

**EDEN CITY COUNCIL
REGULAR MEETING AGENDA**

**Council Chambers
308 E. Stadium Drive
January 21, 2020
6:00 p.m.**

1. Meeting called to order by: Neville Hall, Mayor
2. Invocation: Pastor Leroy Valentine, Ambassadors for Christ Ministries
3. Pledge of Allegiance: Led by Fire Chief Tommy Underwood
4. Proclamations & Recognitions:
 - a. Proclamation: Martin Luther King, Jr. Day
 - b. Recognition: The Hair Company's 45th Anniversary
5. Roll Call
6. Set Meeting Agenda
7. Public Hearings:
 - a. Consideration to approve an agreement with the N.C. Department of Commerce for a Rural Economic Development Grant to benefit Gildan Activewear.
Mike Dougherty, Director of Economic Development
 - b. Consideration to adopt an ordinance establishing a 60-day moratorium on development approvals for game rooms and games of skill in the City and its extraterritorial jurisdiction. **Kelly Stultz, Director of Planning & Inspections**
8. Requests and Petitions of Citizens
9. Unfinished Business:
 - a. Consideration of a presentation by Developmental Associates in the search for a new city manager. **Interim City Manager Terry Shelton**
 - b. Consideration of Boards and Commissions appointments.
Kelly Stultz, Director of Planning & Inspections
 - c. Consideration of an updated report on the nuisance violations at 216 The Boulevard.
Kelly Stultz, Director of Planning & Inspections
10. New Business:
 - a. Consideration to approve an agreement and funding approval for the CDBG Draper Neighborhood Housing Revitalization Project.
Kelly Stultz, Director of Planning & Inspections
 - b. Consideration to approve an agreement between the City and Wetherill Engineering, Inc. for the East Stadium Drive Sidewalk. **Kelly Stultz, Director of Planning & Inspections**

- c. Consideration of Strategic Planning Commission appointments.
Kelly Stultz, Director of Planning & Inspections
 - d. Consideration to adopt an ordinance to amend Chapter 16 (Utilities) of the City Code pertaining to cross connection control.
Mark Bullins, Water & Sewer Construction Projects Manager
11. Reports from Staff:
- a. City Manager's Report. **Terry Shelton, Interim City Manager**
12. Consent Agenda:
- a. Approval and adoption of December 17, 2019 Minutes. **Deanna Hunt, City Clerk**
13. Announcements
14. Closed Session:
- a. To preserve the attorney-client privilege between the attorney and the public body pursuant to NCGS 143-318.11(a)(3).
 - b. To discuss personnel pursuant to NCGS 143-318.11(a)(6).
15. Adjourn



**Proclamation
Martin Luther King, Jr. Day**

WHEREAS, January 20 marks the observance of the federal legal holiday to honor the birthday of the Reverend Dr. Martin Luther King, Jr., and

WHEREAS, Dr. King dedicated his life to a vision: that all Americans would live free from injustice and enjoy equal opportunity. His peaceful and lifelong crusade against segregation and discrimination brought our communities closer to the founding ideals set forth in the Declaration of Independence and the Constitution; and

WHEREAS, as we honor Dr. King, we know that our community is stronger, more just, and more free because of his life and work; and

WHEREAS, in paying tribute, we are reminded that the call lies with each of us to fulfill Dr. King's work. Let us use our time, talents, and resources to give back and help those less fortunate. Let us not forget Dr. King's own tireless spirit and efforts as we work, celebrate, and pray alongside each other.

NOW, THEREFORE, BE IT PROCLAIMED that I, Neville Hall, Mayor of the City of Eden, hereby designate January 20, 2020 be set aside as

Martin Luther King, Jr. Day

in the City of Eden and urge all citizens to join with me this day to apply Dr. King's life and teachings of community service.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21st day of January, 2020.

By:

Neville Hall, Mayor

ATTEST:

Deanna Hunt, City Clerk



Economic Development Department

January 13, 2020

To: The Honorable Mayor and Eden City Council

Thru: Terry Shelton, City Manager

From: Randy Hunt, Eden Main Street Manager

Re: Hair Company Recognition

Time is requested at the January 2020 City Council meeting to recognize The Hair Company for its 45th Anniversary. Please let me know if you have any questions. Thank you.



Economic Development Department

January 9, 2020

To: Honorable Mayor and City Council

Thru: Terry Shelton, City Manager

From: Mike Dougherty, Director of Economic Development

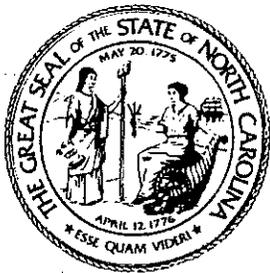
Re: Gildan Yarns Building Reuse Grant Public Hearing

A public hearing is requested at the January 21, 2020 City Council meeting concerning the North Carolina Department of Commerce Building Reuse Grant in the amount of \$500,000 for the benefit of Gildan Activewear (Yarns) which announced its opening in Eden in September of 2019.

The \$500,000 grant will assist with the development of Gildan's 181,000 SF building located at 335 Summit Road. The grant requires up to a 5% local match which is \$25,000. This local match will be in the form of previous City of Eden incentives already approved for Gildan. The grant will be in the form of a forgivable loan administered by the City of Eden, secured by a Deed of Trust that is cancelled once Gildan has met all employment requirements. In return for the grant amount, Gildan must create 85 new jobs. The City of Eden will be the local government party participant in the respective grant agreements subject to various restrictions and conditions mandated by NCGS § 158-7.1.

Attached is the NC Department of Commerce Building Reuse contract for your review.

It is requested that the City Council approve this grant to assist with the development of the building and pave the way for initial and potential investment and jobs.



ROY COOPER
Governor

ANTHONY M. COPELAND
Secretary

KENNY FLOWERS
Assistant Secretary

November 1, 2019

The Honorable Neville Hall
Mayor
City of Eden
PO Box 70
Eden, NC 27289-0070

Re: Contract Agreement for Grant Number 2020-011-3201-2587; Your Signature and Reply is Requested
Project Title: "Gildan Activewear (Yarns), Inc/Project Eden"

Dear Mayor Hall:

Enclosed for your review and signature is a complete set of contract documents required to finalize the grant award from the North Carolina Rural Infrastructure Authority. Below is a description of the documents enclosed along with an explanation of the signatures required for each document.

Document:	Document Description:	Signed By:
Grant Agreement	Contract: Outlines the terms of Grant Agreement between the Department of Commerce and the Unit of Local Government.	Highest Elected Official - Unit of Local Government
Exhibit A	Scope of Services: Outlines the scope of the renovation/construction project.	No Signature Required
Exhibit B	Payment Schedule: Outlines the process for the Unit of Local Government to request reimbursements from Department of Commerce.	No Signature Required
Exhibit C	Reporting Schedule: Outlines the schedule of reports that are due from the Unit of Local Government to the Department of Commerce and when they are due.	No Signature Required
Exhibit D	Closeout/Job Requirements: Outlines the process for the Unit of Local Government to report the creation and maintenance of jobs to the Department of Commerce.	No Signature Required
Exhibit E	Legally Binding Commitment (LBC): Outlines terms and conditions of the Loan.	Highest Elected Official - Unit of Local Government and Legal Property Owner listed on the Deed.
Exhibit F	Promissory Note: Defines the repayment terms of the Loan in the event of default.	Legal Property Owner listed on the Deed.
Exhibit G	Limited Waiver of Confidentiality: Contains employment information reported to the Department of Commerce's Division of Employment Security.	Each Business involved in the project.
Exhibit H	Deed of Trust Documentation	Highest Elected Official - Unit of Local Government

Execute these documents, scan a quality copy and return to my attention at rgpreports@nccommerce.com. If you have any questions or if I can be of any assistance, please contact me at (919) 814-4671 or nichole.gross@nccommerce.com.

Sincerely,

Nichole M. Gross
Grant Manager

Enclosure

The North Carolina Department of Commerce (“Commerce”), an agency of the State of North Carolina (“State”), enters into this Rural Economic Development Grant Agreement (“Grant Agreement”) with **City of Eden** (the “Governmental Unit” and, together with Commerce, the “Parties”).

WHEREAS, the North Carolina General Assembly (“General Assembly”) has determined that it is the policy of the State to stimulate economic activity and to create new jobs for citizens of the State by providing matching grants or loans to specific local governmental units so as to productively reuse certain buildings and properties or expand rural health care facilities subject to the requirements of N.C.G.S. §§143B-472.127 and .128; and

WHEREAS, under N.C.G.S. §143B-472.128, the General Assembly created the North Carolina Rural Infrastructure Authority (“Rural Authority”) to review applications for and, where appropriate, authorize such matching grants or loans, and, under N.C.G.S. §§143B-472.126 and .127, the General Assembly authorized Commerce to administer such grants or loans; and

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, and based on the terms, conditions and representations in this Grant Agreement’s Exhibits A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (LBC), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality (“Waiver”)), the Rural Authority has approved a grant (the “Grant”) to the Governmental Unit; and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated by reference herein; (2) based on the representation in the application that **Gildan Activewear** (the “Owner”) owns certain real property located at:

335 Summit Road
Eden, NC 27288

in **Rockingham** County, North Carolina (the “Property”); (3) based on Commerce’s Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to this Grant Agreement by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the “Project,” as summarized in Exhibit A to this Grant Agreement).

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

1. Scope of Program/Agreements to be Executed.

- (a). As conditions of the Grant Agreement:
- i. The highest elected official of the Governmental Unit shall execute two originals of this Grant Agreement in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one of them to Commerce;
 - ii. The Governmental Unit shall ensure that its highest elected official and a duly authorized representative of the Owner execute two originals of the Rural Economic Development Loan Agreement and Legally Binding Commitment ("LBC") in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one such original to Commerce with the one executed original of the Grant Agreement;
 - iii. The Governmental Unit shall ensure with the Owner that every individual or entity that has any ownership interest in the real property which is the subject of the Project executes two originals of the Promissory Note attached as Exhibit F in its exact form and shall return one such original to Commerce with the one executed originals of the Grant Agreement; and
 - iv. Exhibit A refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs ("New Jobs") to complete the Project as the "Company," the "Employer" and the "Business" (together and hereinafter, the "Business"). The Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver of Confidentiality ("Waiver"), attached as Exhibit G, and shall return the original of any such Waiver to Commerce with the executed originals of the Grant Agreement. The Governmental Unit shall also ensure that any additional Business which becomes involved in the Project after the Grant Agreement is finalized executes a Waiver upon its involvement, the original of which the Governmental Unit shall promptly forward to Commerce.
- (b). The Governmental Unit shall provide Commerce with any information obtained pursuant to the LBC and allow Commerce to execute any rights of the Governmental Unit under the LBC, including the Governmental Unit's rights of access, review or monitoring and Commerce's rights as a third-party beneficiary thereunder.
- (c). The Governmental Unit shall exercise all of its rights and duties under the LBC in a prudent and timely manner to ensure the use of the Grant funds for the intended purposes and objectives and to preserve the rights of Commerce in this Grant Agreement and the LBC.
- (d). The LBC specifies how many New Jobs the Business must create and maintain in the performance of the Project and, if the Business fails to do so, those Grant funds that the Owner must repay to the Governmental Unit for return to Commerce or else repay directly to Commerce, upon request and as directed. If such New Jobs are not created or maintained, then the Governmental Unit shall return to Commerce any Grant funds it has not already disbursed to the Owner, make a timely demand for repayment from the Owner and, if such repayment is not forthcoming, initiate and fully litigate legal proceedings against the Owner to recover such repayment.

- (e). Without limitation, failure by the Governmental Unit to timely demand repayment from and, if necessary, initiate and fully litigate such legal proceedings against the Owner may affect the future consideration of the Governmental Unit for grant programs administered by Commerce. Further, and without limitation, if the Governmental Unit fails to timely initiate legal proceedings against the Owner for such repayment and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all litigation costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.

2. Changes in the Project or Other Conditions.

- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC ("Loan"), the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Governmental Unit, the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.

Notwithstanding the foregoing and wherever referred to in this Grant Agreement, "cessation of business," "ceasing to do business" and "ceases to do business" shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) seasonal shutdowns of operations as long as such cessation do not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the circumstances of for the period of time described in Paragraph 17 below.

- (b). Additionally, the Governmental Unit shall immediately notify Commerce of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement, the LBC or the Project. In its sole and unreviewable discretion, Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.

3. Term of Grant Agreement. The effective period of this Grant Agreement shall commence on **10/17/2019** ("Effective Date") and shall terminate on **10/17/2021** unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.

4. Funding. The Rural Authority grants to the Governmental Unit an amount not to exceed **\$500,000.00** for expenditures directly relating to the Project. The Governmental Unit hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project and consistent with all applicable laws, rules, regulations and requirements, and that the Governmental Unit shall not make or approve of any improper expenditure of Grant funds (including Loan funds). Administrative expenses of the

Governmental Unit are not eligible for Grant funding and any such use of Grant funds will violate this Grant Agreement.

5. Independent Status of the Governmental Unit.

- (a). The Governmental Unit is an entity independent from the Rural Authority and Commerce. The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between or among Commerce, the Rural Authority, the Governmental Unit or any third party (including, without limitation, the Owner or any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make the Governmental Unit (including its employees, agents, members or officials) or any third party (including, without limitation, the Owner or any Business) employees, agents, members or officials of Commerce or the Rural Authority. Neither the Governmental Unit nor any third party (including, without limitation, the Owner or any Business) shall have the ability to bind Commerce or the Rural Authority to any agreement for payment of goods or services or represent to any person that they have such ability.
- (b). The Governmental Unit shall be responsible for payment of all of its expenses, including rent, office expenses and all forms of compensation to employees. The Governmental Unit shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Grant Agreement. All expenses incurred by the Governmental Unit are its sole responsibility, and neither Commerce nor the Rural Authority shall be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. Commerce shall pay the Grant funds to the Governmental Unit in accordance with the Payment Schedule attached hereto as Exhibit B after receipt of written requests for payment from the Governmental Unit certifying that the conditions for such payment under this Grant Agreement have been met and that the Governmental Unit is entitled to receive the amount so requested and any other documentation that may be required by Commerce.

7. Obligation of Funds. The Governmental Unit shall not obligate Grant funds prior to the Effective Date or subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days.

8. Project Records.

- (a). The Governmental Unit shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary contributions or other revenue sources for this Project.

- (b). The Governmental Unit shall retain all financial records, supporting documents and all other pertinent records related to the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all Project records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

9. Monitoring, Reports and Auditing.

- (a). The Governmental Unit agrees to ensure compliance and provide its assistance with such monitoring and auditing requirements as the State may request, including following the Termination Date of this Grant Agreement. Additionally, the Governmental Unit shall regularly monitor all performance under Grant-supported activities, including activities performed by the Owner and any Business, to ensure that time schedules are being met, New Jobs are being created and maintained and other performance goals are being achieved.
- (b). The Governmental Unit shall furnish Commerce detailed written progress reports according to the time periods specified in Exhibit C or as otherwise requested by Commerce. Such reports should describe the progress made by the Governmental Unit, the Owner and any Business toward achieving the purpose(s) of the Project, including specifically the goals of New Job creation and maintenance. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until Commerce is in receipt of the delinquent report and the report meets with Commerce's approval, in Commerce's sole discretion.
- (c). The Governmental Unit acknowledges and agrees that, with regard to the Grant funds, it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of Grant funding received by the Governmental Unit and are subject to change from time to time.
- (d). Within thirty (30) days after the Termination Date, the Governmental Unit shall submit a final report to Commerce describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Governmental Unit should describe the Project, how it was implemented, to what degree the established Project objectives were met and the difficulties encountered, what the Project changed and its cost.
- (e). The Governmental Unit grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Grant Agreement, the LBC or the Project. Likewise, the Governmental Unit

shall ensure that the Owner and any Business provide the same access. In addition, the Governmental Unit agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

10. Termination; Availability of Funds.

- (a). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Agreement, if the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, Commerce shall have no responsibility to make additional Grant payments. Upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
- (b). The obligations of the Rural Authority and/or Commerce to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant (and therefore the Loan) become unavailable, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving written notice specifying the Termination Date, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.

11. Liabilities and Loss. The Governmental Unit hereby agrees to release, indemnify and hold harmless the State (including, without limitation, the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties (including, without limitation, the Owner and the Business) arising out of any act or omission of the Governmental Unit or any third party (including, without limitation, the Owner and the Business) in connection with the performance of this Grant Agreement, the LBC or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Governmental Unit hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in

connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Governmental Unit or of any third party (including, without limitation, the Owner and the Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

12. Governmental Unit Representations and Warranties. The Governmental Unit hereby represents and warrants that:
- (a). The execution and delivery of this Grant Agreement have been duly authorized by all necessary Governmental Unit action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Governmental Unit is a party or by which it is bound.
 - (b). There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Governmental Unit, threatened against or affecting it, the Owner or the Business, that could or might adversely affect the Project or any of the transactions contemplated by this Grant Agreement or the validity or enforceability of this Grant Agreement or the abilities of the Governmental Unit or the Owner to discharge their obligations under this Grant Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the Governmental Unit shall be liable to Commerce for repayment of the entire amount of the Grant and this Grant Agreement may be terminated by Commerce effective upon notice.
 - (c). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Governmental Unit or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Governmental Unit shall provide Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Grant Agreement.
 - (d). The Governmental Unit is solvent.
 - (e). A cash match grant, loan or other funding ("Cash Match") equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. All Cash Match funds shall be utilized exclusively for the purpose of the Project, and there shall be no improper expenditures of Cash Match funds. All Cash Match funds shall be expended prior to or simultaneously with and at the same rate as the Owner's expenditure of Loan funds.

- (f). Upon the Governmental Unit's reasonable inquiry of and receipt of supporting evidence from the Owner, both the Owner and any Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.

13. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.

- (a). Under the LBC, the Owner agrees at all times to preserve its legal existence, except that it may merge or consolidate with or into, or sell all or substantially all of its assets to, any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in the LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees in the LBC to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under the LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under the LBC.
- (b). Other than as provided for in Paragraph 13(a) above, if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall be the sole responsibility of the Governmental Unit to (i) immediately notify Commerce and (ii) pursue any claim for Grant funds owed the State by the Owner or Business, including in any legal proceeding, to obtain the maximum payment allowed by law. To the extent the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and obtain the maximum payment allowed by law, and without limitation, the Governmental Unit shall be liable to Commerce for all amounts that should have been awarded to the Unit in the proceeding if it had taken the necessary action (notwithstanding whether such amounts would have actually been paid by the Owner or Business). Alternatively, without limitation, if the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all legal costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.
- (c). If the Governmental Unit fails to provide Commerce notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this Grant Agreement. If there is such a cessation or such a proceeding, Commerce may terminate the Grant Agreement upon written notice to the Governmental Unit. If there is such a cessation or such a proceeding, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, the Governmental Unit, the Owner and any Business shall not expend any Grant or Loan

funds without Commerce's express written authorization and shall return all unspent Grant or Loan funds to Commerce upon demand and if permissible under applicable bankruptcy, dissolution or insolvency law.

14. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 14 are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
 - (b). If there is a breach of any of the requirements, covenants or agreements in this Grant Agreement or the LBC, or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement, the LBC or in relation to the LBC or the Project (including the performance thereof), the Governmental Unit agrees that Commerce has the sole discretion to require repayment from the Governmental Unit of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Governmental Unit has already received under this Grant Agreement. Such requirements, covenants or agreements include but are not limited to Paragraphs 1, 2(a), 4, 10(a), 12 and 13 of this Grant Agreement and include but are not limited to the creation and retention of the New Jobs and the retention of the Baseline Number of jobs under the LBC.
15. No Waiver by the State. Failure of the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this Grant Agreement or the LBC shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement or the LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
16. Waiver of Objections to Timeliness of Legal Action. The Governmental Unit knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the State (including, without limitation, the Rural Authority or Commerce) to enforce its rights under this Grant Agreement. This waiver includes any objections the Governmental Unit may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.

17. Force Majeure. If (a) during the term of this Grant the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of the LBC as and when the LBC requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of the LBC; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.
18. Special Provisions and Conditions.
- (a). Non-discrimination. The Governmental Unit agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this Grant Agreement.
 - (b). Conflict of Interest. The Governmental Unit shall adopt and keep on file, along with the executed copies of this Grant Agreement, a copy of its policy and any ordinance or resolution it has adopted addressing conflicts of interest that may arise involving the members of the Governmental Unit's governing body and/or any of its employees or officers involved in the Grant, the LBC or the Project. Such policy, ordinance or resolution shall address situations in which any of these individuals may directly or indirectly benefit, other than through receipt of their normal compensation in their capacities as the Governmental Unit's employees, officers or members of its governing body, from the Grant, the LBC or Project, and shall include actions to be taken by the Unit or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. Additionally, the Governmental Unit certifies that, as of the date it executes this Grant Agreement, no such individuals have such a conflict of interest or will directly or indirectly benefit, except in the capacities described above, from the Grant, LBC or Project. Throughout the duration of this Grant Agreement, the LBC and the Project, the Governmental Unit has the duty to promptly inform Commerce of any such conflict of interest or direct or indirect benefit of which it becomes aware.
 - (c). Compliance with Laws. The Governmental Unit shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant Agreement, the LBC or the Project.
 - (d). Non-Assignability. The Governmental Unit shall not assign or transfer any interest in the Agreement without the prior written consent of Commerce; provided, however, that claims for money due to Governmental Unit from Commerce under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

- (e). Personnel. The Governmental Unit represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of Commerce. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.
19. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the Rural Authority or Commerce: Attn: **Hazel Edmond**
Program Manager
North Carolina Department of Commerce
Rural Economic Development Division
301 North Wilmington Street
4346 Mail Service Center
Raleigh, North Carolina 27699-4346

If to the Governmental Unit: Attn: **The Honorable Neville Hall**
Mayor
City of Eden
PO Box 70
Eden, NC 27289-0070

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

20. Entire Agreement. This Grant Agreement supersedes all prior agreements between or among the Rural Authority and/or Commerce and the Governmental Unit with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Commerce and the Governmental Unit.
21. Execution. This Grant Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.
22. Construction. This Grant Agreement shall be construed and governed by the laws of the State of North Carolina.
23. Severability. Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

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

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

City of Eden

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Date: _____

North Carolina Department of Commerce

Signature:  _____ [SEAL]

Printed Name: Kenny Flowers

Title: Assistant Secretary for Rural Economic Development

Date: 11/1/2019

BUILDING REUSE PROGRAM - Vacant

2020-011-3201-2587

City of Eden

Gildan Activewear (Yarns), Inc/Project Eden

EXHIBIT A SCOPE OF PROJECT

Summary: The project will support the reuse of a 181,000 SF building located at 335 Summit Road. The building was constructed in 1964 and has been vacant for two years. Gildan Activewear, Inc is a manufacturer of branded clothing, including undecorated blank activewear such as t-shirts, sports shirts, and fleeces. One NC Contingencies: Cost Estimates, Site control documents

EXHIBIT B PAYMENT SCHEDULE

Eligible Expenditures:

Vacant Building Category: within the existing building footprint

Existing Business Building Category: within the existing building and/or additions

Rural Health Care Category: within the existing building, additions and/or new construction

Eligible costs under all funding categories include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression systems, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

Any company in which any project partner has an ownership or management interest in may act as a contractor for the renovation project only if the company holds a valid NC General Contractors license. The relationship must have been disclosed to the Rural Development Division and a copy of the company's license must have been included in the application. Licensed contracting companies owned or operated by any project partner that are used in the renovation project will be required to submit original invoices from the provider for all labor, materials, services and subcontracted work plus proof that those invoices have been paid in full.

Reimbursement Requirements:

The Department of Commerce will reimburse 50% of eligible expenditures up to the total grant amount upon receipt of the following:

1. A completed financial request form,
2. Evidence that the 5% local government match has been satisfied (first payment request),
3. Copies of eligible project invoices that support the request amount,
4. Evidence that the invoices submitted for reimbursement have been paid-in-full. Evidence may include copies cleared checks, wire transfer or ACH receipts, and/or credit card receipts. Invoices paid with cash and those not paid in full will not be reimbursed, and
5. Satisfaction of reporting requirements according to Exhibit C below.

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

**EXHIBIT C
REPORTING SCHEDULE**

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

Failure to submit progress reports as required:

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

**EXHIBIT D
JOB VERIFICATION AND CLOSE OUT REQUIREMENTS**

Building Reuse and Rural Health Care loans are eligible for forgiveness once the creation and maintenance of the full-time jobs committed for the project, as well as, all reporting requirements are approved by Commerce. Below are the requirements and procedure for approval.

Job Verification

To be considered eligible, a full-time job must be filled with one employee who works at least 35 hours per week and is paid at least minimum wage. Part-time, full-time equivalents, or contract/consulting positions are not eligible.

Grantees should submit the following as evidence of job creation and maintenance:

1. **Job Certification Form**—both the grantee and the participating business are required to complete respective sections of this form that attests to the creation of the number of jobs full-time jobs committed to receive the grant. The form must be signed by the authorized representatives of the local government grantee and the participating business.
2. **NCUI 101 Forms**—The grantee should submit copies of each company's *Employer's Quarterly Tax and Wage Report* (NCUI 101 forms) that have been submitted to the North Carolina Employment Security Commission according to the requirements below.
 - NCUI 101 Forms should be submitted to Commerce.
 - The forms must include the appropriate number of quarters to show that the company maintained the required employment level for six-consecutive months.
 - The employment level reported must meet or exceed the baseline number of employees reported at the time of the application plus the number of new, full-time jobs committed for the grant.
 - The jobs created and the baseline must be maintained concurrently during the same six-month period.
 - If the NCUI 101 forms include employees from other locations in North Carolina, the names of the employees working in the grant funded project facility should be highlighted, and a multi-site report should be provided.
 - If the NCUI 101 forms include both full and part-time employees an "F" should be written next to the name of each full-time employee and a "p" should be written next to the name of each part-time employee.
3. **Final Report**—the grantee must submit the Final Report Form that describes the activities and outcomes of the project.
4. **Photos**—the grantee must submit digital photos that show a variety of views of the completed project.

All forms, including reporting and request for payment, can be found on the Commerce website at <http://www.nccommerce.com/rgp>. Email completed forms and reports to rgpreports@nccommerce.com.

City of Eden (the "Governmental Unit") enters into this Loan Agreement and Legally Binding Commitment (the "LBC," including the "Loan," defined below with **Gildan Activewear** (the "Owner" and, together with the Governmental Unit, the "Parties").

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, the North Carolina Rural Infrastructure Authority (the "Rural Authority") of the State of North Carolina ("State") has awarded a grant (the "Grant") to the Governmental Unit, and the North Carolina Department of Commerce ("Commerce"), an agency of the State, will administer the Grant; and

WHEREAS, the Grant is memorialized in an agreement (the "Grant Agreement") between Commerce and the Governmental Unit, and the Grant Agreement includes Exhibit A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (this LBC, which incorporates by reference the Grant Agreement and its other Exhibits), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality ("Waiver")); and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated into the Grant Agreement by reference; (2) based on the representation in the application that the Owner owns certain real property located at:

335 Summit Road
Eden, NC 27288

in **Rockingham** County, North Carolina (the "Property"); (3) based on Commerce's Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to the Grant Agreement and this LBC by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the "Project," as summarized in Exhibit A to this Grant Agreement); and

WHEREAS, the Governmental Unit and the Owner are required to enter into this LBC as a condition of the Governmental Unit loaning the Grant funds to the Owner.

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

1. Third-Party Beneficiary. The Parties agree that the State (including, without limitation, Commerce and the Rural Authority) is an intended third-party beneficiary of this LBC (including the Loan) and may, at its option, enforce the terms of this LBC or appear as a party in any litigation concerning the LBC.

2. Loan.

- (a) The Governmental Unit hereby loans to the Owner the sum of **\$500,000.00** (the "Loan"), which consists entirely of State Grant funds, to fund the Project. Exhibit A to the Grant Agreement refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs, as defined in Paragraph 3(a), to complete the Project under this LBC as the "Company," the "Employer" and the "Business" (together and hereinafter, the "Business"). The Owner specifically acknowledges that: it must repay the Loan in accordance with the terms of this LBC if the Business does not create and maintain the new jobs required by Paragraph 3(a) below; and as evidence of its obligation to repay the Loan, the Owner has executed the Promissory Note, Exhibit F to the Grant Agreement, which the Owner represents, acknowledges and agrees has been signed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
- (b) As conditions of receiving the Loan:
- i. The highest elected official of the Governmental Unit and a duly authorized representative of the Owner shall execute two originals of the LBC in its exact form (unless Commerce approves of a change to its terms in writing), and the Governmental Unit shall return one such original to Commerce;
 - ii. Every individual or entity that has any ownership interest in the Property shall execute two originals of the Promissory Note in its exact form, and the Governmental Unit shall return one such original to Commerce; and
 - iii. The Owner and the Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver, Exhibit G to the Grant Agreement, and the Governmental Unit shall forward the original of any such Waiver to Commerce.
- (c) The Owner hereby represents and warrants that all Loan funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of any improper expenditures of Loan funds.

3. New Job Creation, Maintenance of New Jobs and Baseline Number of Jobs and Verification.

- (a) New Job Creation and Maintenance of New Jobs and Baseline Number of Jobs. A "New Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) which is with the Business, is located in North Carolina, has a wage at least equal to the minimum wage, is created and maintained by the Business in order to complete the Project and is over and above the **850** full-time jobs in North Carolina ("Baseline Number") that the Business reported having at the time of the application for the Project. The Owner agrees that the Business shall be required to create and maintain in existence for six (6) consecutive months **85** New Jobs prior to the Termination Date, unless this term is extended pursuant to Paragraph 5. Separate and apart from these New Jobs, the Owner agrees that the Business shall be required to maintain in existence its Baseline Number of jobs for as long as it takes the Business to create and maintain its required number of New Jobs.

- (b). Verification. When the New Jobs required by Paragraph 3(a) have been created and maintained for six (6) consecutive months, the Owner shall notify the Governmental Unit so that it and/or Commerce can verify their creation and maintenance, as well as the maintenance of the Baseline Number of jobs and the satisfaction of all other conditions and terms of this LBC and the Project. The Owner shall cause any Business to provide to the Governmental Unit and Commerce, or their respective designees, full and complete access to all records of the Business necessary to verify the number and types of jobs created and maintained, the wages paid to employees and all other conditions and terms of this LBC and the Project. Failure of any Business to provide such access upon request shall constitute a material default by the Owner under the terms of this LBC and, in the sole discretion of the Governmental Unit and/or Commerce, may subject the Owner to repayment in an amount calculated under Paragraph 13 below.
4. Changes in the Project or Other Conditions.
- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC, the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce and the Governmental Unit in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.
- (b). Additionally, the Owner shall immediately notify the Governmental Unit of any change in conditions or local law, or any other event, which may significantly affect the ability of it or any Business to perform the LBC or the Project. In their sole discretion, the Governmental Unit or Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.
5. Term of LBC. The effective period of this LBC shall commence **10/17/2019** ("Effective Date") and shall terminate **10/17/2021** unless terminated on an earlier date under the terms of this LBC (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.
6. Independent Status of the Governmental Unit.
- (a). The State (including, without limitation, the Rural Authority and Commerce) and the Governmental Unit are independent entities from one another and from the Owner and any third party (including, without limitation, any Business). The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between the State and the Governmental Unit or between or among either of them and the Owner or any third party (including, without limitation, any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make any employees, agents or members of the Owner or any third party (including, without limitation, any Business) into employees, agents, members or officials of the Governmental Unit or the State or to make employees, agents, members or officials of the Governmental Unit into

employees, agents, members or officials of the State. Neither the Owner nor any third party (including, without limitation, any Business) shall have the ability to bind the Governmental Unit or the State to any agreement for payment of goods or services or represent to any person that they have such ability. Nor shall the Governmental Unit have the ability to bind the State to any agreement for payment of goods or services or represent to any person that it has such ability.

- (b). The Owner and any third party (including, without limitation, any Business) shall be responsible for payment of all their expenses, including rent, office expenses and all forms of compensation to their employees. The Owner and any third parties (including, without limitation, any Business) shall provide worker's compensation insurance to the extent required for their operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees who are performing work pursuant to this LBC or the Project. All expenses incurred by the Owner or any third party (including, without limitation, any Business) are their sole responsibilities, and neither the Governmental Unit nor the State (including, without limitation, Commerce and the Rural Authority) shall be liable for the payment of any obligations incurred in the performance of the Project.

7. Project Records.

- (a). The Owner shall maintain and cause any Business to maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this LBC separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Owner shall retain and cause any Business to retain all financial records, supporting documents and all other pertinent records related to this LBC, the Loan and the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

8. Monitoring, Reports and Auditing. The Owner agrees to generate and to cause any Business to generate such reports regarding the LBC or the Project as may be requested by the Governmental Unit or the State (including, without limitation, the Rural Authority or Commerce) in such form as they may request, including after the Termination Date. The Owner further grants and shall cause any Business to grant the Governmental Unit or the State (including any of its agencies, commissions or departments such as Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor and examine all of the books, papers, records and other documents relating to the LBC or the Project. In addition, the Owner agrees to comply and to cause any Business to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal

monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

9. Termination; Availability of Funds.

- (a). If the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Owner agrees that the Governmental Unit or Commerce has the right to terminate the LBC by giving the Owner written notice specifying the Termination Date, which shall be determined by the Governmental Unit or Commerce in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
- (b). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under its Grant Agreement with Commerce, the Owner agrees that Commerce has the right to terminate its Grant Agreement with the Governmental Unit and/or terminate this LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
- (c). The obligations of the Rural Authority and/or Commerce to pay any Grant funds to the Governmental Unit and for the Governmental Unit to pay any Loan amounts to the Owner under this LBC are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant and therefore the Loan become unavailable, the Owner agrees that either Commerce or the Governmental Unit has the right to terminate this LBC by giving written notice specifying the Termination Date, which either the Governmental Unit or Commerce may determine in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed.

10. Liabilities and Loss. The Owner hereby agrees to release, indemnify and hold harmless the Governmental Unit and the State (including the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties (including, without limitation, any Business) arising out of any act or omission of the Owner or any third party (including, without limitation, any Business) in connection with the performance of this LBC or the Project, and for all losses arising from implementation of this LBC or the Project. Without limiting the foregoing, the Owner hereby releases the

Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions or negligence of the Owner or of any third party (including, without limitation, any Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

11. Owner Representations and Warranties. The Owner hereby represents and warrants that:
- (a). The Owner and every Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.
 - (b). This LBC has been entered into and executed on behalf of the Owner by an individual with full actual and apparent authority to bind the Owner to the terms hereto, and the execution and delivery of this LBC have been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws or other applicable organizational documents of the Owner, nor are they in contravention of the provisions of any indenture, agreement or undertaking to which the Owner is a party or by which it is bound.
 - (c). The Promissory Note has been executed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
 - (d). There is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, or, to the Owner's knowledge, threatened against or affecting the Owner, that could or might adversely affect the Project, the creation of the New Jobs or any of the transactions contemplated by this LBC, or the validity or enforceability of this LBC or the Owner's ability to discharge its obligations under this LBC.
 - (e). Upon the Owner's reasonable inquiry of any Business, there is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, threatened against or affecting any Business that could or might adversely affect the Project, the creation of the Jobs or any of the transactions contemplated by this LBC or the validity or enforceability of this LBC or the ability of any Business to create the Jobs specified herein.
 - (f). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this LBC by the Owner or the performance of any of its obligations hereunder, or else all such requisite governmental consents or approvals have been obtained. The Owner shall provide the Governmental Unit or Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this LBC.

- (g). The Owner is solvent and has inquired of and received reasonable evidence from any Business of the solvency of that Business.
 - (h). A cash match grant, loan or other funding ("Cash Match") equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. The Owner hereby represents and warrants that all Cash Match funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of improper expenditures of Cash Match funds. The Owner shall expend all Cash Match funds prior to or simultaneously with and at the same rate as its expenditure of Loan funds.
12. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.
- (a). The Owner shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in this LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, any merger, consolidation or sale without such an undertaking shall constitute a material default under this LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under this LBC.
 - (b). Other than as provided for in Paragraph 12(a), if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Owner shall give the Governmental Unit immediate notice of the event, shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
 - (c). If the Owner fails to provide the Governmental Unit notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this LBC. If there is such a cessation or such a proceeding, the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner. Upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
 - (d). Notwithstanding the foregoing and wherever referred to in this LBC, "ceases to do business" shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) season shutdowns of operations as long as such cessation does not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the

circumstances for the period of time described in Paragraph 22 below.

13. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 13 are in addition to those repayment requirements and other remedies set forth elsewhere in this LBC, including the requirements to repay unspent Loan funds. No remedy conferred or reserved by or to the State or the Governmental Unit is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this LBC, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). The Owner acknowledges that the Grant by the Rural Authority and the Loan by the Governmental Unit are predicated upon the creation and maintenance of the New Jobs and maintenance of the Baseline Number of jobs required by Paragraph 3(a) and that failure to create and/or maintain them will constitute a material default of this LBC.
 - i. If the Business fails to create and maintain such New Jobs, then the Owner shall repay to the Governmental Unit or Commerce, as directed, an amount equal to the product of (i) \$5,882.35 (the amount of Loan funds divided by the number of New Jobs required to be created in Paragraph 3(a) and (ii) the number of New Jobs required to be created in Paragraph 3(a), minus the number of New Jobs actually created, above the Baseline Number reported, that have been in existence for six (6) consecutive months.
 - ii. Additionally, in the event that the Business fails to maintain its Baseline Number of jobs as required under Paragraph 3(a), the Business shall lose credit for any qualifying New Jobs under this LBC by the same number of jobs that the Baseline Number is short. For example, if the Baseline Number of jobs falls short by three (3) jobs as of the date the Business has created and maintained all required New Jobs, the number of New Jobs deemed created and maintained shall be reduced by three (3). The amount the Business must repay shall then be calculated in accordance with Paragraph 13(b)i.
 - iii. Either Commerce or the Governmental Unit shall notify the Owner in writing of the amount to be repaid and direct the Owner whether to repay such amount to the Governmental Unit for return to Commerce or repay the amount directly to Commerce. All such amounts shall be due immediately upon demand by the Governmental Unit or Commerce. If not paid within thirty (30) days following demand, the unpaid amount due hereunder and under the Promissory Note shall bear interest at the rate of 10% per annum after demand until paid. Upon default in such payment, the Governmental Unit or Commerce may employ an attorney to enforce their respective rights and remedies, and the Owner hereby agrees to pay the legal costs and reasonable attorneys' fees of the Governmental Unit and Commerce plus all other reasonable expenses incurred by such party in exercising any of its rights and remedies upon such defaults.

