidencing approval in accordance with the Act.

Section 3.04. ***Waiver of Additional Bonds Limitations.*** The limitations hereinabove set forth with respect to the issuance of Additional Bonds may be waived or modified by the written consent of Holders owning 60% or more of the outstanding Bonds and with the consent of the Commission.

## ARTICLE IV REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01. ***Terms and Conditions.*** The Bonds, and the respective installments of principal corresponding thereto, are subject to redemption, both in whole and in part, at such times and prices, as may be provided by the Series Resolution authorizing the issuance of such Bonds.

Section 4.02. ***Notice of Redemption and Prepayment.*** When the City elects to redeem Bonds, notice thereof, stating the redemption date and place of payment and identifying the Bonds by reference to their numbers and further stating that on such redemption date there will become due and payable on each Bond so to be redeemed the principal thereof and the redemption premium, if any, together with the interest accrued to the redemption date and that from and after such date interest thereon ceases to accrue, must be given as set forth in the applicable Series Resolution authorizing the issuance of such Bonds.

Section 4.03. ***Payment of Redeemed Bonds.*** Notice having been given in the manner provided, the Bonds so called for redemption are due and payable on the redemption date so designated at the redemption price set forth in said notice. On presentation and surrender of the Bonds so called for redemption at the place of payment specified in said notice, together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Holder or his duly authorized attorney, such Bonds are to be paid at the aforementioned redemption price. If part but not all of an outstanding bond is selected for redemption, the Holder thereof or his attorney or legal representative shall present and surrender such Bond to the Bond Registrar for payment of the applicable redemption price and the City shall execute and the Bond Registrar shall authenticate and deliver to or on the order of such Holder or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a registered Bond of the same series and maturity, bearing interest at the same rate and of any authorized denomination.

If, on the redemption date, money for payment of the redemption price of all the Bonds to be redeemed is available therefor at the place of payment specified in the notice of redemption, then from and after the redemption date, the Bonds or the installments of principal thereof so called for redemption cease to bear interest. All money held for the redemption of particular Bond or for the prepayment of particular installments thereof is to be held in trust for the account of the Holders of the Bonds so to be redeemed or prepaid.

If said money is not so available on the redemption date, the Bonds will continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

Section 4.04. ***Cancellation of Redeemed Bonds.*** All Bonds redeemed before maturity are to be cancelled forthwith.

## ARTICLE V REVENUES AND FUNDS

Section 5.01. ***Rates and Charges.*** The City covenants and agrees that, subject to any applicable requirements of law or regulations, it will fix Service Charges and from time to time to revise such Service Charges in such manner that the Net Revenues for each Fiscal Year shall not be less than 110% of the Debt Service Requirement for such Fiscal Year and not less than 100% of the amount necessary to meet annual debt service obligations coming due in that Fiscal Year with respect to Subordinate Obligations, City general obligation bonds and the City's installment financing obligations used to finance or refinance System Improvements, if any.

The City covenants that it will not reduce the Service Charges unless the Revenues after any such reduction of Service Charges will, in the opinion of the Consultants, be not less in each subsequent Fiscal Year than the total of the amounts referred to in subdivision (c) of this Section and further that it will not reduce the Service Charges unless:

(a) all deposits have been made to the credit of the Debt Service Fund or with respect to debt service which are required by this Article to have been made before the time of such reduction; .

(b) the amount then on deposit to the credit of the Debt Service Reserve Fund is not less than the Debt Service Reserve Fund Requirement;

(c) the total amount of the Revenues during the preceding Fiscal Year has been not less than the total of the following:

(1) the Operating Expenses during the current Fiscal Year as shown by the Annual Budget for such Fiscal Year, and

(2) 110% of the maximum Debt Service Requirement for any Fiscal Year thereafter; and

(3) 100% of the amount necessary to pay annual debt service obligations coming due in that Fiscal Year with respect to Subordinate Obligations and any City general obligation bonds or installment financing obligations used to finance or refinance System Improvements.

(d) the Revenues after any such reduction of Service Charges will, in the opinion of the Consultants, be not less in the then current Fiscal Year and in each subsequent Fiscal Year than the total of the amounts referred to in subdivision (c) of this Section.

Forthwith on the adoption of any revision of the Service Charges, the City will cause certified copies thereof to be filed with the Consultants and the Commission and mailed, on request, to each Identifiable Bondholder.

The City further covenants that if the Revenues in any Fiscal Year are less than the total amount set forth in the first paragraph of this Section, the City will immediately request the Consultants to make



their recommendations regarding revision of the schedule of Service Charges and improvements in the operation of or services rendered by the System, and copies of such request and of the recommendations of the Consultants must be filed with the Commission and mailed by the City, on request, to each Identifiable Bondholder. Anything in this Bond Order to the contrary notwithstanding, if the City substantially complies with all the recommendations of the Consultants respecting the schedule of Service Charges and improvements in the operation of or services rendered by the System, it will not constitute an event of default under this Bond Order if the Net Revenues are less than the amount set forth in the first paragraph of the Section, but sufficient to meet the Debt Service Requirement.

Section 5.02. ***Creation of Funds and Accounts.*** There are hereby designated or created and designated the following special funds and accounts: (a) Bessemer City System Revenue Fund which is the account maintained for water and sewer funds within the City's System Fund (hereinafter called the "*Revenue Fund*"); (b) Bessemer City System Debt Service Fund which is the debt payment account maintained for debt within the City's System Fund (hereinafter called the "*Debt Service Fund*"); (c) Bessemer City System Debt Service Reserve Fund which is the account for this purpose in the City's System Fund (hereinafter called the "*Debt Service Reserve Fund*"); and (d) Bessemer City System Surplus Fund (hereinafter called the "*Surplus Fund*"). Within the Debt Service Reserve Fund, there is hereby designated a *USDA Reserve Account* and a *General Reserve Account*. The money in each Fund and Account is to be held by the City in trust with a Depositary and applied as hereinafter provided in this Article. Each Fund and Account is to be maintained as long as any of the Bonds are outstanding.

Section 5.03. ***Pledge of Net Revenues.*** The City hereby pledges the Net Revenues to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds. The Revenues, as received by the City, are immediately subject to the lien of this pledge without any physical delivery thereof or further act and the lien of this pledge has priority over any or all other obligations and liabilities of the City, including Subordinate Obligations, any general obligation bonds or installment financing obligations, or notes issued in anticipation thereof, heretofore or hereafter issued by the City for the purpose of providing water and sewer systems or facilities and the lien of this pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such parties have notice thereof.

Section 5.04. ***Application of Revenues Received by the City.*** All Revenues collected by or on behalf of the City are to be deposited by the City as soon as practicable following the receipt thereof and held by the Depositary in the Revenue Fund. The City shall pay from the money in the Revenue Fund, among other things, Operating Expenses in accordance with the Annual Budget, Debt Service Requirements with respect to the Bonds in each Fiscal Year, and the purchase or redemption price of the Bonds. The City shall also deposit to the credit of a special account established with the Depositary an amount in each month equal to the deposits to the Debt Service Reserve Fund required pursuant to Section 5.05(b).

Section 5.05. ***Withdrawals from the Revenue Fund.*** The City shall, on or before the 20<sup>th</sup> day of each month, commencing in the month following the month in which the Project commences operation, withdraw from the Revenue Fund an amount equal to the amount of all money held for the credit of said Fund on the last day of the preceding month and deposit such sum to the credit of the following Funds in the following order:

- (a) to the credit of the Debt Service Fund, such amount thereof (or the entire sum so withdrawn if less than the required amount) as may be required to make the total amount then to the credit of such Fund equal to the amount of interest then or to become within the next ensuing 12 months due and payable on the Bonds then outstanding and

the amount of principal of the Bonds then or to become within the next ensuing 12 months due and payable;

(b) with respect to the Initial Bonds, to the credit of the USDA Reserve Account of the Debt Service Reserve Fund, until the amount on deposit therein is equal to the Debt Service Reserve Fund Requirement, an amount equal to 1/120 of the Debt Service Reserve Requirement; and

(c) with respect to any Additional Bonds unless otherwise specified in the Series Resolution, to the credit of the General Reserve Account of the Debt Service Reserve Fund, until the amount on deposit therein is equal to the Debt Service Reserve Fund Requirement, an amount equal to 1/120 of the Debt Service Reserve Requirement; and

(d) to the credit of the Surplus Fund the balance, if any, remaining after making the deposits under clauses (a) and (b) above;

Provided, however, that if the amount so deposited in any month to the credit of any Fund mentioned in Section 5.05 hereof is less than the required amount, the requirement therefor is nevertheless cumulative, and the amount of any deficiency in any month is to be added to the amount otherwise required to be deposited to the credit of such Fund in each month thereafter until such time as such deficiency is extinguished.

**Section 5.06. *Application of Money in Debt Service Fund.*** All money in the Debt Service Fund is to be held in trust for the payment of the principal of and the interest on the Bonds, and no amount is to be withdrawn from or paid out of the Debt Service Fund except as provided herein. The City shall, from time to time, withdraw from the Debt Service Fund and (1) remit by mail or wire transfer to the Holder of each Bond the amount required to pay interest on such Bond as such interest becomes due, and (2) set aside in trust an amount equal to the amount of, and for the sole and exclusive purpose of thereafter to pay the principal of all Bonds as such principal becomes due.