- (c). If there is a breach of any of the requirements, covenants or agreements in this LBC (including, without limitation, a failure to repay the amount required under Paragraph 13(b) within the time required), or if there are any representations or warranties which are untrue as to a material fact in this LBC or in relation to the LBC or the Project (including the performance thereof), the Owner agrees that the Governmental Unit or Commerce may require repayment from the Owner of an amount of Loan funds to be determined in their sole discretion but not to exceed the amount of Loan funds the Owner has already received under this LBC. Such requirements, covenants or agreements include but are not limited to Paragraphs 2, 3, 4, 9, 11 and 12 of this LBC.
14. No Waiver by Governmental Unit or the State. Failure of the Governmental Unit or the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this LBC shall in no manner affect the rights of the Governmental Unit or the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Governmental Unit or the State of any condition or the breach of any term, provision or representation contained in this LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
15. Waiver of Objections to Timeliness of Legal Action. The Owner knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the Governmental Unit or the State (including Commerce) to enforce their rights under this LBC. This waiver includes any objections the Owner may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.
16. Special Provisions and Conditions.
- (a). Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this LBC or the Project.
- (b). Compliance with Laws. The Owner shall at all times, and shall cause any Business at all times to, observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the LBC or the Project.
- (c). Non-Assignability. The Owner shall not assign or transfer any interest in the LBC without the prior written consent of the Governmental Unit and Commerce; provided however, that claims for money due to the Owner from the Governmental Unit under this LBC may be assigned to any commercial bank or other financial institution without such approval.
- (d). Personnel. The Owner represents that it and any Business have or will secure at their own expense all personnel required to monitor, carry out and perform the scope of services of this LBC and the Project. Such employees shall not be employees of the State (including, without limitation, the Rural Authority or Commerce) or the Governmental Unit. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

17. Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

If to the Governmental Unit:

Attn: _____

To the Owner:

Attn: _____

or addressed to such other address or to the attention of such other individual as either party above shall specify in a notice pursuant to this subsection.

18. Entire Agreement. This LBC supersedes all prior agreements between the Governmental Unit and the Owner with regard to the Loan and the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Parties.
19. Execution. This LBC may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same LBC which shall be sufficiently evidenced by one of such original counterparts.
20. Construction. This LBC shall be construed and governed by the laws of the State of North Carolina.
21. Severability. Each provision of this LBC is intended to be severable and, if any provision of this LBC is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this LBC, but this LBC shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

22. Force Majeure. If (a) during the Grant Term the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of this Agreement as and when this Agreement requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of this Agreement; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.

IN WITNESS WHEREOF, the parties hereto have executed this LBC as of the date first above written.

Governmental Unit Name: _____

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Owner Name: _____

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

The Department of Commerce strongly encourages, but does not require, the Governmental Unit secure the funds loaned to the property owner, Gildan Activewear, with a Deed of Trust on the property.

Please check the appropriate box below indicating the intention of the Governmental Unit:

- The Governmental Unit will secure the funds with a Deed of Trust listing the City of Eden as the beneficiary in the amount of \$500,000.00.

- The City of Eden ("Governmental Unit") has elected NOT to secure with a deed of trust on the subject property the \$500,000.00 in grant funds awarded by the North Carolina Department of Commerce ("Commerce") for a building reuse grant. Governmental Unit acknowledges and agrees that it is liable to the State for any grant funds that must be repaid under the Grant Agreement or Legally Binding Commitment, including (without limitation), any required repayments due to the property owner's failure to create and maintain jobs, which could include the full amount of the grant. Governmental Unit acknowledges that its liability to Commerce arises whether or not it is able to collect any repayment from the property owner under the Legally Binding Commitment, but still elects not to obtain a deed of trust on the subject property.

Please fill in the box below:

Governmental Unit Name:	<u>City of Eden</u>
By (Signature):	_____
Printed Name:	_____
Title:	_____
Date:	_____



Planning and Inspections Department

P. O. Box 70, 308 E Stadium Drive, Eden NC 27289-0070/Telephone 336-623-2110/Fax 336-623-4057

MEMO

TO: Honorable Mayor and City Council
THRU: Terry Shelton, Interim City Manager
FROM: Kelly K. Stultz, AICP, Director
SUBJECT: **Moratorium on Certain Land Uses**
DATE: January 10, 2020

An issue has arisen relating to our land use regulations regarding games of skill and game rooms. At this time, I am of the opinion that our regulations do not completely address these uses. At the Special Meeting of the City Council on January 9, 2020, you called for a public hearing on the declaration of a 60-day moratorium on any permits requested for games of skill or game rooms.

The Planning and Inspections Department requests that you adopt the attached Resolution establishing a 60-day moratorium on the above-referenced uses.

If you need any further information, please let me know.

**AN ORDINANCE ESTABLISHING A SIXTY DAY MORATORIUM ON
DEVELOPMENT APPROVALS FOR CERTAIN LAND USES**

WHEREAS, N.C.G.S. §160A-381(e) authorizes cities to adopt temporary moratoria on certain development approvals; and

WHEREAS, N.C.G.S. §160A-381(e) requires that before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing; and

WHEREAS, sufficient notice was published and a public hearing was held on January 21, 2020, wherein interested citizens were given the opportunity to discuss whether a 60 day moratorium would unreasonably interfere with projects or approvals that would disrupt or impede economic development or the generation of jobs during this brief period; and

WHEREAS, the City of Eden has no zoning ordinances of general application governing the proper and appropriate location and regulations for game rooms and games of skill; and

WHEREAS, almost all counties and most cities greater than 5,000 residents have ordinances of general application that establish zoning districts, setbacks, landscaping and general location requirements for game rooms and games of skill; and

WHEREAS, game rooms and establishments with games of skill have the potential for creating discomfort to the public at large and the State of North Carolina regulates the legality of some of these type uses; and

WHEREAS, the lack of zoning ordinances regulating the aforementioned land uses in the City of Eden does not afford the protection to the citizens and to the general public as do those of other nearby jurisdictions; and

WHEREAS, it is the intent of the City of Eden to adopt amendments to its zoning ordinance and to establish procedures expeditiously so as not to interfere with efforts to develop any of the above-listed uses; and

WHEREAS, the staff of the City of Eden has requested a temporary moratorium to permit it and the Planning Board to further research possible amendments to its zoning ordinance to provide for the more orderly development of regulations for the above listed uses; and

WHEREAS, after considering the comments made at the Public Hearing and reviewing all other options available to it, the City Council believes that there are no other

reasonable alternatives to achieving the goal of insuring that all development associated with the above listed uses is in compliance with the proposed new zoning ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Eden, State of North Carolina, that:

Section 1: Moratorium Established

A moratorium is immediately established on development approvals for game rooms and games of skill in the City of Eden and its extraterritorial jurisdiction, to continue in effect until 11:59 p.m. on March 17, 2020, unless earlier terminated or supplanted by another moratorium pursuant to N.C.G.S. §160A-381(e).

Section 2: Problems and Conditions Necessitating Moratorium

The above-listed land uses, if left unregulated, could cause certain nuisances to the general public and injury to adjoining and nearby properties. Such uses can create situations in which the quality of life and the safety of the citizens and property owners in the City of Eden Planning Jurisdiction can be impacted. In the 21st century, land use planning and zoning are the primary means by which local communities determine the proper locations for certain uses and the rules and standards under which they may be developed consistent with the rights of owners of adjoining and nearby properties.

It is also through zoning ordinances that municipalities require certain uses to receive a special or conditional use permit through which the developer can demonstrate that, under the conditions and location proposed, the use will not substantially injure the value of adjoining or nearby properties.

The location of such uses within close proximity to other uses such as schools, churches, parks, residentially zoned and used property and similar uses are only appropriate under certain conditions.

Section 3: Alternative Actions Considered and Why Inadequate

The City has considered rushing the completion of the zoning ordinance amendments but believes that this action may be more detrimental to the community as it may lead to unintended consequences and the adoption of development regulations that have not been carefully thought out and considered. Accordingly, the City determines that anything short of a moratorium is inadequate to protect the public and the City of Eden.

Section 4: Development Approvals Subject to Moratorium and How Moratorium Address Problems

This moratorium only applies to development approvals in any form, including, but not limited to, building permits, sedimentation and erosion control permits, zoning permits, land disturbance permits, and letters requested by interested parties for confirmation of

zoning status or confirmation of no zoning regulations, when such permits, approvals and requests relate to a project being developed for game rooms or games of skill in the City of Eden and its extraterritorial jurisdiction.

Section 5: Express Date for Termination of Moratorium and Reason for Moratorium Length

This temporary moratorium shall be effective and continue in full force until 11:59 p.m. on March 17, 2020. It is imposed to maintain the status quo while the City of Eden follows the procedures in N.C.G.S. §160A-381(a) and (e) for amending the City of Eden Zoning Ordinance.

Section 6: Schedule of Actions to be taken to Address Problems Leading to a Moratorium

The City will immediately consider and study the proper zoning districts, reasonable development standards, and the methods for permitting the above-listed land uses. The City will immediately consider any other actions necessary to protect the public from improper placement of the above-listed land uses.

Section 7: Effectiveness

This moratorium shall be effective upon adoption.

APPROVED AND ADOPTED this 21st day of January 2020.

CITY OF EDEN

BY: _____
Neville Hall, Mayor

ATTEST:

Deanna Hunt, City Clerk



Planning and Inspections Department

308 East Stadium Drive, Eden, North Carolina 27288 Phone: (336) 623-2110 Fax: (336) 623-4057

MEMO

To: Honorable Mayor and City Council
Thru: Terry Shelton, Interim City Manager
From: Debbie Galloway
Subject: **2020 Boards and Commissions Appointments**
Date: January 10, 2020

The following seats on the City Boards and Commissions are up for appointment or reappointment in 2020. When making appointments, please consider whether these persons have the time or the ability (for whatever reason) to attend regular meetings and participate in the activities of the board or commission.

If you have questions, please do not hesitate to call.

Ward 1 Councilman Moore – All appointments filled

Ward 2 Councilman Nooe

Vacant – Historic Preservation Commission (Jean Harrington resigned)
Michael Hutchinson – Community Appearance Commission - Resigned

Ward 3 Councilwoman Hampton – All appointments filled

Ward 4 Councilman Epps

Hope Gilley – Board of Adjustment term expired and resigned
Faye Shelton – Community Appearance Commission term expired

Ward 5 Councilman Carter

Amelia Dallas – Planning Board term expired

Ward 6 Councilman Hunnicutt

Mike Ayers – Tree Board term expired

Ward 7 Councilman Ellis

Frank Wyatt – Planning Board term expired
Tyra Hinton – Tree Board term expired

Mayor Hall – All appointments filled



Planning and Inspections Department

P. O. Box 70, 308 E Stadium Drive, Eden NC 27289-0070/Telephone 336-623-2110/Fax 336-623-4057

MEMO

TO: Honorable Mayor and City Council
THRU: Terry Shelton, Interim City Manager
FROM: Kelly K. Stultz, AICP, Director
SUBJECT: **216 The Boulevard**
DATE: January 13, 2020

At the October regular meeting of the Eden City Council, the Council made the decision to grant an extension to the property owner of 216 The Boulevard until the January 2020 regular meeting to come into compliance.

We have done a site visit today and are attaching pictures showing the circumstances over time from July of 2018 through today. I will notify Mr. Hall, the property owner, so that he can be prepared to make a presentation regarding the property at your January regular meeting.

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



7/30/2018





216 The Boulevard, 1940s



October 4, 2019



10/3/2019



1/13/2020





1/13/2020



1/13/2020



Planning and Inspections Department

P. O. Box 70, 308 E Stadium Drive, Eden NC 27289-0070/Telephone 336-623-2110/Fax 336-623-4057

MEMO

To: Honorable Mayor and City Council
Thru: Terry Shelton, Interim City Manager
From: Kelly K. Stultz, AICP, Director
Subject: **CDBG – Draper Community**
Date: January 10, 2020

The City of Eden has been awarded a Community Development Block Grant for a portion of the Draper community in the amount of \$750,000.00. These funds will be used to help low to moderate income property owners make their homes safer and more efficient as well as provide some sidewalks in the area.

Attached are the Funding Approval and Grant Agreement that must be executed and returned to the Rural Economic Development Division of the Department of Commerce before these funds will be released.

The Planning and Inspections Department recommends that the City Council authorize the Mayor to execute the documents.



Rural Economic Development Division
Community Development Block Grant Program
Funding Approval

1. Name and Address of Recipient

City of Eden
 308 East Stadium Drive
 Eden, North Carolina 27288

2. Grant Number and Funding Approval Date

Grant Number: 18-C-3071
 Date of Original Funding Approval: 12/20/19
 Date of Amended Funding Approval:

3. Approved Projects**Approved Amount**Project Number and Name

City of Eden Comm. Dev. Draper Neighborhood
 Revitalization Housing Project

\$750,000.00

Total Grant Award

\$750,000.00

4. Funding Approval Conditions

The following conditions must be removed in writing by the Rural Economic Development Division in order for all funds to be released for the approved project(s) listed in item (3), above:

A. Beneficiaries Selection Condition:

No funds may be obligated or expended in any project activity except the administration activity until the recipient has submitted the selected beneficiaries' names and addresses with documented income and need surveys.

B. Floodplain Condition:

No funds may be obligated or expended in any project activity except the administration activity until the recipient has submitted Floodplain information on official City of Eden letterhead signed by CEO or authorized designee.

C. Administration Contracts/Inter-local agreements Condition:

No funds may be obligated or expended in any project activity except the administration activity until the recipient has submitted either a copy of the contract awarded for administration of this grant or a statement signed by the CEO stating that the contract will be administered internally.

D. Environmental Condition:

No funds may be obligated or expended in any project activity except for the administration activity in the C-1 project until the recipient has complied with the Environmental Review Procedures for the N.C. CDBG Program and the CDBG regulations contained in 4 NCAC 19L.100.

E. Performance Based Contract Condition:

No funds may be obligated or expended in any project activity except for the administration activity until the recipient has returned to REDD one copy of the properly completed Performance Based Contract signed by the CEO.

F. Use of Experienced CDBG Administrator:

No funds may be obligated or expended for the administration activity until the recipient has submitted a statement signed by the CEO stating that they will be using an experienced CDBG administrator or local government staff. This person should be one who has actually administered more than one (1) CDBG project. Please note that if issues result from the CDBG administrator, the local government will be subject to 4 NCAC 19L.

G. Public Hearing

No funds may be obligated or expended in any project activity except the administration activity until the recipient has submitted evidence of the Public Hearing Notices/Publications and Affidavits for both the first and second public hearings.

5. Signature of Authorized Official

Name 
Assistant Secretary
Title

December 20, 2019
Date

6. Signature of Authorized Local Official

Name _____
Title _____

_____ Date



**North Carolina Department of Commerce
Rural Economic Development Division
Community Development Block Grant Program**

**Grant Agreement
Neighborhood Revitalization Program**

Upon execution of this grant agreement, the North Carolina Department of Commerce (DOC) agrees to provide to the **City of Eden** (the "Recipient" and collectively with DOC, the "Parties"), Community Development Block Grant (CDBG) assistance under Title I of the Housing and Community Development Act of 1974, (P.L. 93-383), as amended, authorized (and subject to Recipient's compliance with) the DOC funding approval, the North Carolina Community Development Block Grant administrative rules, other applicable laws, rules, regulations, and all other requirements of DOC now or hereafter in effect. The grant agreement is effective on the date the grant agreement and funding approval are signed by the Recipient. The grant agreement consists of the program guidelines and the approved application, including the certifications, maps, schedules and other submissions in the application, any subsequent amendments to this document or the approved application and funding approval and the following general terms and conditions:

1. **Definitions.** Except to the extent modified or supplemented by the agreement, any term defined in the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L, shall have the same meaning when used herein.
 - (a) Agreement means this grant agreement, as described above and any amendments or supplements thereto.
 - (b) Recipient means the **City of Eden**, the entity designated as a recipient for grant assistance in the grant agreement and funding approval.
 - (c) Certifications mean the certifications submitted with the grant application pursuant to the requirements of Paragraph (e) of Rule .0407 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L.
 - (d) "Assistance" or "Grant" means the grant funds provided under this Agreement from funds allocated to the State of North Carolina from the Federal Treasury through the CDBG and supporting laws, rules, requirements and regulations, in the amount of **\$750,000** except as modified.
 - (e) Program means the community development program, project, or other activities, including the administration thereof, for which assistance is being provided under this Agreement and which is described in the Recipient's approved application, as may be modified.

(f) The date for receiving the grant means the date of the REDD Director's signature on the Grant Agreement and Funding Approval.

2. Timely Execution. Due to the need to expedite the use and expenditure of CDBG funds, Recipient's failure to execute and return a copy of the Agreement within 60 days of the date of the Rural Economic Development Division (REDD) Director's signature on the Grant Agreement and Funding Approval may be deemed by DOC to determine the funds are available for reallocation to other subrecipients.
3. Obligations of the Recipient. The recipient shall perform the Program as specified in the application approved by DOC as may be amended with DOC approval. The Recipient hereby certifies that it will comply with all applicable federal and state laws, regulations, rules and Executive Orders, pursuant to Paragraph (e) of Rule .0407 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L. The Recipient shall also comply with all other lawful requirements of DOC, all applicable requirements of the General Statutes of the State of North Carolina specifically N. C. G. S. 87-1-87-15.9 and any other applicable laws, rules, regulations, requirements, and Executive Orders currently or hereafter in force. Recipient is prohibited from any fraud, waste and abuse of CDBG funds by any person or entity. The rules contained in 4 N.C.A.C. 19L (as well as applicable federal rules and regulations) are part of the Agreement, except where specifically modified by applicable law, rule, regulation, DOC, the CDBG HUD Program Requirements and any subsequent amendments, regulations or clarifications to any of the foregoing.

Additionally, Recipient agrees to ensure compliance with respect to the Program and the Grant (and any of its proceeds) with all applicable federal and state laws, rules, regulations and requirements, including but not limited to the following (as each may be modified or amended): (1) the CDBG HUD Program Requirements; (2) Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq*), (3) existing CDBG laws, rules, regulations and requirements, as may be amended, including those set forth in 24 C.F.R., Part 570; (4) North Carolina laws, rules, regulations and requirements; (5) DOC guidance and requirements regarding CDBG now or hereafter in effect, including but not limited to: DOC's CDBG Guidelines and Application Instructions, and DOC bulletins or other guidance documents; and (6) Recipient's own approved CDBG application to DOC, as may be amended with DOC approval.

4. Obligations of Recipient with Respect to Certain Third Party Relationships. Recipient is responsible to **DOC** for ensuring compliance with the provisions of this Agreement and all applicable laws, rules, regulations and requirements, even when the recipient designates a third party or parties to undertake all or any part of the Program. The Recipient shall comply with all lawful requirements of DOC necessary to ensure that the program is carried out in accordance with the Recipient's certifications including but not limited to the certification of assumption of environmental responsibilities under Rule .1004 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L. If the Recipient contracts with or designates a third party to undertake all or part of the Program, the Recipient's contract with the third party must require the third party to comply with this Agreement, all applicable laws, rules, regulations and requirements, including but not limited to the procurement standards set forth in 4 N.C. Administrative Code 19L .0908 as may be applicable.

Recipient shall likewise ensure that all subrecipient contracts regarding Grant funds or relating to the Program include all required contractual elements in order to be in compliance with all Federal, State and local laws, including but not limited to the provisions contained in 24 C.F.R. § 570.503, 24 C.F.R. § 85.37, and other provisions described throughout this Agreement, where applicable. In any event, the Recipient is liable to DOC and HUD for any improper expenditures, damage, loss or harm resulting from the failure of any person or entity to comply with any applicable law, rule, regulation or requirement regarding the Grant funds and/or the Program, including but not limited to an act or omission by a subrecipient or other third party. The Recipient agrees to periodically and rigorously monitor and audit its subrecipients and other third parties to ensure compliance with all applicable requirements.

Any subcontracts or subrecipient agreements entered into by the Recipient with Grant funds shall be subject to all terms and conditions of this Agreement. Payment of all subcontractors and subrecipients shall be the sole responsibility of the Recipient, and DOC shall not be obligated to pay for any work performed by any subcontractor or subrecipient. The Recipient shall be responsible for the performance of all subcontractors and subrecipients and shall not be relieved of any of the duties and responsibilities of this Agreement as a result of entering into subcontracts or subrecipient agreements.

5. Changes to Agreement. Recipient agrees that DOC may supplement or modify this Agreement as may be necessary to implement additional or modified Federal or State guidance regarding implementation of the CDBG program.

6. Conflict of Interest. Recipient agrees to comply with all applicable conflict of interest provisions, including but not limited to those found at 4 N.C.A.C. 19 L .0908 and .0914, N.C. Gen. Stat. § 14-234, 24 C.F.R. § 85.36, 24 C.F.R. § 570.489 (g) and (h), and 24 C.F.R. § 570.611, where applicable, copies of which may be obtained from DOC.

Except for eligible administrative or personnel costs, the general rule is that no persons described in the following sentence who exercise or have exercised any functions or responsibilities with respect to grant activities assisted under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a Grant-assisted activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

The conflict of interest summary in the sentence above generally applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or Recipient or applicable third parties which are receiving CDBG grant funds.

Recipient agrees to include these same prohibitions in all such contracts or subcontracts with any subrecipients or other third parties relating to the Program.

In any event, the Assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining DOC approval of the application for such assistance, or DOC approval of applications for additional assistance, or any other approval or concurrence of DOC required under this Agreement, or the North Carolina Community Development Block Grant Administrative Rules, with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not prohibited if otherwise eligible as program costs and allowed by applicable law.

Additionally, certain limited exceptions to the conflict of interest rules listed in 24 C.F.R. § 570.489 may be granted in writing by HUD and/or DOC upon written request and the provision of information specified in 24 C.F.R. § 570.489(h)(ii)(4).

7. Reimbursement to DOC for Improper Expenditures. The Recipient will reimburse DOC for any amount of Grant assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Additionally, a contract for administrative services shall include a clause holding the administrator organization responsible for reimbursement to the Recipient for any improperly expended grant funds that had to be returned to DOC.
8. Recordkeeping Requirements. Recipient will maintain any and all records and comply with all responsibilities as may be required under typical CDBG recordkeeping (for example, records and responsibilities set forth in 4 N.C.A.C. 19L.0911 (“Recordkeeping”), 24 C.F.R. 570.490 (“Recordkeeping Requirements”), 24 C.F.R. § 570.506 (“Records to be maintained”) and 24 C.F.R. § 85.42 (“Retention and Access Requirements for Records”) as each may be modified by HUD or DOC) as well as records and responsibilities related to CDBG or specifically to CDBG funds. Recipient agrees to comply with any additional record-keeping requirements now or hereinafter set forth by DOC, HUD or any other federal or state entity.
9. Access to Records. The Recipient shall provide any duly authorized representative of DOC, the State of North Carolina, the federal Department of Housing and Urban Development (HUD), and the Comptroller General, the Inspector General and other authorized parties at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant for a period of five years following the completion of all close-out procedures. All original files shall be maintained at the Local Government offices for access purposes.
10. Release of Personal, Financial and Identifying Information. To ensure and document compliance with CDBG income requirements as well as other matters, Recipient shall obtain and retain personal, income-related, financial, tax and/or related information from individuals and families that are benefitting from Grant or Program funds. Additionally, Recipient is obligated to provide access to any and all information relating to the Program to DOC, HUD or some other appropriate federal or state monitoring entity, upon DOC’s request. This obligation includes, but is not limited to, the personal, financial and identifying information of individuals assisted by the Program. As such, Recipient shall obtain any releases or waivers from all individuals or entities necessary to ensure that this information

can be properly and legally provided to appropriate federal and state entities, including DOC and HUD, without issue or objection by the individual or entity.

11. Project Savings. The Recipient is obligated to contribute 100 percent of its pledged **cash** contribution to the CDBG project even if the project experiences a savings after authorized activities are completed. Any project savings accrue to the CDBG program. **Substitution of in-kind contributions for cash is not allowed.**
12. Expenditure of Non-CDBG Funds. The recipient must ensure that non-CDBG funds are expended along with CDBG funds, following the implementation schedule described in the approved application and modified by the Performance Contract (or otherwise with DOC approval), and shall report on non-CDBG expenditures with each Annual Performance Report, consistent with Section .1100 PERFORMANCE of the program regulations (4NCAC 19L) as well as any other applicable reporting requirements.
13. Method of Payment. The Department of Commerce uses the Office of State Controller (OSC) to make CDBG payments to units of local government. The Electronic Payment Form from OSC must be completed for funds to be electronically transferred.
14. Fair Housing. Recipients of CDBG funds are required to comply with fair housing and non-discrimination laws and regulations. Recipients should consult Section .1001 of the CDBG administrative rules for further information on equal opportunity requirements. Recipients are required to submit a fair housing plan for its jurisdiction. Recipients with 10,000 persons or more will be required to complete an Analysis to Impediments to Fair Housing Choice Study. For each grant year that a CDBG project is active, a Recipient must describe the actions it will take in the areas of enforcement, education and removal of barriers and impediments to affirmatively further fair housing. Guidance for developing a Fair Housing Plan can be found in REDD Bulletin 93-4 and the CDBG Implementation Notebook.
15. Equal Employment and Procurement Opportunity. A Recipient must describe the actions it will take annually while the grant is open in the areas of enforcement, education and removal of barriers and impediments that affirmatively further equal access in employment and procurement. This includes a description of steps to be taken in the areas of advertisement, compliance and complaint tracking.
16. Local Economic Benefit (Section 3 Regulation). For each year that a CDBG is active, the Recipient must describe a strategy whereby opportunities in employment and procurement arising out of a CDBG assisted project are identified and made available to low-income residents within the CDBG assisted area to the greatest extent feasible. This strategy must include (1) identification of training and technical assistance resources to prepare low-income residents for employment and procurement opportunities, (2) attempts to reach the numerical targets for new hires set forth in the Section 3 regulation, which applies to Recipients receiving \$200,000 or more in non-administrative line items expended for construction contracts and (3) education of low-income residents within the CDBG assisted area about the components and opportunities of the program.

In addition, Recipients will be required to coordinate additional activities as it relates to Section 3 with the DOC CDBG Compliance Office.

17. Section 504 and ADA. Recipients must complete the Section 504 Survey and

Transition Plan. This plan will not satisfy all the requirements of the Americans with Disabilities Act, but it will meet the minimum requirements for a CDBG assisted project.

18. Environmental Review. Recipients of CDBG funds are required to complete the document entitled "Environmental Review Procedures for the CDBG Program." Once the Environmental Review Record (ERR) is received, REDD will review for completeness and submit selected CDBG ERRs if required to the State Clearinghouse for other State agencies to review and comment. Recipients cannot conduct any program activities until REDD issues an environmental clearance.
19. Language Access Plan (LAP). Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by Limited English Proficient (LEP) persons to important government programs, services, and activities. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and its implementing regulations require that Recipients take responsible steps to ensure meaningful access by LEP persons. Recipients will be required to submit a language access plan using the approved template from REDD. The plan will address the LAP policy, translation of required vital documents, and requirements for citizen participation.
20. Procurement Standards. Where applicable, Recipient shall follow the procurement standards established in the "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" (24 C.F.R., Part 85) and HUD implementing regulations contained in 24 C.F.R. § 570.489(g), which explicitly prohibit cost plus a percentage of cost and percentage of construction cost methods of contracting. 4 N.C.A.C. 19L.0908.
21.
 - a. Any Recipient or Subrecipient shall follow other applicable procurement standards set forth in 4 N.C.A.C. 19L.0908, and the relevant laws cited therein, including but not limited to, laws related to conflicts of interest (N.C.G.S. §14-234), public building contracts (N.C.G.S. § 148-128 to 135), and payment and performance bonds (N.C.G.S. § 44A-25 through 35); acquisition and relocation (4 N.C.A.C. 19L.1003); property management standards (4 N.C.A.C. 19L.0909); equal opportunity (4 N.C.A.C. 19L.1001); and labor standards (4 N.C.A.C. 19L.1006).
 - b. Recipient shall likewise follow all other applicable federal and state procurement rules, guidelines and procedures, including those set forth in Office of Management and 2 C.F.R. Part 225 ("Cost Principles for State and Local Governments").

In any event, per 24 C.F.R. 570.489(g), all purchase orders and contracts shall include any clauses required by Federal statutes, executive orders and implementing regulations.

Additionally, Recipient acknowledges and agrees that, in its conduct under this Agreement and in connection with any and all expenditures of Grant funds made by it, Recipient, its officers, agents and employees shall be and are subject to the provisions of the North Carolina General Statutes and the North Carolina Administrative Code relating to and governing procurement, public contracts, suspension and debarment. Recipient further acknowledges and agrees that, in the event that it grants any of the Grant funds awarded hereunder to one or more subrecipients or other applicable entities, Recipient shall, by contract, ensure that the provisions of all applicable laws relating to and governing

procurement, public contracts, suspension and debarment are made applicable to and binding upon any and all subrecipients and/or other applicable entities.

22. Labor Standards. Recipient shall follow all applicable laws, rules and regulations concerning the payment of wages, contract work hours, safety, health standards, and equal opportunity for CDBG-R programs, including but not limited to the rules set forth in 4 N.C.A.C. 19L.1006, 24 C.F.R. § 570.603 and the following (as may be applicable to CDBG-projects):
- a. Davis-Bacon Act (40 U.S.C.A. 276a). Among other provisions, this act requires that prevailing local wage levels be paid to laborers and mechanics employed on certain construction work assisted with CDBG funds.
 - b. Contract Work Hours and Safety Standards Act (40 U.S.C.A. 327 through 333). Under this act, among other provisions, laborers and mechanics employed by contractors and subcontractors on construction work assisted with CDBG funds must receive overtime compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty hours in any workweek. Violators shall be liable for the unpaid wages and in addition for liquidated damages computed in respect to each laborer or mechanic employed in violation of the act.
 - c. Fair Labor Standards Act (29 U.S.C. 201 et seq.), requiring among other things that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week.
 - d. Federal anti-kickback laws (18 U.S.C. 874 and 40 U.S.C. 276), which, among other things, outlaws and prescribes criminal penalties for "kickbacks" of wages in federally financed or assisted construction activities. Weekly statements of compliance and weekly payrolls must be provided by all contractors and subcontractors.

Recipient agrees to maintain records regarding compliance with the laws and regulations cited in 4 N.C.A.C. 19L.1006 (including the citations listed above) in accordance with 4 N.C.A.C. 19L.0911.

All contracts between Recipient and third parties shall contain labor standards provisions as required in 4 N.C.A.C. 19L.1006.

23. Architectural Barriers. Per 4 N.C.A.C.19L.1007, 24 C.F.R. §§ 570.487 and 570.614 and other applicable law, all applicable buildings or facilities designed, constructed or altered with CDBG Grant funds shall be made accessible and useable to the physically handicapped as may be required by applicable laws, rules, regulations or requirements. Additionally, Recipient must comply with the following (as may be applicable to CDBG projects):
- a. Architectural Barriers Act of 1968 (P.L. 90-480). This act requires Recipient to ensure that certain buildings constructed or altered with CDBG funds are readily accessible to the physically handicapped.
 - b. Minimum Guidelines and Requirements for Accessible Design 36 C.F.R. Part 1190. These regulations establish guidelines for implementing the federal acts described in 4 N.C.A.C.19L.1007(1)(a). The regulations provide technical standards which must be met by Recipient.
 - c. Americans with Disabilities Act ["ADA"] and the ADA Accessibility Guidelines for Buildings and Facilities or the Uniform Federal Accessibility Standards.

- d. North Carolina Building Code, Volume I, Chapter 11-X. These provisions describe minimum standards Recipient must meet in constructing or altering building and facilities, to make them accessible to and useable by the physically handicapped.
24. Change of Use of Real Property. Recipient agrees not to change the use or planned use of any property acquired with CDBG funds from that for which the acquisition or improvement was made, in accordance with this Agreement and applicable law, rule, regulation or requirement, unless (i) the DOC grants explicit written approval and (ii) the requirements of 24 C.F.R. § 570.489(j), 24 C.F.R. § 570.505 and other applicable requirements are followed, as modified (or as may be modified) by HUD or DOC.
24. Obligation of Recipient With Regard to Vacant Units. The recipient shall ensure that all vacant units being rehabilitated will be occupied by a low or moderate income person by the time close-out occurs.
25. Utility Assessments or Fees: Assessments or fees to recover the CDBG funded portion of a utility project may be charged to properties not owned and occupied by low and moderate income persons. Such assessments are program income and, as such, must be used for eligible CDBG activities that meet a CDBG national objective.
26. False or Misleading Information. Recipient is advised that providing false, fictitious or misleading information with respect to CDBG funds may result in criminal, civil, or administrative prosecution under 18 U.S.C. § 1001, 18 U.S.C. § 1343, 31 U.S.C. § 3729, 31 U.S.C. § 3801, or another applicable statute. Recipient shall promptly refer to DOC and HUD's Office of the Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving CDBG funds.
27. Disputes with DOC. If Recipient has any disagreement or dispute with any action or inaction by DOC, Recipient shall inform DOC by letter addressed to Iris Payne, Director, Department of Commerce – Rural Economic Development Division, 4346 Mail Service Center, Raleigh, NC 27699-4346. The Rural Economic Development Division ["REDD"] will endeavor to respond in writing to said letter within 30 days from receipt. Recipient shall not be entitled to a hearing under Chapter 150B for matters described in N.C. Gen. Stat. § 150B(c)(8), added by N.C. Senate Bill 960, including matters related to "contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the [CDBG]." This includes actions arising out of or related to this Agreement or the Program.
28. Disputes or Complaints by Subrecipients or Other Entities. Recipient is responsible for developing, implementing and utilizing its own dispute resolution procedures with respect to disputes and/or complaints between and among Recipient, a Subrecipient, a contractor and/or any other person or entity (other than DOC). This includes (but is not limited to) procedures relating to procurement disputes or protests discussed in 24 C.F.R. 85.36. In the event of a dispute between and among Recipient, any Subrecipient, contractor and/or any other persons or entities (not including DOC), Recipient shall make every effort to resolve the dispute pursuant to its own dispute resolution procedures and shall issue a final decision on the matter as soon as is reasonably practicable. Recipient's dispute resolution procedure shall provide that, in the event that any party to such a dispute or complaint is dissatisfied with the final decision or other resolution provided by Recipient, the dissatisfied party shall appeal to

the North Carolina Superior Court in an appropriate County for a trial de novo, to the extent that jurisdiction is proper pursuant to N.C. Gen. Stat. § 7A-240 and other applicable law.

29. Schedules

- (a) Schedule for Release of Conditions and Completion Activities. **The Recipient must satisfy all Funding Approval Conditions to release CDBG funds within 3 months (3/20/20 from the date the Grant Agreement and Funding Approval were signed by the REDD Director.** The recipient must draw down all CDBG funds, expend all local non-CDBG funds and complete all project activities in conformance with the activities implementation schedule in the application as modified by the Performance Based Contract.
- (b) **The Recipient must obligate all funds within 27 months (3/20/2022 from the date the Grant Agreement and Funding Approval are signed by REDD Director.**
- (c) **All funds are to be expended within 30 months (6/20/2022) from the date the Grant Agreement and Funding Approval are signed by REDD Director. Any remaining funds will be de-obligated.**
- (d) **All closeout documents must be returned to REDD by (9/20/2022)**
- (e) Schedule for Submission of Compliance Documents. The Recipient must submit the following compliance documents within the specified number of months from the date the Grant Agreement and the Funding Approval were signed by the REDD Director:
- **Environmental – 4 months (4/20/20)**
 - **Equal Employment and Procurement Plan – 4 months (4/20/20)**
 - **Fair Housing Plan – 4 months (4/20/20)**
 - **Section 3 Plan – 4 months (4/20/20)**
 - **Section 504 Plan – 4 months (4/20/20)**
 - **Language Access Plan – 4 months (4/20/20)**
 - **Analysis of Impediments- 4 months (4/20/20)**
 - **Request for Release of Funds – 5 months (5/20/20)**
- (f) Timely Draw down of Funds. Recipient is expected make timely drawdowns so that funds are expended in a timely manner.

30. Quarterly Progress Report. Per Bulletin 09-1, Recipient shall ensure that a quarterly progress report that reflects approved CDBG program activity progress and CDBG financial status is presented to Recipient's elected board and a copy of that report, endorsed by the Chief Elected Official or the county/city/town manager will be provided to DOC not later than the tenth (10th) day of the month following the ending month of the reporting period.

31. Performance Measures

The CPD Performance Measurement System is HUD's response to the standards set by the Government Performance and Results Act (GPRA) of 1993. This act holds all Federal agencies accountable for establishing goals and objectives and measuring achievements.

- (a) The recipient must ensure that all activities in the funded project(s) meet the appropriate objectives, outcomes, and indicators established by HUD and selected by

DOC. CDBG funds cannot be used to pay for any activity that does not meet the above requirement.

- (b) The recipient must also assist DOC, when requested, in collecting indicators and any other data necessary to fulfill the requirements of the CPD Performance Measures System, which includes data for the Integrated Disbursement and Information System (IDIS).

Upon execution of this agreement by DOC and the Recipient, the Recipient hereby accepts the assistance on the terms of this grant agreement effective on the date indicated below, and further certifies that the official signing this document has been duly authorized by the recipient's governing body to execute this Grant Agreement.

Secretary of the Department of Commerce

Date: 12/20/2019

By: Kenny Flowers
Kenny Flowers
Assistant Secretary
Rural Economic Development Division

Date: _____

City of Eden
Name of Recipient

By: _____
Signature of Authorized Official

Mayor
(Title)



Planning and Inspections Department

P. O. Box 70, 308 E Stadium Drive, Eden NC 27289-0070/Telephone 336-623-2110/Fax 336-623-4057

MEMO

To: Honorable Mayor and City Council
Thru: Terry Shelton, Interim City Manager
From: Kelly K. Stultz, AICP, Director
Subject: **Stadium Drive Sidewalk Project**
Date: January 10, 2020

It has been a goal of the City Council to improve the walkability of our City. As a part of that we have asked NCDOT to consider a sidewalk project along the north side of East Stadium Drive from North Pierce Street to North Edgewood Drive. This sidewalk would connect Morehead High School, Holmes Middle School and Central Elementary to Freedom Park.