**Section 5.07. *Application of Money in Debt Service Reserve Fund.*** Money held for the credit of the USDA Reserve Account of the Debt Service Reserve Fund is to be used for the purpose of paying interest on the Initial Bonds and maturing principal of Initial Bonds whenever and to the extent that the money held for the credit of the Debt Service Fund is insufficient for such purpose and for any other expenses with the consent of USDA. Money held for the credit of the General Reserve Account of the Debt Service Reserve Fund is to be used for the purpose of paying interest on the Additional Bonds and maturing principal of the Additional Bonds whenever and to the extent that the money held for the credit of the Debt Service Fund is insufficient for such purpose. Any money so withdrawn from such Fund is to be restored from available money in the Revenue Fund, subject to the same conditions as are prescribed for deposits to the credit of such Fund under the provisions of Section 5.05. When the money held for the credit of the Debt Service Reserve Fund exceeds the requirement for such Fund under the provisions of clause (b) of Section 5.05, such excess may be transferred by the credit of the Surplus Fund.

**Section 5.08. *Application of Surplus Fund.*** If the amount available in the Revenue Fund is or has been insufficient to make required payments for Operating Expenses or for the Debt Service Fund or the Debt Service Reserve Fund, the City shall withdraw from the Surplus Fund, to the extent the money therein is available, and pay into the Revenue Fund, such amount as is required to remedy such deficiency.

Money held for the credit of the Surplus Fund and not at the time required to be so withdrawn from the Surplus Fund may be withdrawn and applied by the City, without accounting therefor to the Holders, for any lawful purpose, including, without limitation, to pay debt service on general obligation indebtedness of the City.

Section 5.09. ***Unclaimed Money.*** All money which the City has withdrawn from the Debt Service Fund and Debt Service Reserve Fund or has received from any other source and set aside for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or on call for redemption is to be held in trust for the respective Holders of such Bonds. Any money which is set aside and which remains unclaimed by the Holders of such Bonds for the period of three years after the date on which such Bonds have become payable will be treated as abandoned property pursuant to the provisions of Article 3 of Chapter 116B of the North Carolina General Statutes, and the City shall report and remit this property to the State Treasurer according to the requirements of Article 3 of Chapter 116B of the North Carolina General Statutes. Thereafter the Holders of such Bonds shall look only to the State Treasurer for payment and then only to the extent of the amounts so received without any interest thereon, and the City will have no responsibility with respect to such money.

Section 5.10. ***Cancellation.*** All Bonds paid, redeemed or purchased either at or before maturity, will, at the direction of the City, be delivered to the Bond Registrar or to the City when such payment, redemption or purchase is made and such Bonds must then be cancelled. The Bond Registrar shall destroy all Bonds cancelled under this Bond Order. The Bond Registrar shall execute a certificate in duplicate describing the Bonds so destroyed, one executed certificate to be filed with the City and the second to be retained by the Bond Registrar.

## ARTICLE VI SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 6.01. ***Security for Deposits.*** All money deposited with the City or any other Depositary designated by the City hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other Federal agency is to be continuously secured, for the benefit of the City and the Holders of the Bonds, in such manner as may then be required or permitted by applicable State or Federal laws and regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds, including applicable regulations of the Commission.

Section 6.02. ***Investment of Funds.*** Money held for the credit of the Revenue Fund, the Debt Service Fund and the Surplus Fund must, as nearly as may be practicable, be continuously invested and reinvested in Qualified Investments which mature or which are subject to redemption by the holder thereof at the option of such holder not later than the respective dates when the money held for the credit of each such Fund or Account is required for the purposes intended. Money held for the credit of the Debt Service Reserve Fund must, as nearly as may be practicable, be continuously invested and reinvested in Qualified Investments which mature or which are subject to redemption by the holder thereof at the option of such holder not later than three years after the date of such investment. Obligations and certificates of deposit purchased as investments of money in any such Fund or Account are at all times to be part of such Fund or Account, and the interest accruing thereon and any profit realized therefrom is to be credited to such Fund or Account, and any loss resulting therefrom is to be charged to such Fund or Account. The City shall sell at the best price obtainable or present for redemption any obligations so purchased whenever it is necessary so to do in order to provide money to meet any payment or transfer from any such Fund or Account. Neither the City nor the City Representative is liable or responsible for any loss resulting from any such investment. For the purpose of determining the amount on deposit to the credit of any such Fund or Account, obligations in which money in such Fund or Account have been invested are to be valued at the lower of cost or market.

## ARTICLE VII PARTICULAR COVENANTS

Section 7.01. ***Payment of Bonds and Observance of Covenants.*** The City covenants that it will promptly pay the principal of and the interest on every Bond issued under the provisions of this Bond Order at the places, on the dates and in the manner provided herein and in said Bonds and any premium required for the retirement of the Bonds by purchase or redemption, according to the true intent and meaning thereof. Except as in this Bond Order otherwise provided, the principal, interest and premiums are payable solely from Net Revenues, which are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified, and nothing in the Bonds or in this Bond Order is to be construed as obligating the City to pay the Bonds or the interest thereon except from Net Revenues or as pledging the faith and credit of the City or as obligating the City, directly or indirectly or contingently, to levy or to pledge any form of *ad valorem* tax whatever therefor. The City covenants that it will faithfully do and perform and at all times fully observe any and all covenants, undertakings, stipulations and provisions contained herein or in the Bonds.

Section 7.02. ***Construction of Project and System Improvements.*** The City covenants that it will forthwith diligently proceed to complete the Project and any System Improvements in accordance with plans and specifications which have been approved by the Consultants and in conformity with law and all requirements of all governmental authorities having jurisdiction thereover, and that it will complete such construction with all expedition practicable.

The City further covenants and agrees that it will require each person, firm or corporation with whom it may contract for labor or materials in connection with the construction of the Project or any System Improvements to furnish a performance bond as required by law to insure completion and performance of such contract, or, in lieu thereof, to deposit with the Depositary marketable securities having a market value equal to the amount of such contract and eligible as security for the deposit of trust funds under regulations of the Comptroller of the Currency of the United States, and to carry such workmen's compensation or employers' liability insurance as may be required by law and such builders, risk insurance, if any, as may be required by the Consultants. The City further covenants and agrees that in the event of any default under any such contract and the failure of the surety to complete the contract, the proceeds of any such performance bond or securities will forthwith, on receipt of such proceeds, be applied toward the completion of the contract in connection with which such performance bond or securities have been furnished.

Section 7.03. ***Operation and Maintenance of System.*** The City covenants that it shall at all times operate the System properly and in a sound and economical manner, and shall maintain, preserve and keep the same properly or cause the same to be so maintained, preserved and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and advantageously conducted.

Section 7.04. ***Rules, Regulations and Other Details.*** The City covenants that it shall establish and shall enforce reasonable rules and regulations governing the operation, use and services of the System and that all compensations, salaries, fees and wages paid by the City in connection with the maintenance, repair and operation of the System shall be reasonable. The City shall observe and perform or shall cause to be observed and performed all of the terms and conditions contained in the Act, and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the System or the City.

The City further covenants that:

(a) it may require the owner, tenant or occupant of each lot or parcel of land within the City who is obligated to pay rates, fees or charges for the services and facilities furnished by the System to make a reasonable deposit with the City in advance to insure the payment of such rates, fees or charges and to be subject to application to the payment thereof if and when delinquent;

(b) if any rates, fees or charges for the services and facilities furnished by the System are not be paid within 30 days after they become due and payable, the City shall at the expiration of such 30-day period disconnect the premises from the System, and the City may proceed to recover by appropriate legal action the amount of any such delinquent rates, fees or charges;

(c) it will not render, or cause to be rendered, any free services of any nature by the System nor will preferential rates be established for users of the same class; and

(d) to the extent legally allowed, it will not consent to the furnishing of, or permit any person whatsoever to furnish, water services within the City except in those municipalities which on the date of adoption of the Bond Order operate their own water and sewer systems or in areas wherein the System is unable economically to serve the occupants and properties.

Section 7.05. ***Payment of Lawful Charges.*** The City covenants that, from Revenues, it will pay all taxes and assessments or other municipal or governmental charges lawfully levied or assessed on or in respect of the System or on any part and that, from such Revenues, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within 60 days after they accrue, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien on the System or any part thereof or on such Revenues; provided, however, that nothing in this Section contained requires the City to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

Section 7.06. ***Insurance and Reconstruction.*** The City covenants that it will obtain and maintain insurance, with reasonable terms, conditions, provisions and costs, which the City Representative determines will afford adequate protection against such risks as are customarily insured against in connection with the operation of water and sewer systems of type and size comparable to the System. All such insurance policies are to be carried in an insurance company or companies authorized and qualified under the laws of the State to assume the risks thereof.

The proceeds of all such insurance covering damage to or destruction of the System are to be deposited with the City and be available for and, to the extent necessary, be applied to the repair, replacement or reconstruction of the damaged or destroyed property, and be paid out in the manner determined by the City. If such proceeds are more than sufficient for such purpose, the balance remaining are to be deposited to the credit of the Surplus Fund. If such proceeds are insufficient for such purpose, the deficiency may be supplied out of any money in the Surplus Fund. The proceeds of all insurance covering loss of Revenues are to be deposited to the credit of the Revenue Fund.

Section 7.07. ***Annual Budget of Operating Expenses.*** The City covenants that it shall develop an Annual Budget for each Fiscal Year consistent with the budget preparation schedule set forth in the State's applicable fiscal control statutes. If for any reason the City has not adopted the Annual Budget

before the first day of any Fiscal Year, the budget for the preceding Fiscal Year will, until the adoption of the Annual Budget, be deemed to be in force.

The City may at any time adopt an amended or supplemental Annual Budget for the remainder of the then current Fiscal Year, but no such amended or supplemental budget is effective until it is approved in the manner hereinbefore prescribed for the Annual Budget.

The City covenants that the Operating Expenses incurred in any Fiscal Year will not exceed the reasonable and necessary amount thereof, and that it will not expend any amount or incur any obligations for maintenance, repair and operation in excess of the amounts provided for Operating Expenses in the appropriate budget. Nothing in this Section contained limits the amount which the City may expend for Operating Expenses in any Fiscal Year, but any amounts expended therefor in excess of the appropriate budget are received by the City from some source other than Revenues and the City may not make any reimbursement therefor from such Revenues.

Section 7.08. ***Records, Books and Audits.*** The City covenants that it will keep each of the funds of the System separate from all other funds of the City and that it will keep accurate records and accounts of all items of cost and of all expenditures relating to the System and of the Revenues collected and the application of such Revenues. Such records and accounts must at all times during normal business hours be open to the inspection of the Commission and the Holders of the Bonds.

The City further covenants that promptly after the close of each Fiscal Year it will cause an audit to be made of its books and accounts relating to the System by a firm of independent certified public accountants to be chosen by the City and will cause an annual report of operations of the System to be prepared, such annual report to cover the matters usually contained in annual reports for similar systems. Within a reasonable time thereafter, the City Clerk shall mail reports of each such audit and copies of each such annual report to the Commission and each Identifiable Bondholder, and, on request, to the Consultants. Each such audit report must be in accordance with generally accepted accounting principles and set forth in respect of the preceding Fiscal Year, among other matters, the Revenues and Operating Expenses of the System, all deposits or transfers to the credit of and all withdrawals from each special fund created hereunder, the amounts on deposit at the end of such Fiscal Year to the credit of each such special fund including the details of any investment thereof, a balance sheet and also the findings of such certified public accountants whether the money received by the City under this Bond Order has been applied in accordance with this Bond Order, whether any obligations for Operating Expenses were incurred in excess of the amounts appropriated in the Annual Budget and whether the City is in default in the performance of any of the covenants contained in Article V.

The City will file with the Commission within 180 days of the end of the fiscal year a certificate signed by the [Finance Director] stating (1) whether there existed at the end of such fiscal year any violation of any covenant or agreement of the City contained in this Bond Order, including any supplement or amendment and (2) whether at any time during the fiscal year any Event of Default, as defined herein, occurred or is occurring and, if so, the nature of such Event of Default.

The audit must include a calculation of compliance for the fiscal year with the rate covenant set forth in Section 5.01.

Section 7.09. ***Encumbrance; Additions to the System.*** The City may create or permit to be created a lien on the System in order to secure the certain long-term debt obligations as long as the City Representative certifies at the time of the creation of the lien that (i) loss of the property secured by the lien will not materially adversely affect the ability of the City to meet its financial obligations under this Bond Order, including the ability of the City to meet any of the covenants and (ii) the current value of all

parts of the System subject to a lien securing all long-term debt obligations, including property which may be added to the System as a result of the delivery of the long-term debt obligations, does not exceed 20% of the net capital assets of the System. The City will not otherwise create or permit to be created any lien or charge on the System. The City will pay or cause to be discharged or make provisions to satisfy and discharge, within 60 days after the same accrues, all claims and demands for labor, materials, supplies or other items which, if unpaid, might by law become a lien on the System or the Net Revenues on a parity with the lien of the Bonds, except for the liens permitted by this Section. The City need not pay or cause to be discharged or make provision for any lien or charge as long as the validity thereof is being contested in good faith by appropriate legal proceedings.

The City may add to the System another enterprise operation if (1) a Consultant certifies that the projected Revenues of the System as it will exist after the proposed addition for each of the two Fiscal Years subsequent to the year in which the addition is expected to be completed are projected to satisfy the requirements of Section 5.01, (2) an opinion of Bond Counsel to the effect that the addition will not adversely affect the federal income tax treatment of the Interest on the Bonds and (3) written consent from the Holders and the LGC to such addition.

Section 7.10. ***Creation of Liens.*** The City covenants that it will not create or permit to be created any charge or lien on the Net Revenues ranking equally with or prior to the charge or lien on the Net Revenues of the Bonds issued and secured hereunder unless otherwise required by applicable law.

Section 7.11. ***Instruments of Further Assurance.*** The City covenants that at any and all times it shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further orders, resolutions, acts, conveyances, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting and confirming all and singular the rights, Revenues and other funds hereby pledged or intended so to be, or which the City may hereafter become bound to pledge or as may be reasonable and required to carry out the purposes of this Bond Order and comply with the Act. The City further covenants that it shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Net Revenues and all the rights of the Holders against all claims and demands of all persons whomsoever.

## ARTICLE VIII DEFAULTS AND REMEDIES

Section 8.01. ***Events of Default.*** Each of the following events is hereby declared an “event of default;” that is to say, if:

(a) payment of the principal and premium, if any, of any of the Bonds is not made when it becomes due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) payment of any installment of interest is not made when it becomes due;  
or

(c) the City is rendered incapable of fulfilling its obligations hereunder; or

(d) any substantial part of the System, necessary for its efficient operation, is destroyed or damaged and is not promptly repaired, replaced or reconstructed (whether such failure promptly to repair, replace or reconstruct is occasioned by the impracticability of such repair replacement or reconstruction or the lack of funds therefor or any other reason); or

(e) an order or decree is entered, with the consent or acquiescence of the City, appointing a receiver or receivers of the System or of the Revenues, or if such order or decree, having been entered without the consent or acquiescence of the City is not vacated or discharged or stayed on appeal within 60 days after the entry thereof; or

(f) any proceeding is instituted, with the consent or acquiescence of the City, for the purpose of effecting a composition between the City and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable out of Revenues; or

(g) the City defaults in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Bond Order on the part of the City to be performed, and such default continues for 30 days after written notice specifying such default and requiring it be remedied has been given to the City by the Holders of not less than 20% in principal amount of the Bonds then outstanding.

Section 8.02. ***Bonds Declared Due and Payable.*** On the happening and continuance of any event of default specified in Section 8.01, then and in every such case the Holders of a majority in principal amount of the Bonds then outstanding may, by a notice in writing to the City, declare the principal of all of the Bonds then outstanding (if not then due and payable) to be due and payable immediately, and on such declaration the same shall become and be immediately due and payable, anything contained in the Bonds or in this Bond Order to the contrary notwithstanding; provided, however, that if at any time after the principal of the Bonds has been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Bond Order, money becomes available to pay the principal of all matured Bonds and all arrears of interest, if any, on all the Bonds then outstanding (except the principal of any Bonds not then due by their terms and the interest accrued on such Bonds since the last interest payment date), and all other amounts then payable by the City hereunder have been paid or a sum sufficient to pay the same has been deposited with a Depositary, and every other default in the observance or performance of any covenant, condition or agreement contained in the Bonds or in this Bond Order (other than a default in the payment of the principal of such Bonds then due only because of a declaration under this Section), has been remedied to the satisfaction of the Holders, then and in every such case the Holders may, and on the written request of the Holders of a majority in principal amount of the Bonds not then due by their terms and then outstanding shall, by written notice to the City, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 8.03. ***Additional Remedies.*** On the happening and continuance of any event of default specified in Section 8.01, then and in every case the Holders may proceed to protect and enforce their rights hereunder and under the laws of the State, including the Act, by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Holders deem most effectual to protect and enforce such rights.

Section 8.04. ***No Remedy Exclusive.*** No remedy herein conferred on or reserved to the Holders is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.



Section 8.05. ***Waiver of Default.*** No delay or omission of the Holders of the Bonds to exercise any right or power accruing on any default impairs any such right or power or is to be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

The Holders of a majority of the Bonds may waive any default which has been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under this Bond Order or before the completion of the enforcement of any other remedy under this Bond Order, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 8.06. ***Notice of Default.*** The City shall mail to the Commission and to the Holder of each Bond then outstanding written notice of the occurrence of any event of default set forth in Section 8.01 within 30 days after the City has notice that any such event of default has occurred.

## **ARTICLE IX THE TRUSTEE**

Section 9.01. ***Designation of Trustee.*** The City may at any time, with the approval of the Commission, appoint a Trustee to administer the provisions of this Bond Order and may adopt such supplements to this Bond Order as are necessary or desirable to effectuate such appointment.

## **ARTICLE X SUPPLEMENTAL ORDERS**

Section 10.01. ***Without Consent of Holders.*** The City may amend this Bond Order in any respect before the delivery of the Initial Bonds.

The City may from time to time and at any time following delivery of the Initial Bonds, adopt such orders supplemental hereto as are not inconsistent with the terms and provisions hereof (which supplemental orders shall thereafter form a part hereof) and all of which are not materially adverse to bondholders:

- (a) to cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Bond Order or in any supplemental order, or
- (b) to grant to or confer on the Holders any additional rights, remedies, powers, City or security that may lawfully be granted to or conferred on the Holders, or
- (c) to add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Bond Order other conditions, limitations and restrictions thereafter to be observed, or
- (d) to add to the covenants and agreements of the City in this Bond Order other covenants and agreements thereafter to be observed by the City or to surrender any right or power herein reserved to or conferred on the City.

At least 30 days before the adoption of any supplemental order for any of the purposes set forth in the immediately preceding paragraph of this Section, the Bond Registrar, at the expense of the City, shall cause a notice of the proposed adoption of such supplemental order to be mailed, postage prepaid, to the

owner of each Bond at the address appearing on the registration books and to the Commission. Such notice shall briefly set forth the nature of the proposed supplemental order and shall state that copies thereof are on file at the principal office of the Bond Registrar for inspection by all Holders.

Section 10.02. ***With Consent of Holders.*** Subject to the terms and provisions contained in this Section, and not otherwise, the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding have the right, from time to time following delivery of any Bonds, anything contained in this Bond Order to the contrary notwithstanding, to consent to and approve the adoption, of such order or orders supplemental hereto as are deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding, in particular, any of the terms or provisions contained in this Bond Order or in any supplemental order; provided, however, that nothing herein contained permits, or may be construed as permitting, (a) an extension of the maturity of the principal of or the interest on any Bond issued hereunder without the consent of the Holder of such Bond, or (b) a reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon without the consent of the Holder of such Bond, or (c) the creation of a lien on or a pledge of Revenues other than the lien and pledge created by this Bond Order without the consent of the Holders of all Bonds outstanding, or (d) a preference or priority of any Bond over any other Bond without the consent of the Holders of all Bonds outstanding or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental order without the consent of the Holders of all Bonds outstanding and the consent of the Commission.