At the regular meeting of the Eden City Council on August 19, 2014, the Council authorized the Planning and Inspections Department to proceed and agreed to commit \$60,000 to the project. On April 2, 2019, the Department of Transportation notified the City that they had received Federal authorization for PE Funding on the project in the amount of \$123,500 (\$98,800 federal, \$24,700 local match). City staff proceeded with the Request for Letters of Interest for professional consulting services following the requirements of the NCDOT. Five bids were received and reviewed by the selection committee which consisted of Terry Shelton, Paul Dishmon, Bev O'Dell and Kelly K. Stultz. Wetherill Engineering, Inc. was selected by the Selection Committee and approved by the NCDOT on October 30, 2019.

Attached you will find a copy of the proposed Agreement between the City of Eden and Wetherill Engineering, Inc.

The Planning and Inspections Department requests that you authorize the execution of this agreement.

If you need further information, please let me know.

**NORTH CAROLINA
ROCKINGHAM COUNTY**

**AGREEMENT
BETWEEN
CITY OF EDEN, NC
AND
WETHERILL ENGINEERING, INC.
FOR
PROFESSIONAL ENGINEERING SERVICES
FOR
SIDEWALK PROJECT ON EAST STADIUM DRIVE (TIP # EB-5888)**

THIS AGREEMENT is made this ____ day of _____, 2020, by and between the **CITY OF EDEN**, a North Carolina municipal corporation, with its principal office at 308 East Stadium Drive, Eden, North Carolina 27288 (hereinafter "OWNER") and **WETHERILL ENGINEERING, INC.**, a North Carolina Corporation, located at 1223 Jones Franklin Road, Raleigh, NC 27606, (hereinafter "ENGINEER");

WHEREAS, OWNER intends to install sidewalk along East Stadium Drive in Eden (identified as North Carolina Department of Transportation Project TIP #EB-5888)(hereinafter "Project").

WHEREAS, ENGINEER is in the business of providing services as described herein for the design of said Project and possesses the expertise and facilities necessary to comply with the terms of this Agreement.

NOW THEREFORE, OWNER and ENGINEER in consideration of their mutual covenants herein agree with respect to the performance or furnishing of professional engineering services by ENGINEER for the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Basic Services described in Section 2 below and as further set forth in Attachment A, entitled "Scope of Services." This Agreement will become effective on the date first above written.

SECTION 1 - GENERAL

1.1. Standard of Care

ENGINEER shall perform for or furnish to OWNER, professional engineering and related services in all phases of the Project to which this Agreement applies as hereinafter provided. ENGINEER may employ such ENGINEER's subcontractors as ENGINEER deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. ENGINEER shall not be required to employ any OWNER's subconsultants unacceptable to ENGINEER and ENGINEER shall not employ any subconsultant unacceptable to OWNER.

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality.

The ENGINEER shall be solely responsible for all engineering design services and for the completeness and accuracy of all documents and supporting data prepared by the ENGINEER, its agents, employees and subconsultants in connection with the design phase of the Project. Approval by the OWNER of any documents, supporting data or construction shall not constitute or be deemed a release of the responsibility and liability of ENGINEER, its employees, associates, agents and subconsultants for the accuracy and competency of their design, working drawings and reports; nor shall such approval be deemed to be an assumption of such a responsibility by the OWNER for any defect in the designs, working drawings or other documents prepared by ENGINEER, its employees, agents, and subconsultants. Owner shall not be liable or responsible for any defect in the design, working drawings or other documents. After acceptance of the final documents by the OWNER, ENGINEER agrees, prior to and during construction of this Project, to perform such engineering services as may be required by the OWNER to correct errors or omissions on the original documents prepared by ENGINEER at no cost to the OWNER.

1.2. Definitions

Wherever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

1.2.1. Additional Services.

Additional Services means the services to be performed for or furnished to OWNER by ENGINEER described in Section 3 of this Agreement.

1.2.2. Agreement.

Agreement means this Standard Form of Agreement between OWNER and ENGINEER for Professional Services including those Attachments listed in Section 9 of this Agreement.

1.2.3. Basic Services.

Basic Services means the services to be performed for or furnished to OWNER by ENGINEER described in Section 2 of this Agreement.

1.2.4. Construction Cost.

Construction Cost means the total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Section 4 of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

1.2.5. Engineer's Subconsultant.

ENGINEER's Subconsultant means a person or entity having a contract with ENGINEER to perform or furnish Basic or Additional Services as ENGINEER's independent professional subconsultant engaged directly on the Project.

The ENGINEER shall only utilize subconsultants and/or subfirms that are prequalified by the North Carolina Department of Transportation to perform the specified professional or specialized services needed.

The ENGINEER shall utilize the subconsultant(s) and/or subfirm(s) as proposed in the ENGINEER'S Letter of Interest (LOI) or project proposal to the OWNER regarding the requested services. The ENGINEER shall indicate the proposed utilization (firm name and percentage) for both the Prime Consultant and any/all subconsultant(s) firms in the LOI on the appropriate FORM RS-2(s).

The ENGINEER shall insure that any/all subconsultant(s) or subfirms(s) shall comply with the terms and conditions set forth in this Agreement.

The ENGINEER and/or subconsultant will not sublet any portion of the work covered by this Agreement without prior written approval by the OWNER.

The ENGINEER will be responsible for the schedule of any work sublet to others so as to assure the overall schedule of the project is maintained

The ENGINEER will be responsible for the completeness, accuracy and presentation of all data, and for the review of any work sublet to others.

1.2.6. Reimbursable Expenses.

Reimbursable Expenses means the expenses incurred directly in connection with the performance or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Attachment B, Basis Of Compensation.

1.2.7. Total Project Costs.

Total Project Costs means the sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Section 4.

SECTION 2 - BASIC SERVICES OF ENGINEER

2.1. General

Upon this Agreement becoming effective, ENGINEER shall provide professional services to OWNER as hereinafter provided. These services will include professional engineering consultation and advice, and furnishing (civil, structural, surveying, SUE, planning, signals, geotechnical and utility coordination) engineering services incidental thereto. These services will include the following:

2.1.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

2.1.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others, data or services which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.

2.1.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.

2.1.4. Provide written monthly progress report containing description of work accomplished, description of any problems encountered, and corresponding remediation of said problems and update on status of meeting implementation schedule (Attachment C), and a statement of percentage of Project completed.

2.1.5. Provide those services as more fully described in Attachment A, "Scope of Services," attached hereto.

SECTION 3 - ADDITIONAL SERVICES OF ENGINEER

3.1. Additional Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others, Additional Services of the types listed in paragraphs 3.1.1 through 3.1.3, inclusive, as may be amended and supplemented as indicated in Attachment A. These services are not included as part of Basic Services except to the extent otherwise provided in Attachment A. These services will be paid for by OWNER as indicated in Section 6.

3.1.1. Preparation of applications and supporting documents (other than and in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; and preparation or review of environmental assessments and impact statements.

3.1.2. Furnishing services of independent professional associates and consultants.

3.1.3. Performing other Additional Services in connection with the Project including services which are to be furnished by OWNER in accordance with Section 4, and services not otherwise provided for in this Agreement.

SECTION 4 - OWNER'S RESPONSIBILITIES

Except as otherwise provided in Attachment A, OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

4.1. Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have

complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

4.2. Assist ENGINEER by placing at ENGINEER's disposal all available information in the OWNER's possession and which OWNER deems pertinent to the Project including previous reports and any other data relative to design of the Project. Except for obvious or glaring defects or omissions, the ENGINEER may rely on all information provided by the OWNER without independent investigation or verification by the ENGINEER unless otherwise indicated by the OWNER.

4.3. Examine all studies, reports, sketches, proposals and other documents presented by ENGINEER, obtain advice of an attorney for services not included in the Basic Services, insurance counselor and other consultants as OWNER deems appropriate for such examination and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

4.4. At no cost to ENGINEER, provide the above data and services and shall render approvals and decisions as is necessary for the orderly process of ENGINEER's services.

4.5. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

4.6. Provide accounting, independent cost estimating and insurance counseling services as may be required for the Project, legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project.

4.7. Advertise for proposals from bidders, open the proposals at an appointed time and place, and pay for all costs incidental thereto.

4.8. Give prompt written notice to ENGINEER whenever OWNER observes any condition that affects the scope or timing of ENGINEER's services, or any defect or nonconformance in ENGINEER's services. Failure of OWNER to give said notice to ENGINEER shall not affect the duties and responsibilities of the ENGINEER, nor shall it result in a waiver of any of OWNERS rights under this Agreement.

4.9. All geotechnical exploratory work, such as soil borings, penetration tests, soundings, subsurface explorations, laboratory tests of soils, rock formation, and other geophysical phenomena which are required to provide information for design and all other field and laboratory tests and analyses which are required to provide design information unless otherwise addressed in Attachment A, "Scope of Services."

4.10. A geotechnical report by a qualified geologist or geotechnical firm interpreting the data on the exploratory work and testing and setting out the site conditions that can be anticipated from this initial exploratory work unless otherwise addressed in Attachment A, "Scope of Services."

4.11. Releases to the news media concerning public hearings, pre-bid conferences, anticipated street closings or partial closings, or other project related information.

4.12. Hall or auditorium space for pre-bid conferences and the audio equipment and Projection equipment required for such hearings and/or conferences.

4.13. Prior to beginning field survey activities, OWNER will locate and identify all existing water and wastewater mains and service connections to the extent possible, along the route of the proposed Project. Identification will include painting locations of mains and services in paved areas and flagging or painting in wooded areas.

4.14. Owner will, to the extent possible, contact and coordinate with other utilities, such as gas, telephone, cable TV, power, etc., the location and identification of their respective installations along the route of the proposed Project.

SECTION 5 - TIMES FOR RENDERING SERVICES

5.1. If, in this Agreement, specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation and times within which to render services provided for herein may be subject to equitable adjustment by the OWNER. If OWNER has requested changes in the scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably by the OWNER.

The anticipated period of service for each phase of the Project is outlined in the schedule attached hereto as Attachment C.

SECTION 6 - PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES.

6.1. Payment Terms Defined

6.1.1. Direct Labor Cost

Direct Labor Cost shall mean the raw salary costs at the time services are performed of all personnel engaged directly on the Project, including, but not limited to, engineers, architects, scientists, surveyors, designers, draftsmen, specification writers, estimators, steno, clerical, accounting, and other technical and business personnel but does not include indirect payroll-related costs or fringe benefits.

6.1.2. Billing Rate

Billing Rate shall mean an hourly rate, equal to Direct Labor Cost, times an Overhead Multiplier of to be paid to ENGINEER as total compensation for each hour an employee of ENGINEER works on the Project.

6.1.3. Overhead Multiplier

Overhead Multiplier shall mean a factor by which the Direct Labor Cost is multiplied to compensate for general and administrative overhead. The Overhead Multiplier includes profit.

6.1.4. Reimbursable Expenses

Reimbursable Expenses shall mean the actual cost incurred directly or indirectly in connection with the Project, including, but not limited to providing and maintaining field office facilities, including furnishings and utilities, subsistence and transportation of Resident Project Representatives and their assistants, toll telephone calls, express mail and telegrams, reproduction or reports, drawings, specifications, bidding documents, and similar Project-related items in addition to those required under Section 1. Any reimbursable expenses not included in the fee estimate (Attachment B) shall be approved by the OWNER before they are incurred by the ENGINEER. Furthermore, OWNER reserves the right to approve any and all reimbursable expenses before payment thereof.

6.1.5. Lump Sum

Lump Sum shall mean the total cost by ENGINEER to complete the full terms of this Agreement as described in Attachment A, "Scope of Services." This cost shall include labor, benefits, taxes, and all other Reimbursable Expenses.

6.2. Basis and Amount of Compensation for Basic Services

6.2.1. The LUMP SUM compensation for Basic Services shall be on the basis of billing rate as defined in 6.1.2. The total estimated cost including Reimbursable Expenses is **\$97,193.16** and shall not exceed this amount unless authorized in writing by the OWNER. A breakdown of the LUMP SUM compensation is detailed in Attachment B, "Basis of Compensation."

6.2.2. Payment

Payment (partial payment for lump sum task orders; payment of actual costs incurred for cost-plus task orders) will be made to the ENGINEER on a monthly basis upon submission of a Progress Report/Project Schedule, an invoice stating the percent of completion of each task (for lump sum task orders) or a listing of actual costs incurred (for cost-plus task orders), and appropriate supporting documentation; Invoices shall be in the OWNER's format. The OWNER may withhold retainage on this contract if deemed necessary by the Contract Administrator assigned by the OWNER to this AGREEMENT.

The ENGINEER shall pay subconsultants for work performed within seven (7) days after ENGINEER receives payment from the OWNER for work performed by the subconsultant. This requirement must be incorporated into all subconsultant agreements. Failure to comply with the seven (7) day requirement may cause the OWNER to withhold payments to the ENGINEER and the OWNER may suspend work until the subconsultant is paid.

It shall be the responsibility of the ENGINEER and all subconsultants to keep records of all payments requested and the dates received. The OWNER may request copies of this information in the form of a report.

6.2.3. ENGINEER shall notify OWNER at the time it has reached approximately 25%, 50%, 75% and 90% of the total not-to-exceed estimated cost set out in 6.2.1 above and state

approximately what percent of the Basic Services of the design phase of the Project has been completed at that time.

6.3. Additional Services

The amount of compensation for Additional Services shall be on the basis of the billing rate as defined in 6.1.2 or Lump Sum to be agreed upon at time of request for Additional Services. The estimated amount of Additional Services will be determined at the time the Additional Services are requested. Additional services will be provided only upon prior written approval of OWNER and amendment of the Agreement.

6.3.1. Preparation of Invoices

Invoices for Basic and Additional Services and Reimbursable Expenses will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by

ENGINEER monthly. Invoices are due and payable on receipt. Invoices will be based upon total services completed at the time of billing and shall show a detailed breakdown of how services and reimbursable expenses accrued, in form and level of detail satisfactory to OWNER. Each invoice shall contain a statement of the percentage of the design phase of the Project completed and percent of the not to exceed total cost set out in 6.2.1 above spent to date.

6.3.2. Unpaid Invoices

If OWNER fails to make the payment due ENGINEER for services and expenses within thirty (30) days after receipt of ENGINEER's invoice therefore, the amounts properly due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving thirty (30) days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full, all amounts properly due for services, expenses and charges. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

6.3.3. The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the ENGINEER's compensation as reimbursable expenses.

6.3.4. Records of ENGINEER's Direct Labor Costs and Reimbursable Expenses pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Upon request, copies of the above documents will be made available to OWNER, at no cost to OWNER, within a reasonable period of time.

SECTION 7 - OPINIONS OF COST

7.1. Opinions of Probable Construction Cost

ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids or actual Construction Cost will not vary from opinions of

probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in paragraph 4.6.

SECTION 8 - GENERAL CONSIDERATIONS

8.1. Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms thereof through no fault of the terminating party. The nonperforming party shall be given a ten (10) calendar day cure period to show progress (satisfactory to the terminating party) after the written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of any termination, ENGINEER will be paid for all services properly rendered and reimbursable expenses properly incurred to the date of termination. The OWNER reserves the right to terminate the Agreement for reasons of convenience or if the Project is no longer needed with the same termination conditions previously stated except the ten (10) day cure period. In the event of any termination, Section 8.2 applies to any and all documentation, drawings, reports, calculations, and etc. produced by the ENGINEER up to the date of termination.

8.2. Upon any termination, ENGINEER shall (1) promptly discontinue all Services affected (unless a termination notice from OWNER directs otherwise); and (2) deliver or otherwise make available to OWNER all documents, data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by ENGINEER in performing this Agreement, whether completed or in process.

8.3. Reuse of Documents

All documents, including drawings, specifications, supporting calculations, computer software, etc., prepared by ENGINEER pursuant to this Agreement are instruments of service with respect to this Project and are the property of the OWNER whether the Project for which they are made is executed or not.

The reuse of these documents by others authorized by the OWNER entitles the ENGINEER to no additional compensation as the documents are the property of the OWNER. The OWNER understands that any reuse of the documents on other Projects is at the OWNER's sole risk and without liability or legal exposure to the ENGINEER; and ENGINEER shall be relieved of and OWNER shall to the extent permitted by law, defend, indemnify and hold harmless ENGINEER from any liability whatsoever, including claims for personal injury, property damage or death arising out of or resulting from reuse on other projects.

The OWNER reserves the right to require ENGINEER to submit copies to the OWNER of any Project file information and documentation during and after the completion of the Project with ENGINEER's compensation being only the direct printing and copying expense and/or direct expenses to copy and supply computer information on a diskette.

The ENGINEER shall retain its rights in its standard drawing details, designs, specifications, data bases, computer software, and any other proprietary property. Rights to intellectual property developed, utilized or modified in the performance of services shall remain property of the ENGINEER.

8.4 General Compliance with Laws

The ENGINEER will comply with all laws, ordinances, and regulations, Federal, State, and local, applicable to the work. Specific attention is directed to North Carolina General Statutes 14-100 (Obtaining Property by False Pretenses) and 136-13.2 (Falsifying Highway Inspection Reports).

8.4.1 Selection of Labor

During the performance of this Agreement, the ENGINEER will not discriminate against labor from any other state, possession or territory of the United States.

8.4.2 Employment Practices

During the performance of this Agreement, the ENGINEER agrees to comply with all applicable provisions of 49 CFR Part 21, 23 CFR Part 200 and Part 230 and the Civil Rights Act of 1964 as amended, and agree as follows:

- a. The ENGINEER will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex, age, handicap and/or disability. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex, age, handicap or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the OWNER setting forth the provisions of this nondiscrimination clause.
- b. The ENGINEER will, in all solicitations or advertisements for employees placed by or on behalf of the ENGINEER, state that all qualified applicants will receive consideration for employment without regard to race, religion, creed, color, national origin, sex, age, handicap and/or disability.
- c. The ENGINEER will comply with all provisions of U.S. Presidential Executive Order No. 11246 as amended by Executive Order 11375, and other Orders and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60).
- d. The ENGINEER will furnish all information and reports required by Executive Order No. 11246 as amended by Executive Order 11375, and other Orders, and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60), and will permit access to his books, records, and accounts by the U.S. Secretary of Labor or Labor Officials for purposes of investigations to ascertain compliance with such rules, regulations and orders.
- e. In the event of the ENGINEER'S noncompliance with the nondiscrimination clauses of this Agreement or with any of rules, regulations, or orders referenced hereinabove this Agreement may be canceled, terminated, or suspended in whole or in part, and the ENGINEER may be declared ineligible for further Government contracts or Federally-assisted construction agreements in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375 and other Orders and as

supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned U.S. Presidential Executive Order and regulations or as otherwise provided by law.