Section 10.03. ***Obtaining Consent of Holders.*** If at any time the City shall determine that it is necessary or desirable to adopt any supplemental order for any of the purposes of Section 10.02, the Bond Registrar, at the expense of the City, shall cause notice of the proposed adoption of such supplemental order to be mailed, postage prepaid, to each Holder of Bonds at the addresses appearing on the registration books and to the Commission. Such notice shall briefly set forth the nature of the proposed supplemental order and shall state that copies thereof are on file at the principal corporate trust office of the Bond Registrar for inspection by all Holders. The Bond Registrar is not, however, subject to any liability to any Holder by reason of its failure to cause the notice required by this Section to be mailed and any such failure does not affect the validity of such supplemental order when consented to and approved as provided in this Section.

Whenever, within one year after the date of the first mailing of such notice, the City shall deliver to the Bond Registrar an instrument or instruments in writing purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed supplemental order described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice and such amendment has been approved by the Commission, then, but not otherwise, the City may adopt such supplemental order in substantially such form, without liability or responsibility to any Holder of any Bond, whether or not such Holder has consented thereto.

If the Holders of not less than a majority in aggregate principal amount of the Bonds outstanding at the time of the adoption of such supplemental order have consented to and approved the adoption thereof as herein provided, no Holder of any Bond has any right to object to the adoption of such supplemental order, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City from adopting the same or from taking any action pursuant to the provisions thereof.

On the adoption of any supplemental order pursuant to the provisions of this Section, this Bond Order is deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Bond Order of the City, the Bond Registrar and all Holders of Bonds then

outstanding will thereafter be determined, exercised and enforced in all respects under the provisions of this Bond Order as so modified and amended.

Bonds owned or held by or for the account of the City will not be deemed outstanding and will be excluded for the purpose of any consent or any calculation provided for in this Article.

Bonds delivered after the effective date of any action taken as in this Article provided may bear a notation by endorsement or otherwise in form approved by the City and Bond Registrar as to such action. If the City and Bond Registrar so determine, new Bonds modified to conform to any such action are to be prepared, authenticated and delivered to the Holder of any Bond then outstanding without cost to such Holder in exchange for and on surrender of such outstanding Bonds.

Section 10.04. ***Unanimous Consent of Holders.*** Notwithstanding anything contained in the foregoing provisions of this Article, the terms and provisions of this Bond Order or any order supplemental hereto and the rights and obligations of the City and of the Holders of the Bonds may be modified or amended in any respect on the adoption by the City of an order to that effect, approved by the Bond Registrar, and the filing with the City of the written consent of Holders of all the Bonds. No notice to Holders is required.

## ARTICLE XI MISCELLANEOUS PROVISIONS

Section 11.01. ***Discharge of Bond Order.*** If, when the Bonds secured hereby have become due and payable in accordance with their terms or have been duly called for redemption and the whole amount of the principal and the interest and premium, if any, so due and payable on all of the Bonds then outstanding is paid, then the right, title and interest of the Holders of the Bonds secured hereby in the Revenues and funds mentioned in this Bond Order ceases, terminates and becomes void, and the City, in such case, may apply any and all balances remaining in any funds to any lawful purpose of the City as the City determines; otherwise this Bond Order continues and remains in full force and effect.

Section 11.02. ***Payments When Funds are Insufficient.*** Anything in this Bond Order to the contrary notwithstanding, if money is insufficient to pay the interest on or the principal of the Bonds as they become due and payable (either by their terms or by acceleration of maturities), all money in the Debt Service Fund and Debt Service Reserve Fund, together with any money then available or thereafter becoming available for such purpose, is to be applied as follows:

(a) Unless the principal of all the Bonds has become or has been declared due and payable, all such money is to be applied

first: to the payment to the persons entitled thereto of all installments of interest then due, in the order of the maturity of the installments of such interest, and if the amount available is not sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which has become due (other than Bonds called for redemption for the payment of which money is held pursuant to the provisions of this Bond Order), in the order of their due dates, with interest on such Bonds

from the respective dates on which they became due, and, if the amount available is not sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of Bonds and to the redemption of Bonds, all in accordance with the provisions of Article IV.

(b) If the principal of all the Bonds has become due or has been declared due and payable, all such money is to be applied to the payment of the principal and interest then due and unpaid on the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds has been declared due and payable and if such declaration is thereafter rescinded and annulled, then the money then remaining in and thereafter accruing to the Debt Service Fund and the Debt Service Reserve Fund is to be applied in accordance with the provisions of paragraph (a) of this Section.

Section 11.03. ***Effect of City's Undertakings.*** All of the covenants, stipulations, obligations and agreements contained in this Bond Order are covenants, stipulations, obligations and agreements of the City and of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements are binding on the successor or successors thereof from time to time, and on any officer, City Council, commission, City, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements is transferred by or in accordance with law.

The City has the right to enter into a contract with any public or private agency for the maintenance, operation and improvement of the System for such periods of time and under such terms and conditions which are not inconsistent with the provisions of this Bond Order as the City determines to be in the best interests of the City and of the Holders of Bonds issued pursuant to this Bond Order.

Section 11.04. ***Notices.*** Any notice, demand, direction, request or other instrument authorized or required by this Bond Order to be given to or filed with the City or the Bond Registrar is to be deemed to have been sufficiently given or filed for all purposes of this Bond Order if and when sent by registered mail, return receipt requested to the City, if addressed to 132 W. Virginia Ave., Bessemer City, North Carolina 28016; to the Bond Registrar, if addressed to the address set forth in the applicable Series Resolution; and to the Commission, if addressed to the Commission Secretary, Local Government Commission, Longleaf Building, 3200 Atlantic Avenue, Raleigh, North Carolina 27604.

Section 11.05. ***Execution of Instruments by Holders and Proof of Ownership of Bonds.*** Any request, direction, consent or other instrument in writing required or permitted by this Bond Order to be signed or executed by Holders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Holders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of Bonds is sufficient for any purpose of

this Bond Order, and is conclusive in favor of the Bond Registrar with regard to any action taken by it under such instrument, if in accordance with the registration books.

Any request or consent of the Holder of any Bond binds every future Holder of the same Bond in respect of anything done by the Bond Registrar in pursuance of such request or consent.

Section 11.06. ***Parties Interested Herein.*** Except as herein otherwise expressly provided, nothing in this Bond Order expressed or implied is intended or to be construed to confer on any person, firm or corporation other than the City, the Bond Registrar and the Holders of the Bonds issued under and secured by this Bond Order any right, remedy or claim, legal or equitable, under or by reason of this Bond Order or any provision hereof, this Bond Order and all its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and the Holders from time to time of the Bonds issued hereunder.

Section 11.07. ***Limited Obligations on Bonds.*** Nothing in the Bonds or in this Bond Order is to be construed as pledging either the faith and credit or the taxing power of the City for their payment, or to create any debt against the City, or as conveying or mortgaging the System or any part thereof.

Section 11.08. ***No Recourse Against Members, Officers or Employees of City or Local Government Commission of North Carolina.*** No recourse under, or upon, any statement, obligation, covenant or agreement contained in this Bond Order, or in any Bond or bond anticipation note hereby secured, or in any document or certification whatsoever, or under any judgment obtained against the City or the Local Government Commission of North Carolina, or by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any member, officer or employee of the City or the Local Government Commission of North Carolina, either directly or through the City for the payment for or to, the City or the Local Government Commission of North Carolina or any receiver of either of them, or for, or to, any owner or holder of Bonds or bond anticipation notes or otherwise, of any sum that may be due and unpaid upon any such Bond or bond anticipation note. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such member, officer or employee to respond by reason of any act or omission on his or her part or otherwise, for the payment for, or to, the City or the Local Government Commission of North Carolina or any receiver of either of them, or for, or to, any owner or holder of Bonds, bond anticipation notes or otherwise, of any sum that may remain due and unpaid upon the Bonds or bond anticipation notes hereby secured or any of them, is hereby expressly waived and released as an express condition of, and in consideration for, the adoption of this Bond Order and the issuance of the Bonds.

Section 11.09. ***Severability of Invalid Provisions.*** If any one or more of the provisions of this Bond Order or of the Bonds issued hereunder are held to be illegal or valid, such illegality or invalidity does not affect any other provision of this Bond Order or of the Bonds, but this Bond Order and the Bonds are to be construed and enforced as if such illegal or invalid provision had not been contained therein. If any covenant, stipulation, obligation or agreement contained in the Bonds or in this Bond Order is held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 11.10. ***Issuance of Subordinate Obligations and Expenditures for System Improvements.*** Nothing in this Bond Order express or implied is to be construed as preventing the City from financing System Improvements by the issuance of obligations which are not secured under the provisions of this Bond Order or from making expenditures for System Improvements from money

received by the City solely for such purpose. Such obligations of the City described in records maintained by the Bond Registrar represent Subordinate Obligations.

Section 11.11. ***Applicable Law.*** This Bond Order is adopted with the intent that the laws of the State govern its construction.

Section 11.12. ***Headings, etc.*** Any headings preceding the texts hereof and any table of contents or marginal notes appended to copies hereof, are solely for convenience of reference and do not constitute a part of this Bond Order nor affect its meaning, construction or effect.

Section 11.13. ***Officers of the City.*** The officers and agents of the City are hereby authorized and directed to do all the acts and things required of them by the Bonds and this Bond Order for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements contained in the Bonds and this Bond Order.

Section 11.14. ***Inconsistent Matters.*** All orders and resolutions and parts thereof, which are in conflict or inconsistent with any provisions of this Bond Order are hereby repealed and declared to be inapplicable to the provisions of this Bond Order.

Section 11.15. ***Effective Date.*** This Bond Order is effective immediately on its adoption.

**RESOLUTION OF THE  
CITY COUNCIL OF THE CITY OF BESSEMER CITY, NORTH CAROLINA  
PROVIDING FOR THE ISSUANCE OF A \$4,998,000 WATER AND SEWER SYSTEM REVENUE BOND  
ANTICIPATION NOTE OF THE CITY OF BESSEMER CITY, NORTH CAROLINA**

**WHEREAS**, the Bond Order hereinafter described was approved on January 10, 2022 and is in force and effect approving the issuance of water and sewer system revenue bonds of the City of Bessemer City, North Carolina (the “City”);

**WHEREAS**, the City desires to finance various improvements to the City’s water and sanitary sewer systems (the “Project”) as permitted by Section 159-161 of the General Statutes of North Carolina, as amended;

**WHEREAS**, the City desires to finance a portion of the Project through the issuance of \$4,998,000 Water and Sewer System Revenue Bonds (the “Bonds”) which may be issued in one or more series and are Initial Bonds under the Bond Order, and will initially finance the Project through the issuance of the Notes (as defined herein);

**WHEREAS**, First-Citizens Bank & Trust Company (the “Bank”) has agreed to purchase the Notes (as defined herein) in the principal amount of \$4,998,000 to evidence a loan to the City, which sum will be applied to the payment of a portion of the cost of the Project and the United States of America Department of Agriculture, Rural Development (“USDA”) has agreed to purchase the Bonds in the aggregate principal amount of \$4,998,000 after completion of the Project, all of the proceeds of which will be applied to the repayment of the principal amount of the Notes;

**WHEREAS**, the Local Government Commission of North Carolina (the “LGC”) is expected to approve the application of the City for approval of the Bonds as required by Section 159-85 of the General Statutes of North Carolina, as amended, and the issuance and private sale of the Bonds at its January 11, 2022 meeting;

**WHEREAS**, the LGC is expected to approve the issuance and private sale of the Note under the provisions of Article 9 of Chapter 159 of the General Statutes of North Carolina, as amended, at its January 11, 2022 meeting.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Bessemer City, North Carolina (the “City Council”), as follows:

1. For purposes of this Resolution, the following words have the meanings ascribed to them below:

“Bond Order” means the Bond Order authorizing the Bonds adopted by the City Council on January 10, 2022 and effective thereon

“City” means the City of Bessemer City, North Carolina, and its successors or assigns.

“City Council” means the City Council of Commissioners of the City.

“Note” means the City’s \$4,998,000 Water and Sewer System Revenue Bond Anticipation Note.

2. The City shall issue its Note in the total aggregate principal amount not to exceed \$4,998,000.

3. The Note is being issued to provide funds to pay a portion of the funding to finance various improvements to the City's water and sanitary sewer systems (the "Project") pursuant to and in accordance with the Bond Order.

4. Unless otherwise changed by a certificate delivered at closing by the City Manager or the Finance Director, the Note shall be dated January 20, 2022 and shall mature on April 20, 2023, at which time the principal shall be due and payable. It shall bear interest at the rate of 1.06% per annum, which interest shall be payable at the maturity of the Note and shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. No interest coupons shall be attached to the Note. Upon ten days written notice to the Registered Owner of the Note, the principal amount of the Note may be prepaid in whole on any date prior to the Maturity Date without penalty with the proceeds of the Bonds.

5. The Note will be payable as to both principal and interest to the Bank and both the principal of and interest on the Note shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

6. The Note shall be sold to the Bank at a purchase price of \$4,998,000, such purchase price and the interest rate set forth above being in the best interests of the City.

7. The Note, which shall be in the form attached hereto as Exhibit A, shall bear the original or facsimile signatures of the Mayor or City Manager of the City and the City Clerk. An original or facsimile of the seal of the City is to be imprinted on the Note.

8. Unless otherwise changed by a certificate delivered at closing by the City Manager or the Finance Director, the proceeds of the Note shall be deposited into an account to be held by the City. The moneys held in such account shall be used to pay the costs of the Project or costs incurred in connection with the issuance of the Note. Funds may not be used to pay costs of the Project until the City has delivered written approval of such specific use by USDA to the Registered Owner of the Note. Funds in such account shall be invested in compliance with Section 159-30 of the North Carolina General Statutes, as amended, with interest earnings to be applied to the costs of the Project.

9. The City designates the Note as a "qualified tax-exempt obligation" eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code. The City does not reasonably anticipate issuing more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3), including all entities which issue obligations on behalf of the City and all subordinate entities of the City, during calendar year 2022 and will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3) during calendar year 2022.

10. The Mayor, the City Manager, the Finance Director and the City Clerk, each acting on behalf of the City, are hereby authorized and directed to cause the Notes to be prepared and to execute the Notes and deliver it to the respective Bank.

11. The Mayor, the City Manager, the Finance Director and the City Clerk, or their respective designees, each acting on behalf of the City, are authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the documents contemplated hereinabove or as may be deemed necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution. Any and all acts of the authorized officers of the City may be done individually or collectively.



12. If the maturity date of the Note occurs prior to the date that the Project is completed or substantially completed enough such that the United States of America, United States Department of Agriculture, Rural Development is willing to purchase the Bonds expected to be used to pay off the Note, then the Mayor, the City Manager, the Finance Director and the Clerk, and their respective designees, each acting on behalf of the City, are authorized and directed to execute and deliver another note or notes in substantially the form of Exhibit A with such terms as they deem necessary to keep such note or notes outstanding until such time as USDA is willing to purchase the Bonds to pay off the note or notes.

13. After the close of each Fiscal Year, the City will cause an audit to be made of its books and accounts relating to the System by a firm of independent certified public accountants to be chosen by the City and will cause an annual report of operations of the System to be prepared, such annual report to cover the matters usually contained in annual reports for similar systems. Within 180 days after the close of such Fiscal Year, the City Clerk shall mail reports of each such audit and copies of each such annual report to the Registered Owner of the Note.

***READ, APPROVED AND ADOPTED*** this 10th day of January, 2022.

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CITY CLERK

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MAYOR

(SEAL)

**CERTIFICATE**

I, **HYDEIA HAYES, CITY CLERK OF THE CITY OF BESSEMER CITY, NORTH CAROLINA** *DO HEREBY CERTIFY* that the foregoing is a true and accurate copy of the Resolution entitled “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BESSEMER CITY, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A \$4,998,000 WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE OF THE CITY OF BESSEMER CITY, NORTH CAROLINA**” which was adopted by the City Council at its regular meeting held on the 10th day of January, 2022, to become effective on thereon.

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HYDEIA HAYES  
CITY CLERK

# **EXTRACTS FROM MINUTES OF THE CITY COUNCIL OF COMMISSIONERS**

A regular meeting of the City Council (the “*City Council*”) of the City of Bessemer City, North Carolina was held on January 10, 2022, in the City Council Chambers, Bessemer City, North Carolina,, Mayor Becky S. Smith presiding and the following Council Members present:

Council Members Absent:

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\_\_\_\_\_ moved that the resolution entitled, “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BESSEMER CITY, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A \$4,998,000 WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE OF THE CITY OF BESSEMER CITY, NORTH CAROLINA**”, copies of which having been made available to the City Council, be adopted.

The motion was adopted by a vote of \_\_\_\_\_.

AYES:

NAYS:

***PASSED, ADOPTED AND APPROVED*** this 10th day of January, 2022.

**CITY COUNCIL OF THE CITY OF BESSEMER CITY,  
NORTH CAROLINA**

BY: \_\_\_\_\_  
HYDEIA Y. HAYES  
CITY CLERK

**EXHIBIT A**

(Form of Note)

NO. R-1

**\$4,998,000**

UNITED STATES OF AMERICA  
STATE OF NORTH CAROLINA  
CITY OF BESSEMER CITY, NORTH CAROLINA  
WATER AND SEWER SYSTEM REVENUE BOND ANTICIPATION NOTE

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED DATE</u>
1.06%	April 20, 2023	January 20, 2022

**OWNER: FIRST-CITIZENS BANK & TRUST COMPANY**

**PRINCIPAL SUM: FOUR MILLION NINE HUNDRED NINETY-EIGHT THOUSAND DOLLARS**

The **CITY OF BESSEMER CITY, NORTH CAROLINA** (the “City”) acknowledges itself indebted and for value received hereby promises to pay to the Owner named above, on the Maturity Date specified above, the Principal Sum shown above and to pay to the Owner hereof interest thereon from the date of this Note on April 20, 2023, the date on which it shall mature, each payment at the Interest Rate per annum specified above calculated on the basis of a 360-day year consisting of twelve 30-day months. Principal of and interest on this Note is payable in immediately available funds and is payable in U.S. dollars to the Owner of the Note. The principal amount of the Note may be prepaid in whole on any date prior to the Maturity Date without penalty with the proceeds of the Bonds (as defined in the Note Resolution) purchased by the United States of America Department of Agriculture, Rural Development.

This Note is issued pursuant to and in accordance with Article 5 and Article 9 of Chapter 159 of the General Statutes of North Carolina, both as amended, a bond order (the “*Bond Order*”) adopted by the City Council of the City on January 10, 2022 and effective thereon and a resolution adopted by the City Council of the City on January 10, 2022 (the “*Note Resolution*”). This Note is issued in anticipation of the receipt of the proceeds of the sale of a like amount of the City’s Water and Sewer System Revenue Bonds, and the proceeds hereof shall be used to pay a portion of the cost of the Project (as defined in the Bond Order).