- f. The ENGINEER will include the provisions of the paragraphs under Section 8.4.2 of this Agreement in every subcontract or purchase order so that such provisions will be binding upon each subconsultant or vendor unless specifically exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to Section 204 of the U.S. Presidential Executive Order No. 11246.

8.4.3 Title VI and Nondiscrimination

Purpose

The purpose of this section is to comply with Federal Requirements under United States Department of Transportation Order 1050.2A, Title 49 Code of Federal Regulations (CFR) part 21 and 23 CFR part 200. Any Federal provision that is specifically required not specifically set forth is hereby incorporated by reference.

- a. NCDOT Title VI Assurance (1050.2A, Appendix A & E)
 - i. During the performance of this contract, the ENGINEER, for itself, its assignees, and successors in interest (hereinafter referred to as the "ENGINEER") agrees as follows:
 - 1) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally- assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - 2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
 - 3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
 - 4) **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by

the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- 5) **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a) withholding payments to the contractor under the contract until the contractor complies; and/or
 - b) cancelling, terminating, or suspending a contract, in whole or in part.
- 6) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

- ii. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal- aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. § 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. NCDOT Title VI Nondiscrimination Program (23 CFR 200.5(p))

The North Carolina Department of Transportation (NCDOT) has assured the United States Department of Transportation that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, income-level, sex, age, or excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:

- i. During the performance of this contract or agreement, contractors (e.g., subcontractors, consultants, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. (*USDOJ Title VI Legal Manual, VI(F)*)

- ii. Subrecipients (e.g. cities, counties, LGAs, MPO/RPOs) may be required to prepare and submit a Title VI Program to NCDOT, which may include Title VI Nondiscrimination Assurances and/or agreements. Subrecipients must also ensure that their contractors and subrecipients comply with Title VI. (23 CFR 200.9(b)(7))
- iii. If reviewed or investigated by NCDOT, the contractor or subrecipient agrees to take affirmative action, to correct any deficiencies found within a reasonable time period, not to exceed 90 calendar days, unless additional time is granted by NCDOT. (23 CFR 200.9(b)(15))

8.5. Successors and Assigns

8.5.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 8.5.2, the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

8.5.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

8.5.3. Except as may be expressly stated otherwise in this Agreement, nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

8.6. Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

8.7. Severability

If any provision or part of the Agreement is held to be void, invalid, illegal or unenforceable under any law or regulation such void, invalid, illegal or unenforceable provision shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER and this Agreement shall be considered as if such void, invalid, illegal or unenforceable provision had never been included herein.

8.8. Insurance

During the performance of the Services under this Agreement, ENGINEER shall maintain the

following insurance:

(1) General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate, and with property damage limits of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate.

(2) Automobile Liability Insurance, covering owned, non-owned, hired vehicles and trailers used in connection with this Project. This insurance shall provide bodily injury and property damages limits of not less than \$1,000,000 combined single limit/aggregate.

(3) Errors and Omissions Insurance (Professional Liability) covering the ENGINEER's performance or professional services caused by an error, omission, or negligent act. This insurance shall remain in effect for a minimum of three (3) years after completion of the Agreement and shall provide for professional liability coverage with limits not less than \$1,000,000 per claim and a \$1,000,000 annual aggregate. For purposes of all provisions of this Agreement relating to errors or omissions or negligent acts of ENGINEER, the term "ENGINEER" shall include the employees and agents of ENGINEER, as well as any consultants or independent contractors selected by and working for ENGINEER.

(4) Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence. In case any work is sublet under this Agreement ENGINEER shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This Agreement shall be void and of no effect unless ENGINEER shall secure and keep in effect during the term of this Agreement the ENGINEER's compliance with the provisions of the Worker's Compensation laws of the State of North Carolina.

ENGINEER shall furnish to the OWNER certificates of insurance for all of the insurance coverages described herein within ten (10) days after this Agreement is ratified and certified copies of any amendments and/or renewals to the policies which occur thereafter. At least thirty (30) days written notice shall be given to the

OWNER prior to any cancellation, modification or non-renewal of any insurance required under this Agreement. Engineer and subconsultants shall be required to include OWNER as additional insureds on their General Liability insurance policies.

8.9. To the extent permitted by law, the ENGINEER shall defend, indemnify and hold harmless OWNER from and against loss, cost, claims, damages and expense, including but not limited to reasonable attorney's fees, which the OWNER may incur, arising out of the performance of the Services for OWNER where such liability is caused by the intentional or negligent act, error or omission of ENGINEER or any person or organization for whom ENGINEER is responsible. The ENGINEER shall be solely responsible for the design phase engineering services within the ENGINEERS scope and for the completeness and accuracy of all documents and supporting data

prepared by the ENGINEER, its agents, employees, subcontractors or subconsultants in connection with the design phase of the Project, irrespective of any OWNER approval of the same as more fully set forth in paragraph 1.1.

8.10. Indemnity provisions shall be incorporated into all Project contractual arrangements entered into between OWNER and ENGINEER.

8.11. Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of Section 8 shall survive.

8.12. Agreement Form

Headings within the Agreement are for convenience only and do not define, limit, or construe the contents of such sections.

8.13. Americans with Disabilities Act

The ENGINEER shall comply with the provisions of the Americans with Disabilities Act (ADA) and all rules and regulations promulgated thereunder. To the extent permitted by law, the ENGINEER hereby agrees to defend, indemnify and hold harmless the OWNER from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the

ENGINEER, its contractors and subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated thereunder.

8.14. Equal Opportunity

In connection with the Services under this Agreement, ENGINEER agrees to comply with the applicable provisions of State and Federal Equal Opportunity Statutes and Regulations.

8.15. OSHA Compliance

The ENGINEER and subconsultants are to comply with the State of North Carolina Occupational/Safety and Health Act and the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Agreement, and to the extent permitted by law, shall defend, indemnify and hold OWNER harmless from and against claims, suits, damages, costs, losses and expenses (including reasonable attorney's fees) in any manner arising out of or connected with the failure of the ENGINEER, its contractors, subcontractors, agents, successors, assigns, officers or employees to comply with the provisions of OSHA of the rules and regulations promulgated thereunder.

8.16. Waiver

No waiver by either party of any default by the other party in performance of any provision of this Agreement should operate or be construed as a waiver of any future default, whether like or different in character.

8.17. ENGINEER understands that OWNER has contracted with it for its expertise in the subject matter of this Agreement and ENGINEER warrants that it knows and is familiar with applicable laws and regulations and has the expertise and facilities necessary to promptly

perform the obligations undertaken by this Agreement at the total compensation including reimbursable expense amount described in Section 6.

8.18 Maintenance of Information and Reports

8.18.1 Information

- a. All work will be administered and performed in accordance with Federal Aid Policy Guide – 23 CFR 172, the North Carolina Administrative Code, all relevant North Carolina General Statutes and all United States Statutes.
- b. Subcontracts exceeding \$2,500 which involve the employment of mechanics or laborers shall require the subconsultant to comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC Chapter 37) as supplemented by Department of Labor regulations (29 CFR, Part 5).
- c. Subcontracts exceeding \$10,000 shall require the subconsultant to comply with all Federal and State Statutes and regulations required in the Agreement.

8.18.2 Availability of Information

- a. The ENGINEER will maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred on this project and to make such materials available at its offices at all reasonable times during the contract period and for three (3) years from the date of final payment for inspection by the OWNER, the Federal Highway Administration or any other authorized representative of the OWNER or Federal Highway Administration. Copies thereof will be furnished to the OWNER and/or Federal Highway Administration if requested. The ENGINEER and any or all subconsultants will use cost principles as described in Federal Acquisition Regulation (48 CFR 1-31), Subpart 1-31.2.
- b. The ENGINEER will require all subconsultants to whom a portion of this contract may be sublet to maintain all such books, documents, papers, accounting records, and other information pertaining to cost, and further to require that said subconsultants make these materials available to the OWNER and/or Federal Highway Administration at all reasonable times during the contract period and for three (3) years from date of final payment, and to require said subconsultants to furnish copies of such documents to the OWNER and/or Federal Highway Administration upon request. The ENGINEER will affirmatively enforce this provision of this contract with the subconsultant upon request of the OWNER or the Federal Highway Administration.
- c. The ENGINEER shall notify the OWNER in writing of significant changes within the ENGINEER'S firm (e.g., change of name, address, telephone number, project-related personnel changes, etc.). This responsibility includes ensuring the ENGINEER'S qualification paperwork and registration information is current in the OWNER'S files.

8.20 Covenant Against Contingent Fees

The ENGINEER warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the OWNER shall have the right to annul

this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

8.21 CERTIFICATION OF ELIGIBILITY Under the Iran Divestment Act

Pursuant to G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-55 *et seq.** requires that each vendor, prior to contracting with the State certify, and the undersigned on behalf of the Vendor does hereby certify, to the following:

- 1) that the vendor is not identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran;
- 2) that the vendor shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and
- 3) that the undersigned is authorized by the Vendor to make this Certification.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days. For questions about the Department of State Treasurer's Iran Divestment Policy, please contact Meryl Murtagh at Meryl.Murtagh@nctreasurer.com or (919) 814-3852.

* Note: Enacted by Session Law 2015-118 as G.S. 143C-55 *et seq.*, but has been renumbered for codification at the direction of the Revisor of Statutes.

8.22 E-Verify

The ENGINEER shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the ENGINEER utilizes a subcontractor in the performance of this Agreement, ENGINEER, shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

8.23 Conflict of Interest

The ENGINEER does hereby certify that they have not entered into and, during the lifetime of this Agreement, will not enter into any agreement with a third-party affording the ENGINEER, or any Subcontractors that they may hire, with any direct or indirect financial interest in the outcome of the project, except with regard to the project development, human and natural environmental and/or engineering services associated with this Agreement.

Pursuant to N.C.G.S. § 133-1, the ENGINEER will not knowingly specify building materials, equipment, or other items that are manufactured, sold or distributed by any firm or corporation in which the designer has a financial interest. Pursuant to N.C.G.S. § 133-2, the ENGINEER will not employ or allow manufacturers or their representatives or agents to write, plan, draw, or make specifications for such public works.

The ENGINEER does hereby certify that it does not have any potential conflict of interest with any entity involved with the project. Any potential conflict of interest shall be disclosed immediately to the OWNER.

SECTION 9 - ATTACHMENTS AND SPECIAL PROVISIONS

9.1. This Agreement is subject to the provisions of the following Attachments which are attached to and made a part of the Agreement:

- 9.1.1. Attachment A, "Scope of Service," consisting of 11 pages.
- 9.1.2. Attachment B, "Basis of Compensation," consisting of 41 pages.
- 9.1.3. Attachment C, "Project Schedule," consisting of 1 page.

This Agreement (consisting of Pages 1 to 20 inclusive, and the Attachments identified above) constitute the entire agreement between OWNER and ENGINEER and supersede any and all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

ENGINEER:

CITY OF EDEN

WETHERILL ENGINEERING, INC.

Terry A. Shelton
Interim City Manager

By: _____
Name: Debora B. Wetherill
Title: President

ATTEST: (Seal)

ATTEST: (Seal)

Deanna Hunt, City Clerk

By: _____
Name: Edward G. Wetherill
Title: Vice President

This instrument has been pre-audited in the manner required by the Local Government and Fiscal Control Act.

This ____ day of _____, 2020.

Tammie McMichael
Director of Finance

Address for giving notices:



Planning and Inspections Department

P. O. Box 70, 308 E Stadium Drive, Eden NC 27289-0070/Telephone 336-623-2110/Fax 336-623-4057

MEMO

TO: Honorable Mayor and City Council
THRU: Terry Shelton, Interim City Manager
FROM: Kelly K. Stultz, AICP, Director
SUBJECT: **Appointment of New Member to Strategic Planning Commission**
DATE: January 10, 2020

There are currently five vacancies on the Eden Strategic Planning Commission:

1. One vacancy is for an unexpired term as a result of a resignation;
2. One vacancy for a full term for someone that resigned in the last year of their service; and
3. Three vacancies for members whose terms have expired: JeSie Morris, Christy Hensley and Merinda Easley.

The Strategic Planning Commission ordinance grants them the ability to make recommendations about their membership. At their November meeting, the Commission recommended James Burnette to fill the full term of the person who resigned in their last year of service. This would make his term run 2020 through 2022. We ask that you appoint James Burnette to the Eden Strategic Planning Commission.

JeSie Morris, Christy Hensley and Merinda Easley have expressed an interest in continuing to serve on the commission or the City Council can replace them with new members to the Strategic Planning Commission for three-year terms.

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

CITY OF EDEN – MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL

THRU: TERRY SHELTON, INTERIM CITY MANAGER

FROM: MARK BULLINS, WATER AND SEWER CONSTRUCTION PROJECTS MANAGER

DATE: JANUARY 10, 2020

SUBJECT: CHANGES TO THE CITY OF EDEN'S CROSS-CONNECTION CONTROL ORDINANCE

In June of 2018, the City of Eden passed a Cross-Connection Control division as an addition to its Water Use Ordinance for the purpose of protecting our drinking water from pollution and/or contamination that can occur from backpressure or backsiphonage from non-potable sources.

The proposed changes to this ordinance, would allow the City's ordinance and the City of Eden's backflow prevention program to reflect the changes in the North Carolina Administrative Code (NCAC). Some changes in the NCAC now require water distribution systems to maintain records on their backflow prevention programs as a part of their biennial inspection by the North Carolina Department of Environmental Quality. However, the changes that affect the ordinance have to do with determining the hazard level associated with a cross-connection. The list of cross-connections and the protection requirements provided by the NCAC under title 15A, .0406 (b) Appendix B, has been removed. All backflow prevention requirements are now covered under the American Water Works Association's M 14 Manual for Cross-Connection Control. Because of the adoption of the recommendations from this manual, the most notable change is the classification of an irrigation system as a health hazard changing the level of protection required and the type of backflow prevention assembly to be used.

The list of under 16-53 DEGREE OF HAZARD, C. Minimum backflow prevention assembly requirements, (2) Facilities that require a backflow prevention assembly, would be changed to reflect the recommended practices from the M14 manual. One addition is to show that the city will allow existing assemblies previously approved the NCAC to remain in use until they can no longer be maintained or repaired.

Other changes are grammar, spelling and syntax, these are highlighted in turquoise.

The City of Eden's Manual for the Prevention of Backflow and Cross-Connection Control would also reflect these changes and with the addition that the water customer will be responsible for the initial test as well as annual testing and maintenance thereafter.

Proposed Changes/Additions to City of Eden Cross Connection Control Ordinance
based on AWWA M14 Manual

This is way the existing ordinance would look with the proposed changes. All changes and additions are highlighted. Changes highlighted in yellow are changes due to the changes in the State of North Carolina Administrative Code, the adoption of the AWWA M14 manual and allowing the existing double check assemblies to remain since they were once allowed by the code. Those changes highlighted in turquoise are due to grammar and syntax.

***DIVISION 2A* **CROSS-CONNECTION** CONTROL**

§ 16-46 PURPOSE OF **CROSS-CONNECTION CONTROL.**

The purpose of this **cross-connection** section is:

(1) To protect the public potable water supply of the City of Eden from the possibility of contamination or pollution, which could backflow into the public water system, due to backsiphonage or backpressure, by containing such pollution or contamination at the water service within customer's private water system.

(2) To define the authority of the City of Eden as the water purveyor entitled to eliminating all **cross-connections**, new or existing, within its public water system.

(3) To provide for a continuing program of inspections and testing of existing **cross-connections**, and those which may be installed in the future.

(Ord. passed 6-19-18)

§ 16-47 AUTHORITY FOR IMPLEMENTING A CROSS-CONNECTION CONTROL PROGRAM.

Cross-Connections between potable water systems and non-potable sources are a significant threat to water quality and to the health of the public water supply. This ordinance is designed to maintain the safety and potability of the water in the City of Eden public water system by establishing rules and procedures to prevent the pollution and contamination of public drinking water by backflow from any non-potable source.

The authority for the following backflow and cross-connection rules are found in the

- 1) Federal Safe Drinking Water Act of 1974, 1986 & 1996 (42 US Federal Code, Chapter 6A, Subchapter XII) and the EPA Cross-Connection Control Manual.
- 2) NCAC title 15A, (Title 15A, subchapter 18C .0102 DEFINITIONS (c) .0307, (c)(5)(A); cross-connection control and .0406 (b); Cross-Connections This Article

(Ord. passed 6-19-18)

§ 16-48 DEFINITIONS.

- A. Backflow: Any reverse flow of water, gas or any other substance back into the public water system of the City of Eden from any source other than the approved water supply.
 - 1) Back pressure backflow: Any elevation of pressure in the downstream piping system caused by pumps, elevation of piping, heat or steam and/or air pressure above the supply pressure at the point of consideration, which would cause a reversal of the normal direction of flow of water.
 - 2) Backsiphonage backflow: A reversal of the normal direction of flow of water in the pipes due to a negative pressure (vacuum) being created in the supply line with the backflow source subject to atmospheric pressure. This can occur because of water main breaks or during fire suppression events.
- B. Backflow Administrator: An employee of the City of Eden, trained and certified by the State of North Carolina as a Cross-Connection Control Operator in Responsible Charge, designated to administer and enforce this article, also known as the Cross-Connection Control Technician.
- C. Backflow Prevention Assembly (Approved): An assembly that has been investigated and approved by the City of Eden Backflow Administrator and has been approved to meet the design and performance standards of the American Society of Sanitary Engineers (ASSE), the American Water Works Association (AWWA), and has been tested and approved for specific applications by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC FCCCHR). FM (Factory Mutual) and Underwriters Laboratory (UL) approvals shall be required for backflow prevention assemblies installed on fire suppression lines.

- 1) Air gap (fixed) - A permanently fixed, unobstructed vertical distance through the atmosphere between the lowest opening from any pipe or faucet supplying water from any source to a tank, plumbing fixture, or other device and the flood level rim of the device. An approved air gap separation shall be at least double the diameter of the supply pipe. In no case shall the air gap separation be less than two inches. An approved air gap may be considered as a backflow prevention assembly.
- 2) Double check valve assembly - An assembly composed of two, **independently operating**, approved check valves, plumbed in series. The assembly must include four resilient-seated test cocks that are properly located for testing the assembly and two tightly closing shut-off valves located at each end of the assembly.
- 3) Double check detector assembly - An assembly composed of an approved double check valve assembly with a bypass water meter and a meter-sized approved double check valve device. The meter shall register accurately for very low flow rates and shall register all flow rates. The check valves shall allow for water to flow through the water meter prior to flowing through the larger assembly. This shall be for the purpose of detecting leaks or usage on fire suppression water systems.
- 4) Dual check valve device - A backflow prevention device comprised of **two independently operating**, approved check valves, plumbed in series. The device is not testable and is generally installed downstream from a water meter and is used for the containment of single-family water services as part of a residential backflow prevention program.
- 5) Pressure vacuum breaker Assembly - A device containing **an independently operating** spring-loaded check valves and an independently operated spring-loaded air inlet valve located on the discharge side of the check valve. The device includes tightly closing shut-off valves on each side of the assembly and two properly located test cocks for the testing of the assembly
- 6) Reduced pressure zone assembly - An approved, properly functioning assembly containing two, independently **operating**, approved check valves plumbed in series, with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves that discharges to atmosphere. The assembly must include four resilient-seated test cocks that are properly located for testing the assembly and two tightly closing shut- off valves located at each end of the assembly.
- 7) Reduced pressure detector assembly - An assembly composed of an approved reduced pressure zone backflow prevention assembly with a bypass water meter and meter-sized approved reduced pressure zone device. The meter shall register accurately for very low flow. The water flowing through the meter shall be protected to same level as the water through the main assembly. The check valves shall allow for water to flow through the water meter prior to flowing through the larger assembly. This shall be for the purpose of detecting leaks or usage on fire suppression water systems.

- D. Certified Backflow Prevention Assembly Tester: Any individual person who holds a certificate of completion from a certified training program in the testing and repair of backflow prevention assemblies and cross-connection control. The certification school must be approved by the Cross-Connection ORC for the City of Eden and based on the quality of training provided as compared to NC AWWA and NCRWA standards.
- E. Construction Meter: A water meter assembly that includes a Reduced Pressure Zone backflow preventer for the protection of the potable water system, usually $\frac{3}{4}$ by $\frac{5}{8}$ inch designated for the purpose of providing temporary waster service for a construction site. It may be set up to take advantage of an existing water connection or be connected to a fire hydrant and shall have a $\frac{3}{4}$ inch hose bib connection.
- F. Containment: The prevention of backflow from a non-potable system utilizing an approved, properly functioning backflow prevention assembly which is installed, operated, and maintained in accordance with the provisions of this article.
- G. Contamination: An impairment of the quality of the water to a degree that it creates an actual hazard to the public health through poisoning or through the spread of disease.
- H. Cross-Connection: Any actual or potential connection or piping arrangement between a potable water supply and any other non-potable source or system whereby water or other liquids, mixtures, or substances may flow into or enter the potable water supply system.
- I. Hazard (Health/High): A potential threat of contamination to the public water system or to a water service customer's potable water system that could cause serious illness or death.
- J. Hazard (Imminent): An immediate threat of contamination to the public water system that could cause serious illness or death.
- K. Hazard (Non-health/Low): An actual or potential threat of damage to the physical components comprising the public water system or to a water service customer's potable water system, or of pollution to the public water system or to a water service customer's potable water system.
- L. Homeowner: An individual who resides on the property that he/she owns by proper title and/or deed. The owner-occupant of a home.
- M. Hydrant Meter: A water meter designed to be connected to a fire hydrant for the purpose of obtaining water on a temporary basis where no regular water connection is available that will perform the purpose needed. This device should include a Reduced Pressure Zone (RPZ) backflow preventer to protect the potable water system from contamination. This assembly shall be fitted 2 $\frac{1}{2}$ inch fire hose connection.
- N. Isolation: The prevention of backflow in which a backflow preventer, such as a hose bib or an atmospheric vacuum breaker, is located to correct a cross-connection at a specific location on a private potable water system rather than at a water service connection. This protects the drinking water in the building and is covered by NC Plumbing Code.
- O. Owner: Any person who has legal title to, or license to operate or habitat in, a property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.

- P. Pollution: An impairment of the quality of the potable water to a degree that does not create a hazard to public health but that does adversely and unreasonably affect the aesthetic qualities of such potable water for domestic use.
- Q. Potable Water: Water from any source which has been approved for human consumption by the State of North Carolina, Department of Environmental Quality, Water Resources Division, Public Water Supply Section.
- R. Person: Any individual, partnership, company, public or private corporation, political subdivision or government agency or any other legal entity.
- S. Private Water System: Any water system located on the water service customer's premise, whether supplied by public potable water or an auxiliary water supply. The system or systems may be either a potable water system or an industrial piping system.
- T. Public Water System: The potable water system owned and operated by the City of Eden. This includes all storage tanks, distribution mains, lines, pipes, connections, fixtures and other facilities, conveying potable water from the water treatment plants to the service connections of each water service customer.
- U. Service Connection: The terminal end of a service connection from the public potable water system, immediately after the water meter, i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the water service customer's private water system.
- V. Used Water: Any water supplied by a water purveyor from a public potable water system to a water service customer's private water system after it has passed through the point of delivery and is no longer under the control of the water purveyor.
- W. Water Service Customer: Any person, firm, or corporation receiving water from the City of Eden by way of a water service connected to the City of Eden's public water system.
- X. Water Purveyor: Owner or operator of a public potable water system providing approved potable water supply to the public.
- Y. Water Supply (Auxiliary): Any water supply on or available to the water customer's premises other than the water purveyor's public potable water system. The auxiliary water may include water from another purveyor's public potable water system or any natural source such as a well, spring, river, stream, etc., and used or objectionable.
- Z. Water Supply (Unapproved): Any water supply, which has not been approved for human consumption by the State of North Carolina, Department of Environmental Quality, Water Resources Division, Public Water Supply Section.

§ 16-49 RESPONSIBILITY.

A. Responsibility: City of Eden

- (1) The City of Eden Collection and Distribution Superintendent will be primarily responsible

for preventing any contamination or pollution of the public water system. This responsibility begins at the point of origin of the public water system supply and includes all of the public water distribution system, and ends at the service connection, under the Safe Drinking Water Act. The Backflow Administrator shall exercise vigilance to ensure that the water customer has taken the proper steps to protect the public potable water system.

(2) When it has been determined by an inspection of the water service customer's private water system that a backflow protection system is required for the protection of the public water system, the Backflow Administrator shall notify the owner, in writing, of any such building or premises, to correct within a time set by this article, any plumbing installed or existing that is in violation of this article.

(3) The Backflow Administrator will select an approved backflow prevention assembly to be installed at the service connection. The owner shall be notified that the installation of a backflow prevention assembly may create a closed system, and as a result thermal expansion may occur. In these circumstances the owner must understand and assume all liability and responsibilities for that phenomenon.

B. Responsibility: Water Service Customer

(1) The water service customer has the responsibility of preventing contaminants and pollutants from entering the water service customer's private water system or the public water system operated by the City of Eden. The water service customer, at his own expense, shall install, operate, test, repair and maintain all backflow prevention assemblies specified within this article. The City of Eden may choose to do the testing, maintenance and repair of the customer's backflow prevention assemblies and pass the costs to the affected water customers through the water billing system.

(2) If a water service customer is a tenant and does not maintain the private water system, and has no authority to bring the system into compliance with the provisions of this article, the City of Eden may assert any available action against the tenant water service customer to assure the private water system is brought into compliance with this article.

(Ord. passed 6-19-18)

§ 16-50 RIGHT OF ENTRY; AUTHORIZATION.

(1) Any authorized representative from the City of Eden shall have the right to enter any building, structure or premises during normal business hours to perform any duty imposed upon him/her by this article and in accordance with the North Carolina Administrative Code. Those duties may include sampling and testing of water, or inspection and observation of all piping systems connected to the public water supply. Refusal to allow these representatives to enter for these purposes shall result in disconnection of water service.

(2) On request, the water service customer shall furnish to the water purveyor any pertinent information regarding the water supply system on such property where **cross-connection** and backflow are deemed possible.

(Ord. passed 6-19-18)

§ 16-51 LAW; UNPROTECTED CROSS-CONNECTION PROHIBITED.

(1) No water service connection to any private water system shall be installed or maintained by the City of Eden unless the water supply is protected as required by this article and in accordance with the North Carolina Administrative Code. Service of water to any premises shall be discontinued by the City of Eden if a backflow prevention assembly required by this article, is not installed, tested and maintained, or if a backflow prevention assembly has been removed, bypassed or if an unprotected **cross-connection** exists on the premises. Service will be restored after all such conditions or defects are corrected.

(2) No water service customer shall allow an unprotected **cross-connection** to be made or to remain that involves the water service customer's private water system.

(3) No connection shall be made to an unapproved auxiliary water supply unless the public water supply is protected against backflow by an approved backflow prevention assembly, appropriate to the degree of hazard.

(4) No interconnection to any other water purveyor's water system shall be made unless it is protected against backflow by an approved backflow prevention assembly.

(5) No water service customer shall fail to maintain in good operating condition any backflow prevention assembly, which is part of the water service customer's private water system and is required by this article.

(6) No water service customer shall fail to submit to the City of Eden any records, which are required by this article.
(Ord. passed 6-19-18)

§ 16-52 INSTALLATION.**A. Installation and testing requirements:**

(1) The purpose of this section is to require that, when a **cross-connection** to the City of Eden public water system has been identified, all water flowing from the public water system into that private water system, must flow through an approved backflow prevention assembly. Furthermore, each backflow prevention assembly must be properly located, installed, tested, and maintained per the City of Eden requirements so that the backflow prevention assembly is effective in protecting the public water system from any possible contamination or pollution.

(2) The installation or replacement of a backflow prevention assembly for domestic water, irrigation, commercial and industrial use shall only be performed by a licensed plumber, utility contractor or homeowner. The installation or replacement of a backflow prevention assembly on a dedicated fire sprinkler service shall only be performed by a licensed fire sprinkler contractor. ALL backflow prevention assemblies shall be tested and repaired by a certified backflow prevention assembly tester authorized by the City of Eden.

(3) For premises existing prior to the start of this program, the Department will perform evaluations and inspections of plans and/or premises and inform the owner by letter of any corrective action deemed necessary.

(4) All new and change of use construction plans and specifications which will receive service from the City of Eden public water system shall be made available to the Backflow Administrator for review, approval, and to determine the degree of hazard, and any required backflow prevention assembly to be installed.

(5) All facilities zoned commercial or industrial that have existing water services with the City of Eden and requesting Certificate of Occupancy from the City or County Planning and Zoning offices, whether for new construction or change of use, shall be inspected for compliance of backflow prevention and **cross-connection** control. Any facility not having backflow protection or changing the degree of hazard shall be brought into compliance before the Backflow Administrator may release the Certificate of Occupancy.

(6) The Backflow Administrator will determine if a water service customer must install a backflow prevention assembly, and provide the water service customer with a letter of notification and list of approved backflow prevention assemblies. Any unapproved backflow prevention assembly must be replaced, with an approved backflow prevention assembly, within a time period set by the Backflow Administrator. The following time periods shall be set forth for the installation of the specified backflow prevention assemblies:

New construction: No water meter will be installed by the City until the proper backflow prevention assembly is installed, tested, and approved.

Change of use/change of ownership: No water service will be activated by the City until the proper backflow prevention assembly is installed, tested, and approved.

Existing facility evaluation compliance schedule:

Health hazard	60 Days
Non-health hazard	90 Days

Testing and repair compliance schedule:

Failure to test backflow prevention assembly by anniversary date	30 Days
Failure to repair or replace failed a backflow prevention assembly	14 Days

If an **IMMINENT HAZARD** or an **UNREASONABLE THREAT OF CONTAMINATION OR POLLUTION** to the City's public water system is detected, the Backflow Administrator may require the installation of the required backflow prevention assembly **IMMEDIATELY**, or within a shorter time period than specified above. If installation is not completed within the specified time period, or if contamination is presently occurring, **WATER SERVICE MAY BE IMMEDIATELY DISCONNECTED** in order to protect the potable water system and public health.

(7) All backflow prevention assemblies must be installed and maintained on the water service customer's premises as part of the water service customer's private water system at or near the service connection and before the service line is connected to any other pipes except as authorized by the Backflow Administrator.

(8) If it has been determined that a backflow prevention assembly cannot be installed at the meter service, due to Zoning or DOT Right-of-Way, an approved backflow prevention assembly must be installed before any branch of plumbing that is installed between the service meter and the service backflow prevention assembly.

(9) Any branch of plumbing installed on the private water system that may be subject to a greater hazard than the supply line, (example: Irrigation systems or pump systems, etc.) shall be protected with the appropriate backflow prevention device, as determined by the Backflow Administrator.

(10) Approved backflow prevention assemblies: Meets American Society of Sanitary Engineers (ASSE) standard and carries ASSE seal or is on the University of Southern California Foundation for **Cross-Connection** Control and Hydraulic Research (USC FCCHR) approval list. Also see the current revision of the City of Eden Backflow Assemblies Specification sheets.

(11) Any water service customer installing any backflow prevention assembly must provide the following information to the Backflow Administrator:

- a. Owner's name and address;
- b. Service address where assembly is installed;
- c. Description of assembly's location;
- d. Date of installation;
- e. Size of assembly
- f. Type of assembly;
- g. Manufacturer;
- h. Model number;
- i. Serial number;
- j. Test results/reports.

(12) Reserved

(13) Each backflow prevention assembly that is required must function properly at time of installation. Each water service customer will be required to maintain, and repair each assembly required as part of their private water system. Testing shall be done immediately following installation of any backflow prevention assembly prior to receiving a CO (certificate of occupancy) and annually thereafter. The owner at their own expense shall have a certified backflow prevention assembly tester conduct the tests and forward the results to the City within ten business days.

(14) If an assembly needs to be repaired it must be re-tested immediately following any repairs. The owner at their own expense shall have a certified backflow prevention assembly tester conduct tests and forward the results to the City. A complete duplicate copy of any testing and/or repair shall be sent to the Backflow Administrator within ten business days of completion of test or repair. Each water service customer must maintain a complete copy of test or repair for no less than five years. All test and repair records must be maintained on forms approved by the Backflow Administrator of the City of Eden.

(15) All rubber components must be replaced every five years in every backflow prevention assembly or as often as needed, according to manufacturer's directions and components condition.

(16) Any existing backflow prevention assembly that was installed prior to the adoption of this article, which does offer the proper level of protection type for the hazard will need to be replaced. At that point the assembly shall be replaced, by the water customer, with the proper type of assembly for the current hazard classification.

B. Installation location requirements:

(1) Backflow prevention assemblies must be located in a place where it is readily accessible for regular testing, maintenance, repair, and inspection. Any water service customer's water service that is critical and cannot be shut down for annual testing or maintenance shall install parallel backflow prevention assemblies in order to maintain the continuity of water flow for testing and repair; or in the case of the assembly failing. Bypass lines parallel to a backflow prevention assembly shall have an approved backflow prevention assembly that is equal to that on the main line.

(2) No backflow preventer shall be installed in a manner by which it is subject to freezing. All above ground backflow preventers shall be installed in an ASSE standard 1060 "freeze retardant" enclosure with a minimum R value of 8.0. All above ground backflow preventers shall be installed with permanent piped electrical service to a thermostatically controlled heater or heat tape. Backflow for lawn irrigation systems may be installed with unions and an upstream shut off valve not subject to freezing. All underground piping must be installed a minimum of 12 inches below grade and must meet the requirements of underground water service piping.

Reduced pressure zone assembly (RPZ).

- a. Above ground outdoor installation is preferred and encouraged.
- b. Below ground and indoor installations are strongly discouraged, and shall only be allowed in special cases as approved by the Backflow Administrator. The vault shall have positive drainage with adequate gravity drainage to atmosphere to accommodate for the maximum discharge of the relief valve(s) on the assembly(s) and must be in a location where no portion of assembly can become submerged at any time or under any circumstances or conditions.
- c. Twelve inches minimum and a maximum of 36 inches clearance from vault floor and a minimum of 24 inches clearance from a wall or another fixture for the purpose of testing and repair.
- d. No vertical installation unless USC FCCHR approvals allow otherwise.
- e. Installation in accordance with manufacturer's recommendations.
- f. Located where it is readily accessible for regular testing, maintenance, and inspection.
- g. Must be in a location where no portion of assembly can become submerged at any time under any circumstances or conditions

Double check valve assembly (DCVA).

- a. Above ground outdoor installation is preferred and encouraged.

- b. Below ground installation is strongly discouraged, and shall only be allowed in special cases as approved by the Backflow Administrator. The vault shall have positive drainage with adequate gravity drainage to atmosphere and must be in a location where no portion of assembly can become submerged at any time or under any circumstances or conditions.
- c. Twelve inches minimum and a maximum of 36 inches clearance from vault floor and a minimum of 24 inches clearance from a wall or another fixture for the purpose of testing and repair.
- d. Vertical or horizontal installation acceptable with USC FCCHR approvals.
- e. Installation in accordance with manufacturer's recommendations.
- e. Located where it is readily accessible for regular testing, maintenance, and inspection.

Air gap (AG).

- a. Above ground installation only.
- b. Must be in a location where no portion of assembly can become submerged at any time under any circumstances or conditions

(Ord. passed 6-19-18)

§ 16-53 DEGREE OF HAZARD.

A. Determination.

(1) No service shall be completed until the Backflow Administrator has been provided with information or has surveyed the private water system to determine the degree of hazard and **decides the type of** backflow prevention assembly needed to protect the City of Eden public water supply.

(2) Any water service customer, making any modification to the private water system's use or configuration, which may change the degree of hazard, shall notify in writing the Backflow Administrator before any modification is made. If the Backflow Administrator determines that such modification requires a greater degree of backflow prevention assembly, that assembly must be installed prior to any modification of use or configuration.

(3) If the City of Eden Backflow Administrator or his designee is unable to survey any portion of a private water system to determine the degree of hazard, due to confidential activities, a reduced pressure zone assembly will be required.

B. **Degree of Hazard**

(1) Health hazard: Actual or potential threat of contamination that presents an imminent danger to the public health with consequence of serious illness or death.

(2) Non-health hazard: One that presents foreseeable and significant potential for pollution, nuisance, aesthetically objectionable or other undesirable alterations of the City of Eden public drinking water supply.

C. Minimum backflow prevention assembly requirements

(1)	Degree of Hazard:	RPZ or RPDA	DCVA or DCDA	AG
	Health hazard	X		X
	Non-health hazard		X	
AG = Air gap				
DCVA = Double check valve assembly				
DCDA=Double Check Detector Assembly (Fire protection systems w/o chemicals or pumps)				
RPZ = Reduced pressure zone assembly				
RPDA=Reduced Pressure Detector Assembly (Fire protection systems with chemicals and/or pumps)				

(2) Facilities that require a backflow prevention assembly:

- a. Residential dual check valve. If no other backflow prevention assembly is specified a dual check valve assembly must be installed on all private water systems.
- b. Non-health hazard.
 1. Connection to tanks, lines, and vessels that handle non-toxic substances
 2. Fire sprinkler systems without chemicals
 3. Most commercial establishments
 4. Churches
 5. Other facilities as determined by the Backflow Administrator.
- c. Health hazard.
 1. Irrigation systems
 2. Wastewater treatment plants
 3. Beauty shop and salons
 4. Connection to tanks, lines, boilers or vessels that handle sewage, lethal substances, toxic or radioactive substances
 5. Connection to an unapproved water system or auxiliary water supply

6. Buildings with five or more stories above ground
7. Hospitals and other medical facilities
8. Morgues, mortuaries and autopsy facilities
9. Metal plating facilities.
10. Breweries, bottling plants
11. Schools, daycares and colleges
12. Bakeries, restaurants, etc.
13. Solar hot-water systems
14. Canneries
15. Battery manufacturers
16. Exterminators and lawn care companies
17. Chemical processing plants
18. Dairies
19. Film laboratories
20. Car wash facilities
21. Dye work
22. Laundries
23. Swimming pools
24. Waterfront facilities
25. Concrete/ asphalt plants
26. Airports
27. Oil and gas production, storage, or transmission facilities
28. Sand and gravel plants.
29. Furniture manufacturing plants
30. Interconnection with other water purveyor's potable water systems
31. Gas/service stations
32. Other facilities as determined by the Backflow Administrator

*This is not intended to be an exhaustive list. Any other type facilities or services not listed above may also be required to install an approved backflow prevention assembly if determined by the Backflow Administrator. All assemblies and installations shall be subject to inspection and approval by the City of Eden Backflow Administrator or his designee's.