The Note is a special obligation of the City payable solely from the Net Revenues (as defined in the Bond Order) and from the proceeds of said Water and Sewer System Revenue Bonds of the City. Neither the credit nor the taxing power of the City is pledged for the payment of this Note and no holder of this Note has the right to compel exercise of the taxing power by the City or the forfeiture of any of the City’s property in connection with any default hereon. Reference is hereby made to the Bond Order and the Note Resolution and to all amendments and supplements thereto for a description of the provisions, among others, respecting the nature and extent of the security, the rights, duties and obligations of the City, the rights of the holder of this Note and the terms upon which this Note is issued and secured.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of North Carolina to exist, be performed or happen precedent to or in the issuance of

this Note, exist, have been performed and have happened, and that the amount of this Note, together with all other indebtedness of the City, is within every debt and other limit prescribed by said Constitution or statutes.

This Note is not valid or obligatory for any purpose until the certification hereon has been signed by an authorized representative of the Local Government Commission of North Carolina.

*IN WITNESS WHEREOF*, the City has caused this Note to bear the original or facsimile of the signatures of the Mayor of the City and the City Clerk and an original or facsimile of the seal of the City to be imprinted hereon.

(SEAL)

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

Date of Execution: \_\_\_\_\_, 2022

The issue hereof has been approved under the provisions of The Local Government Bond Act.

\_\_\_\_\_  
SHARON EDMUNDSON  
Secretary of the Local Government Commission

## FORM OF ASSIGNMENT

## ASSIGNMENT

***FOR VALUE RECEIVED*** the undersigned hereby sells, assigns and transfers unto

---

(Please print or typewrite Name and Address,  
including Zip Code, and Federal Taxpayer Identification or  
Social Security Number of Assignee)

---

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

---

Attorney to register the transfer of the within Note on the books kept for registration thereof,  
with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

***NOTICE:*** Signature must be guaranteed by a Participant in the Securities Transfer Agent Medallion Program (“*STAMP*”) or similar program.

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***NOTICE:*** The signature to this assignment must correspond with the name as it appears on the face of the within Note in every particular, without alteration, enlargement or any change whatever.

TRANSFER FEE MAY BE REQUIRED

## CHAPTER 94: NOISE REGULATIONS

- 94.01 Definitions
- 94.02 Unreasonably loud noise
- 94.03 Noises expressly prohibited
- 94.04 Noises impacting residential life
- 94.05 Exceptions
- 94.06 Permits
- 94.07 Reports of violation
- 94.99 Penalty

### § 94.01 DEFINITIONS.

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

DECIBEL: A unit used to measure the intensity of a sound or the power level of an electrical signal by comparing it with a given level on a logarithmic scale. For example, a conversation between two people is usually 60 decibels (dB) while a motorcycle engine running is about 95 dB.

NOISE. Any sound or combination of sounds which because of its volume, duration or intensity tends to disturb person(s).

PERSON. Any individual, association, firm, partnership, or corporation.

SOUND. Any disturbance of the air that is detectable by the unaided ear or which produces vibrations detectable by person(s).

SOUND AMPLIFICATION DEVICE. Any device or instrument for amplifying the human voice, music or other sound, including but not limited to loudspeakers, stereos, phonographs, radios or tape players, portable or otherwise.

(Ord. passed 5-12-14)

### § 94.02 UNREASONABLY LOUD NOISE.

It shall be unlawful for any person to authorize or cause to be emitted from any property or source under the control of said person any noise that is unreasonably loud, raucous, or disturbing so as to constitute a nuisance, annoyance, danger to the health, or serious disturbance.

Standard noise levels during the daytime, 7:00 a.m. to 11:00 p.m., shall be limited to no more than 70 dB. Standard noise levels during the nighttime, 11:00 p.m. to 7:00 a.m., shall be limited to no more than 65 dB. Noise more than the standard levels shall also be considered unreasonably loud noise.

(Ord. passed 5-12-14) Penalty, see § 94.99

### § 94.03 NOISES EXPRESSLY PROHIBITED.

Without limiting the generality of § 94.02, the following acts are specifically declared to be unlawful and in violation of § 94.02.

- (A) The excessive blowing of a horn on any motor vehicle except when the horn is used as a warning device.

**Commented [MK1]:** Does not require sound to be measured but just gives a baseline should the Town need to measure in the future for any reason.

- (B) The operation of any motor vehicle or any engine without a muffler, or with a muffler that is so defective or so designed that the vehicle emits an unusually loud noise.
- (C) The operation of any motor vehicle so as to create loud or unusual noises by the screeching of tires, racing of engines, backfiring or other loud noises whether caused from disrepair, motor or accessory alterations, or otherwise.
- (D) The use of any mechanical device operated by compressed air, unless the noise created thereby is effectively muffled and reduced.
- (E) The creation of any loud or disturbing noise on any street adjacent to any school, institution of learning, library, or any church during services.
- (F) The playing or use of any sound amplification device, television, or any musical instrument, so as to unreasonably disturb the comfort, quiet or repose of persons in any place of residence or so as to interfere substantially with the operations of any church, school, theater, library, or other similar place of assembly, unless a noise permit has been obtained as required by § 94.06.
- (G) The use of any sound amplification device, musical instrument, or other medium for the purpose of attracting attention by the creation of noise to any performance, show, sale, display, advertisement or merchandise, or other commercial venture, unless a noise permit has been obtained as required by § 94.06.
- (H) The use of any sound amplification device on any public street, sidewalk, park or other public area within the city limits (whether while operating a motor vehicle or otherwise) which is clearly audible by a person at a distance of 50 yards or more from the source of the sound unless a noise permit has been obtained as required by § 94.06.

(Ord. passed 5-12-14) Penalty, see § 94.99

#### **§ 94.04 NOISES IMPACTING RESIDENTIAL LIFE.**

It shall be unlawful to carry on the following activities in any residentially zoned area of the city or within 300 feet of any dwelling in any zoning district of the city:

- (A) Operation of garage or service station machinery or equipment between the hours of 11:00 p.m. and 7:00 a.m.; or
- (B) Operation of construction machinery or equipment between the hours of 11:00 p.m. and 7:00 a.m.; or
- (C) Operation of lawn mowers or other power-operated domestic tools out-of-doors between the hours of 11:00 p.m. and 7:00 a.m.; or
- (D) The idling of trucks Or the operation of associated loading and unloading and/or trucking equipment between the hours of 11:00 p.m. and 7:00 a.m.

(Ord. passed 5-12-14) Penalty, see § 94.99

#### **§ 94.05 EXCEPTIONS.**

The following are excepted from the application of §§ 94.01 through 94.03:

- (A) Noise or sound emanating from scheduled outdoor athletic events.

**Commented [MK2]:** Do we want to include a provision that if these noises occur, they may be mitigated by screening and other noise reducing landscaping or structures?

**Commented [MK3]:** Increase distance to 500'



- (B) Noise or sound of safety signals, warning devices, emergency pressure relief valves or church bells.
- (C) Noise or sound emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations.
- (D) Noise or sound emitted from any authorized emergency or public safety vehicle.
- (E) Noise or sound emanating from parades, street fairs, festivals or similar events which are conducted, sponsored, or sanctioned by the city or school system.
- (F) Noise or sound from railroad operations.
- (G) Amplified sound, either live or recorded, on Sunday through Wednesday until 10:00 p.m., Thursday through Saturday until 11:00 p.m. This exception does not supersede § 94.02 of the chapter.

(Ord. passed 5-12-14)

**§ 94.06 PERMITS.**

- (A) It shall be unlawful for any person to use or cause to be used any sound amplifying device, musical or other instrument for entertainment, advertising or other purposes, or to otherwise engage in any activity creating noise which exceeds the standards set forth in this chapter without obtaining a noise permit in advance of these activities.
- (B) All applications for noise permits shall be made to promptly considered and acted upon by the City Manager or his or her designee. In considering and acting on all applications for permits, the City Manager shall consider, but shall not be limited to, the following factors:
  - (1) The nature and duration of the proposed activity;
  - (2) Other uses in the vicinity or location proposed for the activity;
  - (3) Effect of the activity on nearby residential areas;
  - (4) Cultural, social, recreational and/or education benefit of the proposed activity;
  - (5) Previous experience with the applicant; and
  - (6) Previous violations of this noise chapter, if any, by any applicant.
- (C) Taking into consideration the factor listed in division (B) above, the City Manager shall issue a noise permit upon finding that the interest furthered by the proposed use or activity outweighs the public interest in maintaining peace and quiet at the time and place involved.
- (D) The City Manager may impose such reasonable and appropriate conditions upon the permit as he or she deems necessary to assure that the proposed use will be consistent with the intent of this section.
- (E) The permit holder(s) shall agree to cooperate with the Police Department in enforcing this chapter by being available at the site of the event the entire time for which a permit has been issued and capable of assisting the police in enforcing this chapter. Failure of the permit holder(s) to be present or to assist the police in complying with this chapter will be cause for revocation of the permit.

- (F) Any application for a permit ~~must should~~ be made at least ~~48 hours~~ twenty (20) business days in advance of the activity. The review of the permit will be completed within five (5) business days.
- (G) If an application for a noise permit is denied, ~~if the applicant does not agree is approved with conditions unacceptable to the applicant of the permit~~, or if a permit is revoked, the ~~applicant or permit holder~~ shall be entitled to appeal the City Manager's action to the City Council ~~after submission of a written request to do so~~. Such appeal must be submitted in writing to the City Manager within five (5) business days of the City Manager's action and at least ten days prior to the date of the next regular meeting of City Council.
- (H) A permit may be denied or revoked in the following cases:
- (1) The activity constitutes a threat to the health, safety or welfare of others;
  - (2) The applicant has violated any provisions of this chapter within 12 months preceding the date of the application;
  - (3) The applicant violates any of the provisions during the time allowed for the permitted activity; or
  - (4)        The activity interferes with another previously permitted activity.

(Ord. passed 5-12-14)

#### § 94.07 REPORTS OF VIOLATION.

In the event that reasonable grounds exist for believing that any provision of this chapter is being violated, any person may make a report thereof to the Police Department which shall investigate the alleged violation. If such investigation reveals a violation, the investigating officer shall cause a written complaint to be made, and may issue a criminal or civil citation for violation thereof.

(Ord. passed 5-12-14) Penalty, see § 94.99

#### § 94.99 PENALTY.

- (A) Civil penalties. Each violation of this chapter shall result in a civil penalty of \$100. If a person fails to pay this penalty within ten days after being cited for a violation, the city may seek to recover the penalty by filing a civil action in the nature of a debt.
- (B) Criminal penalties. Any police officer may issue a criminal citation for violation of any ordinance concerning noise. A violation of any noise ordinance provision shall constitute a misdemeanor, punishable by imprisonment for up to 30 days and/or a criminal fine in the amount of \$250. Any person who has been convicted of a violation of the noise ordinance two or more times in the past five years shall be subject to imprisonment and/or a criminal fine in the amount of \$500.
- (C) The city may seek to enforce this chapter through any appropriate equitable action.
- (D) Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense.

(Ord. passed 5-12-14)

**Commented [MK4]:** We can discuss further, but by increasing the lead time on the permit, this will allow for the required appeal time. However, this will require public awareness of the submission timeline change.



**AN ORDINANCE AMENDING CHAPTER 92 AND 94 OF THE CITY OF  
BESSEMER CITY CODE OF ORDINANCES.**

**WHEREAS**, after proper notification a Public Hearing was held before the Bessemer City Council on December 13th, 2021 to consider a proposed amendment to the City of Bessemer City Code of Ordinances.

**WHEREAS**, after a \_\_\_\_\_ vote, the City Council of Bessemer City approved a text change to the City of Bessemer City Code of Ordinances reflected in Chapter 92 and 94 of the City of Bessemer City Code of Ordinances.

**NOW THEREFORE BE IT ORDAINED**, by the City Council of the City of Bessemer City, that the City of Bessemer City Code of Ordinances is amended to reflect the adopted changes as written below.

1. CHAPTER 92 ABANDONED, JUNK, NUISANCE VEHICLES.
2. CHAPTER 94 NOISE.

Effective Date

This Ordinance shall become effective upon its adoption by the City Council of the City of Bessemer City, North Carolina.

Adopted by City Council this 10<sup>th</sup> Day of January, 2022.

\_\_\_\_\_  
Becky S. Smith, Mayor

\_\_\_\_\_  
Hydeia Y. Hayes, City Clerk



**RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR  
APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH  
CAROLINA GENERAL STATUTES 160A-20**

**WHEREAS**, Bessemer City desires to finance the construction of Stinger Park lighting (the Project); and

**WHEREAS**, Bessemer City desires to finance this Project using an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

**WHEREAS**, Findings of Fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its Findings of Fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of Bessemer City, North Carolina, meeting in regular session on January 10, 2022, that the said Council make the following FINDINGS OF FACT:

1. The proposed contract is for financing up to \$1,300,000, the estimated cost of the Project.
2. The proposed contract is preferable to a bond issue because: 1) the total costs of the financing are not sufficient to warrant the expenses involved in a General Obligation Bond issue; 2) the proposed Project is too expensive to be funded through current revenues and/or fund balance, thus the installment contract method of financing proves to be the best alternative for Bessemer City; and 3) the desired term of financing is 10 or 15 years, thereby making bonds a less desirable alternative.
3. The sum to fall due under the contract will be adequate and not excessive for the proposed purpose and the rate of interest will be approximately the same or lower than that of a general obligation bond issue, when considering total costs involved in a referendum, legal expenses, insurance etc.
4. Bessemer City's debt management procedures and policies are acceptable. The City adheres to its Budget Ordinance, has a history of timely debt obligation payments, and maintains an acceptable level of unappropriated fund balance. The City Manager and Finance Director constantly monitor the City's fiscal structure and periodically report the financial condition to the City Council.

5. Bessemer City is not in default in meeting its debt service obligations.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Manager is hereby authorized to act on behalf of Bessemer City in filing an application with the North Carolina Local Government Commission for approval of the Financing and other actions not inconsistent with this resolution.

BE IT FURTHER RESOLVED that a Public Hearing be held to hear public input on the financing of this Project by the use of an installment financing contract as allowed for under N.C.G.S 160A-20 for the said financing on January 24, 2022 at 3:00 pm in the Council Chambers of City Hall in Bessemer City, NC, and that the Clerk to the Board is hereby authorized and directed to cause to be published, a notice of the said meeting as by law required.

This Resolution is effective upon its adoption this 10th day of January 2022.

The motion to adopt this resolution was made by Council member \_\_\_\_\_, and passed unanimously by the City Council of Bessemer City, North Carolina.

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Becky S. Smith, Mayor

---

Hydeia Y. Hayes, City Clerk

## BUDGET AMENDMENT 2021-2022

January 10, 2022

BE IT ORDAINED by the governing body of the City of Bessemer City that the following amendments be made to the annual budget ordinance for the fiscal year ending June 30, 2022.

Section 1. To amend the General Fund, the appropriations are to be changed as follows:

### General Fund

Dept Number	Description	Increase	Decrease	Debit	Credit
100-80-6120-351	Maint. & Repair Bldg.	16,522.00		16,522.00	
100-80-6130-351	Maint. & Repair Bldg. Amphi.	17,138.00		17,138.00	
100-10-4340-351	Maint. & Repair Bldg.	25,348.00		25,348.00	
100-10-4310-500	Camera & Implementation	22,000.00		22,000.00	
100-00-9840-540	Transfer to Fund 540	218,992.00		218,992.00	

This will result in a net increase in appropriations for the General Fund.

To provide for the increase, the following General Fund Revenue Accounts will be increased.

### General Fund

Dept Number	Description	Increase	Decrease	Debit	Credit
100-00-3835-820	Sale of GF Property	300,000.00			300,000.00

Section 2. Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and the Finance Officer for their direction.

Adopted by Council, this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Becky S. Smith, Mayor

Attest:

\_\_\_\_\_  
Hydeia Y. Hayes, Clerk

## Capital Project Ordinance Amendment

### January 10, 2022

BE IT ORDAINED by the governing body of the City of Bessemer City that the following amendments be made to the North Park/Stinger Park Capital Project Ordinance for the fiscal year ending June 30, 2022 as follows:

Section 1. To amend the North Park/Stinger Capital Project Ordinance.

<u>Account</u>	<u>Increase</u>	<u>Decrease</u>
Transfer From General Fund (Sale of GF Property)	\$218,992	
Construction	\$218,992	

Section 2. Copies of this Capital Project Ordinance Amendment shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and the Finance Officer for their direction.

Adopted by Council, this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Becky S. Smith, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hydeia Hayes, City Clerk

\_\_\_\_\_  
Date



**CERTIFIED BID TABULATION**  
**WATER TREATMENT PLANT IMPROVEMENTS**  
**BESSEMER CITY, NORTH CAROLINA**

Thursday, July 1, 2021; 2:00 pm

City Council Chambers, 132 W. Virginia Avenue, Bessemer City, North Carolina 28016

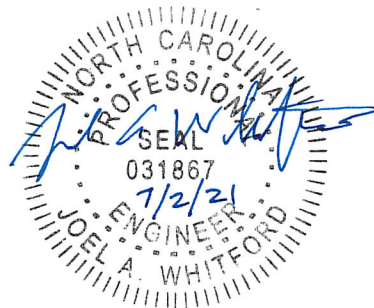
BIDDER	TOTAL BASE BID INCLUDING ALLOWANCES	ALTERNATE BID ITEMS						
		No. 1 <i>Add</i>	No. 2 <i>Deduct</i>	No. 3 <i>Add</i>	No. 4 <i>Add</i>	No. 5 <i>Add</i>	No. 6 <i>Add</i>	No. 7 <i>Add</i>
The Harper Corporation	\$7,196,000	\$123,600	(\$224,800)	\$13,400	\$247,300	\$27,800	\$31,400	\$14,280
State Utility Contractors, Inc.	\$7,957,000	\$110,000	(\$250,000)	\$15,000	\$185,000	\$45,000	\$35,000	\$20,400
Shook Construction Company	\$8,400,000	\$120,000	(\$330,000)	\$12,000	\$240,000	\$76,000	\$40,000	\$23,460
Haren Construction Company, Inc.	\$8,892,000	\$125,000	(\$282,000)	\$12,000	\$220,000	\$35,000	\$32,000	\$30,000
M. B. Kahn Construction Co., Inc.	\$8,918,800	\$47,000	(\$209,000)	\$23,000	\$186,000	\$83,000	\$56,800	\$30,600
Wharton-Smith, Inc.	\$9,420,000	\$110,000	(\$155,000)	\$35,000	\$220,000	\$40,000	\$50,000	\$91,800

This is to certify that the bids tabulated herein were accompanied by a 5% bid bond or certified check and publicly opened and read aloud at 2:00 pm local time on the 1st day of July 2021, in the City Council Chambers, Bessemer City, NC 28016.

JOEL WHITFORD, PE



1240 19th Street Lane NW  
Hickory, North Carolina 28603  
License No. C-0459



September 9, 2021

Mr. James Inman, ICMA-CM, MPA, MCJ  
City Manager  
City of Bessemer City  
132 W. Virginia Avenue  
Bessemer City, North Carolina 28016

RE: Award Recommendation  
Contract 1 – Stinger Park Water and Sewer Improvements  
Contract 2 – Water Treatment Plant Improvements  
Bessemer City, North Carolina

Dear Mr. Inman:

On July 1, 2021, bids were received, opened, and publicly read aloud for both Contracts 1 and 2. Five (5) bids were received for Contract 1 – Stinger Park Water and Sewer Improvements. Buckeye Bridge, LLC of Canton, NC was the lowest responsive, responsible bidder for Contract 1 with a total base bid of \$442,814.70. Buckeye is appropriately licensed with the NC Licensing Board for General Contractors and has successfully completed similar projects.

Six (6) bids were received for Contract 2 – Water Treatment Plant Improvements. The Harper Corporation of Greenville, SC was the lowest responsive, responsible bidder for Contract 2 with a base bid amount of \$7,196,000, and total bid price including all add alternates of \$7,653,780. This total includes two allowances - \$200,000 for sludge removal and \$50,000 for unknown concrete repairs to the WTP filters. It is our recommendation that these two items be removed from the award amount and added back later in the project from contingency funds. Harper is appropriately licensed with the NC Licensing Board for General Contractors and has successfully completed similar projects.

We recommend the City seek to obtain supplemental funds to cover the funding shortfall. The two (2) bid overruns were caused by the current labor shortages and pricing inflation that has been seen throughout the construction industry.

Based upon our discussions and funding availability, we recommend that the City award Contract 1 to Buckeye for the contract price of \$442,814.70 at the earliest opportunity, with a 5-percent contingency. It is expected that the City will have to put additional local funds into the overall project costs that will exceed the contract amount for Contract 1. We have received preliminary approval of this approach from USDA.

Upon approval of remaining funds, we recommend that Contract 2 be awarded to Harper for a contract price of \$7,403,780, as outlined above. The City would also need to establish a 5-percent construction contingency for this contract.

Enclosed for your use are the Certified Bid Tabulations. Please do not hesitate to contact us if you have any questions.

Sincerely,

**McGILL ASSOCIATES, P.A.**



**DOUGLAS CHAPMAN, PE**

Hickory Office Manager – Principal

Enclosure: Certified Bid Tabulations

cc: Mr. Jamie Ramsey, Assistant City Manager  
Mr. Joel Whitford, McGill



# CERTIFIED BID TABULATION

## STINGER PARK WATER AND SEWER

### BESSEMER CITY, NORTH CAROLINA

Thursday, July 1, 2021; 3:00 pm

City Council Chambers, 132 W. Virginia Avenue, Bessemer City, North Carolina 28016

No	Description	Unit		Quantity	Buckeye Bridge, LLC		Neill Grading and Construction		Two Brothers Utilities, LLC		Appalachian Sitework, Inc.		Piedmont Utility Group, Inc.	
					Bid Unit Price	Bid Price	Bid Unit Price	Bid Price	Bid Unit Price	Bid Price	Bid Unit Price	Bid Price	Bid Unit Price	Bid Price
1	Mobilization (max. 3%)	LS		1	\$12,569.70	\$12,569.70	\$13,500.00	\$13,500.00	\$14,205.00	\$14,205.00	\$15,500.00	\$15,500.00	\$16,215.09	\$16,215.09
2	6" DIP Water Line	2610	LF	2,610	\$36.50	\$95,265.00	\$37.50	\$97,875.00	\$42.90	\$111,969.00	\$46.35	\$120,973.50	\$48.39	\$126,297.90
3	6" Gate Valve and Box	2	EA	2	\$1,298.00	\$2,596.00	\$1,600.00	\$3,200.00	\$1,267.00	\$2,534.00	\$2,174.24	\$4,348.48	\$1,340.50	\$2,681.00
4	4" Gate Valve and Box	1	EA	1	\$1,093.00	\$1,093.00	\$1,200.00	\$1,200.00	\$1,086.00	\$1,086.00	\$1,957.47	\$1,957.47	\$1,111.15	\$1,111.15
5	3" Gate Valve and Box	1	EA	1	\$1,013.00	\$1,013.00	\$1,100.00	\$1,100.00	\$1,026.00	\$1,026.00	\$1,918.57	\$1,918.57	\$1,046.90	\$1,046.90
6	Compact Ductile Iron Fittings	1400	LB	1400	\$11.10	\$15,540.00	\$10.75	\$15,050.00	\$4.00	\$5,600.00	\$6.40	\$8,960.00	\$0.01	\$14.00
7	4" Water Service with Meter Vault	1	LS	1	\$27,985.00	\$27,985.00	\$22,200.00	\$22,200.00	\$30,225.00	\$30,225.00	\$29,106.90	\$29,106.90	\$28,697.53	\$28,697.53
8	3" Water Service with Meter Vault	1	LS	1	\$24,266.00	\$24,266.00	\$20,000.00	\$20,000.00	\$28,734.00	\$28,734.00	\$26,842.30	\$26,842.30	\$23,043.89	\$23,043.89
9	1" Water Service with Meter	1	LS	1	\$2,308.00	\$2,308.00	\$3,650.00	\$3,650.00	\$2,400.00	\$2,400.00	\$7,321.08	\$7,321.08	\$4,067.38	\$4,067.38
10	Fire Hydrant Removal	1	EA	1	\$353.00	\$353.00	\$925.00	\$925.00	\$300.00	\$300.00	\$1,450.00	\$1,450.00	\$798.00	\$798.00
11	Fire Hydrant Assembly with Valve and Tee	3	EA	3	\$5,235.00	\$15,705.00	\$4,750.00	\$14,250.00	\$5,307.00	\$15,921.00	\$5,794.87	\$17,384.61	\$5,346.40	\$16,039.20
12	Combination Air Release/Vacuum Valves	1	EA	1	\$5,824.00	\$5,824.00	\$5,000.00	\$5,000.00	\$4,600.00	\$4,600.00	\$6,347.91	\$6,347.91	\$3,541.01	\$3,541.01
13	Connect to 6" Existing Water Lines	2	EA	2	\$4,510.00	\$9,020.00	\$8,600.00	\$17,200.00	\$5,250.00	\$10,500.00	\$3,118.00	\$6,236.00	\$5,239.21	\$10,478.42
14	Connect to Existing Manhole	1	EA	1	\$2,600.00	\$2,600.00	\$5,100.00	\$5,100.00	\$3,800.00	\$3,800.00	\$2,850.00	\$2,850.00	\$2,850.00	\$2,850.00
15	8" DIP Gravity Sewer	1590	LF	1590	\$65.70	\$104,463.00	\$54.50	\$86,655.00	\$73.00	\$116,070.00	\$60.70	\$96,513.00	\$92.35	\$146,836.50
15.A	8" PVC SDR 35 Gravity Sewer	950	LF	950	\$52.90	\$50,255.00	\$45.00	\$42,750.00	\$53.00	\$50,350.00	\$60.45	\$57,427.50	\$80.82	\$76,779.00
16	Sewer Service Connection	4	EA	4	\$1,152.00	\$4,608.00	\$1,150.00	\$4,600.00	\$1,800.00	\$7,200.00	\$1,450.00	\$5,800.00	\$1,733.07	\$6,932.28
17	4' Dia. Sanitary Sewer Manhole	11	EA	11	\$2,675.00	\$29,425.00	\$3,850.00	\$42,350.00	\$3,217.00	\$35,387.00	\$4,894.23	\$53,836.53	\$4,027.67	\$44,304.37
18	4' Dia. Sanitary Sewer High Velocity Manhole	4	EA	4	\$2,921.00	\$11,684.00	\$8,250.00	\$33,000.00	\$6,531.00	\$26,124.00	\$6,159.30	\$24,637.20	\$4,977.11	\$19,908.44
20	Doghouse Manhole	1	EA	1	\$3,359.00	\$3,359.00	\$6,850.00	\$6,850.00	\$7,274.00	\$7,274.00	\$7,727.40	\$7,727.40	\$5,099.22	\$5,099.22
21	Abandon Existing Manholes	8	EA	8	\$631.00	\$5,048.00	\$1,500.00	\$12,000.00	\$675.00	\$5,400.00	\$3,800.00	\$30,400.00	\$1,254.00	\$10,032.00
22	Curb & Gutter Repair	1	LS	1	\$4,735.00	\$4,735.00	\$1,500.00	\$1,500.00	\$2,000.00	\$2,000.00	\$6,300.00	\$6,300.00	\$5,586.00	\$5,586.00
23	Asphalt Road Pavement Repair	100	LF	100	\$131.00	\$13,100.00	\$82.50	\$8,250.00	\$50.00	\$5,000.00	\$60.00	\$6,000.00	\$68.59	\$6,859.00
<b>Totals</b>						<b>\$442,814.70</b>		<b>\$458,205.00</b>		<b>\$487,705.00</b>		<b>\$539,838.45</b>		<b>\$559,218.28</b>

This is to certify that the bids tabulated herein were accompanied by a 5% bid bond or certified check and publicly opened and read aloud at 3:00 pm local time on the 1st day of July 2021, in the City Council Chambers, Bessemer City, NC 28016.

JOEL WHITFORD, PE



1240 19th Street Lane NW  
Hickory, North Carolina 28601  
Firm License No. C-0459





**CERTIFIED BID TABULATION**  
**WATER TREATMENT PLANT IMPROVEMENTS**  
**BESSEMER CITY, NORTH CAROLINA**

Thursday, July 1, 2021; 2:00 pm

City Council Chambers, 132 W. Virginia Avenue, Bessemer City, North Carolina 28016

BIDDER	TOTAL BASE BID INCLUDING ALLOWANCES	ALTERNATE BID ITEMS						
		No. 1 <i>Add</i>	No. 2 <i>Deduct</i>	No. 3 <i>Add</i>	No. 4 <i>Add</i>	No. 5 <i>Add</i>	No. 6 <i>Add</i>	No. 7 <i>Add</i>
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JOEL WHITFORD, PE



1240 19th Street Lane NW  
Hickory, North Carolina 28603  
License No. C-0459