(3) Filling of tanks/tankers or any other container from a City of Eden fire hydrant is strictly prohibited unless it has been equipped with the proper meter and approved backflow prevention assembly. The City of Eden will issue a permit for this tank/tanker or container. Any unauthorized connection to a fire hydrant is considered an illegal **cross-connection** to the City of Eden public water system and will be subject to penalties as set forth in the City of Eden Fee Schedule.

*Exemption: All fire apparatuses are exempt from the backflow prevention requirements only if fighting fire or training. If training they are asked to notify the City's Collection and Distribution Division. However, if fire apparatus has been used to haul non-potable water, it is to be cleaned and recertified prior to connecting to a City of Eden fire hydrant.

*All double check valve assemblies installed on irrigation systems prior to 2020 shall be allowed to remain in service until they fail and can longer be repaired. At that time, they shall be replaced with a reduced pressure principle assembly in order for the irrigation system to remain in service.

(4) Imminent hazard: If it has been determined a water service customer's private water system has an imminent hazard: the water service customer must install an approved backflow prevention assembly specified by the City of Eden Backflow Administrator and this article. This assembly must be installed within 24 hours of notification from the Backflow Administrator. If the water service customer fails to install the specified assembly within the allowed time period, water service to the water service customer's private water system will be terminated and the water service customer may be subject to civil penalties. In the event the Backflow Administrator is unable to notify the water service customer within 24 hours of determining an imminent hazard exists, the Backflow Administrator may terminate water service until the specified assembly is installed. These actions may be carried out under the Safe Drinking Water Act.

§ 16-54 NOTICE OF CONTAMINATION OR POLLUTION.

(1) In the event the water service customer's private water system becomes contaminated or polluted the water service customer shall immediately notify the City of Eden Backflow Administrator or the Collection and Distribution Superintendent.

(2) In the event the water service customer has reason to believe that a backflow incident has occurred between the water service customer's private water system and the public water system the water service customer shall immediately notify the City of Eden Backflow administrator or the Collection and the Distribution Superintendent so that appropriate actions can be taken to isolate and remove the contamination or pollution.

(Ord. passed 6-19-18)

§ 16-55 VIOLATIONS AND CIVIL PENALTIES.

A. Notification of violation

- (1) A written notice will be presented to any water service customer/person who has been found to be in violation of any part of this article.
- (2) This first notice must explain the violation and give the time period within which the violation must be corrected.
- (3) A second notice will give 30 additional days to correct all violations as required by this article.
- (4) A third notice will be a civil penalty allowing 15 more days to comply before the penalties begin.
- (5) In the event a water service customer found to be in violation of this article fails to correct the violation within the specified time or, fails to pay any civil penalties expense assessed under this article, water service will be terminated.

B. Civil and other penalties

(1) Unprotected **cross-connection** involving a private water system, which is of a health hazard: \$1,000.00 per day not to exceed \$10,000.00.

(2) Unprotected **cross-connection** involving a tank/tanker or other container hooked to a fire hydrant—\$1,000.00 per occurrence.

(3) Unprotected **cross-connection** involving a private water system, which is of a non-health hazard—\$500.00 per day not to exceed \$5,000.00.

(4) Any violation of the requirements and prohibitions of this Article including failure to address an unprotected cross connection is hereby declared a public nuisance and shall be corrected or abated as directed by the requirements of this Article. Any person(s) creating a public nuisance or failing to abate such shall be subject to the provisions of City Code, Chapter 6 Article II: Nuisances, governing such nuisances, including reimbursing the City of Eden for any costs incurred in removing, abating or remedying said nuisance.

(5) Submitting false records which are required by this article—\$1,000.00. Also, this will result in removal of the tester from the approved testers list. Notification of the school where the tester was certified and the tester's behavior shall be reported to the North Carolina Division of Water Resources.

(6) Failure to submit records which are required by this article—\$500.00.

(7) Failure to test or maintain backflow prevention assemblies as required by this article— \$100.00 per day up to and including termination of water service.

(Ord. passed 6-19-18)

AN ORDINANCE AMENDING
THE CITY CODE
OF THE CITY OF EDEN

BE IT ORDAINED BY THE CITY COUNCIL of the City of Eden, North Carolina, that Article 2A of Chapter 16 of the Eden City Code is amended as follows:

DIVISION 2A CROSS-CONNECTION CONTROL

§ 16-46 PURPOSE OF CROSS-CONNECTION CONTROL.

The purpose of this cross-connection section is:

- (1) To protect the public potable water supply of the City of Eden from the possibility of contamination or pollution, which could backflow into the public water system, due to backsiphonage or backpressure, by containing such pollution or contamination at the water service within customer's private water system.
- (2) To define the authority of the City of Eden as the water purveyor entitled to eliminating all cross-connections, new or existing, within its public water system.
- (3) To provide for a continuing program of inspections and testing of existing cross-connections, and those which may be installed in the future.

§ 16-47 AUTHORITY FOR IMPLEMENTING A CROSS-CONNECTION CONTROL PROGRAM.

Cross-Connections between potable water systems and non-potable sources are a significant threat to water quality and to the health of the public water supply. This ordinance is designed to maintain the safety and potability of the water in the City of Eden public water system by establishing rules and procedures to prevent the pollution and contamination of public drinking water by backflow from any non-potable source.

The authority for the following backflow and cross-connection rules are found in the

- 1) Federal Safe Drinking Water Act of 1974, 1986 & 1996 (42 US Federal Code, Chapter 6A, Subchapter XII) and the EPA Cross-Connection Control Manual.
- 2) NCAC title 15A, (Title 15A, subchapter 18C .0102 DEFINITIONS (c) .0307, (c)(5)(A); cross-connection control and .0406 (b); Cross-Connections This Article

§ 16-48 DEFINITIONS.

- A. Backflow: Any reverse flow of water, gas or any other substance back into the public water system of the City of Eden from any source other than the approved water supply.
 - 1) Back pressure backflow: Any elevation of pressure in the downstream piping system caused by pumps, elevation of piping, heat or steam and/or air pressure above the supply pressure at the point of consideration, which would cause a reversal of the normal direction of flow of water.

- 2) Backsiphonage backflow: A reversal of the normal direction of flow of water in the pipes due to a negative pressure (vacuum) being created in the supply line with the backflow source subject to atmospheric pressure. This can occur because of water main breaks or during fire suppression events.
- B. Backflow Administrator: An employee of the City of Eden, trained and certified by the State of North Carolina as a Cross-Connection Control Operator in Responsible Charge, designated to administer and enforce this article, also known as the Cross-Connection Control Technician.
- C. Backflow Prevention Assembly (Approved): An assembly that has been investigated and approved by the City of Eden Backflow Administrator and has been approved to meet the design and performance standards of the American Society of Sanitary Engineers (ASSE), the American Water Works Association (AWWA), and has been tested and approved for specific applications by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC FCCCHR). FM (Factory Mutual) and Underwriters Laboratory (UL) approvals shall be required for backflow prevention assemblies installed on fire suppression lines.
- 1) Air gap (fixed) - A permanently fixed, unobstructed vertical distance through the atmosphere between the lowest opening from any pipe or faucet supplying water from any source to a tank, plumbing fixture, or other device and the flood level rim of the device. An approved air gap separation shall be at least double the diameter of the supply pipe. In no case shall the air gap separation be less than two inches. An approved air gap may be considered as a backflow prevention assembly.
 - 2) Double check valve assembly - An assembly composed of two, independently operating, approved check valves, plumbed in series. The assembly must include four resilient-seated test cocks that are properly located for testing the assembly and two tightly closing shut-off valves located at each end of the assembly.
 - 3) Double check detector assembly - An assembly composed of an approved double check valve assembly with a bypass water meter and a meter-sized approved double check valve device. The meter shall register accurately for very low flow rates and shall register all flow rates. The check valves shall allow for water to flow through the water meter prior to flowing through the larger assembly. This shall be for the purpose of detecting leaks or usage on fire suppression water systems.
 - 4) Dual check valve device - A backflow prevention device comprised of two independently operating, approved check valves, plumbed in series. The device is not testable and is generally installed downstream from a water meter and is used for the containment of single-family water services as part of a residential backflow prevention program.
 - 5) Pressure vacuum breaker Assembly - A device containing an independently operating spring-loaded check valves and an independently operated spring-loaded air inlet valve located on the discharge side of the check valve. The device includes tightly closing shut-off valves on each side of the assembly and two properly located test cocks for the testing of the assembly

- 6) Reduced pressure zone assembly - An approved, properly functioning assembly containing two, independently operating, approved check valves plumbed in series, with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves that discharges to atmosphere. The assembly must include four resilient-seated test cocks that are properly located for testing the assembly and two tightly closing shut-off valves located at each end of the assembly.
 - 7) Reduced pressure detector assembly - An assembly composed of an approved reduced pressure zone backflow prevention assembly with a bypass water meter and meter-sized approved reduced pressure zone device. The meter shall register accurately for very low flow. The water flowing through the meter shall be protected to same level as the water through the main assembly. The check valves shall allow for water to flow through the water meter prior to flowing through the larger assembly. This shall be for the purpose of detecting leaks or usage on fire suppression water systems.
- D. Certified Backflow Prevention Assembly Tester: Any individual person who holds a certificate of completion from a certified training program in the testing and repair of backflow prevention assemblies and cross-connection control. The certification school must be approved by the Cross-Connection ORC for the City of Eden and based on the quality of training provided as compared to NC AWWA and NCRWA standards.
 - E. Construction Meter: A water meter assembly that includes a Reduced Pressure Zone backflow preventer for the protection of the potable water system, usually $\frac{3}{4}$ by $\frac{5}{8}$ inch designated for the purpose of providing temporary water service for a construction site. It may be set up to take advantage of an existing water connection or be connected to a fire hydrant and shall have a $\frac{3}{4}$ inch hose bib connection.
 - F. Containment: The prevention of backflow from a non-potable system utilizing an approved, properly functioning backflow prevention assembly which is installed, operated, and maintained in accordance with the provisions of this article.
 - G. Contamination: An impairment of the quality of the water to a degree that it creates an actual hazard to the public health through poisoning or through the spread of disease.
 - H. Cross-Connection: Any actual or potential connection or piping arrangement between a potable water supply and any other non-potable source or system whereby water or other liquids, mixtures, or substances may flow into or enter the potable water supply system.
 - I. Hazard (Health/High): A potential threat of contamination to the public water system or to a water service customer's potable water system that could cause serious illness or death.
 - J. Hazard (Imminent): An immediate threat of contamination to the public water system that could cause serious illness or death.
 - K. Hazard (Non-health/Low): An actual or potential threat of damage to the physical components comprising the public water system or to a water service customer's potable water system, or of pollution to the public water system or to a water service customer's potable water system.
 - L. Homeowner: An individual who resides on the property that he/she owns by proper title and/or deed. The owner-occupant of a home.

- M. Hydrant Meter: A water meter designed to be connected to a fire hydrant for the purpose of obtaining water on a temporary basis where no regular water connection is available that will perform the purpose needed. This device should include a Reduced Pressure Zone (RPZ) backflow preventer to protect the potable water system from contamination. This assembly shall be fitted 2 ½ inch fire hose connection.
- N. Isolation: The prevention of backflow in which a backflow preventer, such as a hose bib or an atmospheric vacuum breaker, is located to correct a cross-connection at a specific location on a private potable water system rather than at a water service connection. This protects the drinking water in the building and is covered by NC Plumbing Code.
- O. Owner: Any person who has legal title to, or license to operate or inhabit in, a property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.
- P. Pollution: An impairment of the quality of the potable water to a degree that does not create a hazard to public health but that does adversely and unreasonably affect the aesthetic qualities of such potable water for domestic use.
- Q. Potable Water: Water from any source which has been approved for human consumption by the State of North Carolina, Department of Environmental Quality, Water Resources Division, Public Water Supply Section.
- R. Person: Any individual, partnership, company, public or private corporation, political subdivision or government agency or any other legal entity.
- S. Private Water System: Any water system located on the water service customer's premise, whether supplied by public potable water or an auxiliary water supply. The system or systems may be either a potable water system or an industrial piping system.
- T. Public Water System: The potable water system owned and operated by the City of Eden. This includes all storage tanks, distribution mains, lines, pipes, connections, fixtures and other facilities, conveying potable water from the water treatment plants to the service connections of each water service customer.
- U. Service Connection: The terminal end of a service connection from the public potable water system, immediately after the water meter, i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the water service customer's private water system.
- V. Used Water: Any water supplied by a water purveyor from a public potable water system to a water service customer's private water system after it has passed through the point of delivery and is no longer under the control of the water purveyor.
- W. Water Service Customer: Any person, firm, or corporation receiving water from the City of Eden by way of a water service connected to the City of Eden's public water system.
- X. Water Purveyor: Owner or operator of a public potable water system providing approved potable water supply to the public.
- Y. Water Supply (Auxiliary): Any water supply on or available to the water customer's premises other than the water purveyor's public potable water system. The auxiliary water

may include water from another purveyor's public potable water system or any natural source such as a well, spring, river, stream, etc., and used or objectionable.

- Z. Water Supply (Unapproved): Any water supply, which has not been approved for human consumption by the State of North Carolina, Department of Environmental Quality, Water Resources Division, Public Water Supply Section.

§ 16-49 RESPONSIBILITY.

A. Responsibility: City of Eden

(1) The City of Eden Collection and Distribution Superintendent will be primarily responsible for preventing any contamination or pollution of the public water system. This responsibility begins at the point of origin of the public water system supply and includes all of the public water distribution system, and ends at the service connection, under the Safe Drinking Water Act. The Backflow Administrator shall exercise vigilance to ensure that the water customer has taken the proper steps to protect the public potable water system.

(2) When it has been determined by an inspection of the water service customer's private water system that a backflow protection system is required for the protection of the public water system, the Backflow Administrator shall notify the owner, in writing, of any such building or premises, to correct within a time set by this article, any plumbing installed or existing that is in violation of this article.

(3) The Backflow Administrator will select an approved backflow prevention assembly to be installed at the service connection. The owner shall be notified that the installation of a backflow prevention assembly may create a closed system, and as a result thermal expansion may occur. In these circumstances the owner must understand and assume all liability and responsibilities for that phenomenon.

B. Responsibility: Water Service Customer

(1) The water service customer has the responsibility of preventing contaminants and pollutants from entering the water service customer's private water system or the public water system operated by the City of Eden. The water service customer, at his own expense, shall install, operate, test, repair and maintain all backflow prevention assemblies specified within this article. The City of Eden may choose to do the testing, maintenance and repair of the customer's backflow prevention assemblies and pass the costs to the affected water customers through the water billing system.

(2) If a water service customer is a tenant and does not maintain the private water system, and has no authority to bring the system into compliance with the provisions of this article, the City of Eden may assert any available action against the tenant water service customer to assure the private water system is brought into compliance with this article.

§ 16-50 RIGHT OF ENTRY; AUTHORIZATION.

(1) Any authorized representative from the City of Eden shall have the right to enter any building, structure or premises during normal business hours to perform any duty imposed upon him/her by this article and in accordance with the North Carolina Administrative Code. Those

duties may include sampling and testing of water, or inspection and observation of all piping systems connected to the public water supply. Refusal to allow these representatives to enter for these purposes shall result in disconnection of water service.

(2) On request, the water service customer shall furnish to the water purveyor any pertinent information regarding the water supply system on such property where cross-connection and backflow are deemed possible.

§ 16-51 LAW; UNPROTECTED CROSS-CONNECTION PROHIBITED.

(1) No water service connection to any private water system shall be installed or maintained by the City of Eden unless the water supply is protected as required by this article and in accordance with the North Carolina Administrative Code. Service of water to any premises shall be discontinued by the City of Eden if a backflow prevention assembly required by this article, is not installed, tested and maintained, or if a backflow prevention assembly has been removed, bypassed or if an unprotected cross-connection exists on the premises. Service will be restored after all such conditions or defects are corrected.

(2) No water service customer shall allow an unprotected cross-connection to be made or to remain that involves the water service customer's private water system.

(3) No connection shall be made to an unapproved auxiliary water supply unless the public water supply is protected against backflow by an approved backflow prevention assembly, appropriate to the degree of hazard.

(4) No interconnection to any other water purveyor's water system shall be made unless it is protected against backflow by an approved backflow prevention assembly.

(5) No water service customer shall fail to maintain in good operating condition any backflow prevention assembly, which is part of the water service customer's private water system and is required by this article.

(6) No water service customer shall fail to submit to the City of Eden any records, which are required by this article.

§ 16-52 INSTALLATION.

A. Installation and testing requirements:

(1) The purpose of this section is to require that, when a cross-connection to the City of Eden public water system has been identified, all water flowing from the public water system into that private water system, must flow through an approved backflow prevention assembly. Furthermore, each backflow prevention assembly must be properly located, installed, tested, and maintained per the City of Eden requirements so that the backflow prevention assembly is effective in protecting the public water system from any possible contamination or pollution.

(2) The installation or replacement of a backflow prevention assembly for domestic water, irrigation, commercial and industrial use shall only be performed by a licensed plumber, utility contractor or homeowner. The installation or replacement of a backflow prevention assembly on a dedicated fire sprinkler service shall only be performed by a licensed fire sprinkler contractor.

ALL backflow prevention assemblies shall be tested and repaired by a certified backflow prevention assembly tester authorized by the City of Eden.

(3) For premises existing prior to the start of this program, the Department will perform evaluations and inspections of plans and/or premises and inform the owner by letter of any corrective action deemed necessary.

(4) All new and change of use construction plans and specifications which will receive service from the City of Eden public water system shall be made available to the Backflow Administrator for review, approval, and to determine the degree of hazard, and any required backflow prevention assembly to be installed.

(5) All facilities zoned commercial or industrial that have existing water services with the City of Eden and requesting Certificate of Occupancy from the City or County Planning and Zoning offices, whether for new construction or change of use, shall be inspected for compliance of backflow prevention and cross-connection control. Any facility not having backflow protection or changing the degree of hazard shall be brought into compliance before the Backflow Administrator may release the Certificate of Occupancy.

(6) The Backflow Administrator will determine if a water service customer must install a backflow prevention assembly, and provide the water service customer with a letter of notification and list of approved backflow prevention assemblies. Any unapproved backflow prevention assembly must be replaced, with an approved backflow prevention assembly, within a time period set by the Backflow Administrator. The following time periods shall be set forth for the installation of the specified backflow prevention assemblies:

New construction: No water meter will be installed by the City until the proper backflow prevention assembly is installed, tested, and approved.

Change of use/change of ownership: No water service will be activated by the City until the proper backflow prevention assembly is installed, tested, and approved.

Existing facility evaluation compliance schedule:

Health hazard	60 Days
Non-health hazard	90 Days

Testing and repair compliance schedule:

Failure to test backflow prevention assembly by anniversary date	30 Days
Failure to repair or replace failed a backflow prevention assembly	14 Days

If an **IMMINENT HAZARD** or an **UNREASONABLE THREAT OF CONTAMINATION OR POLLUTION** to the City's public water system is detected, the Backflow Administrator may require the installation of the required backflow prevention assembly **IMMEDIATELY**, or within a shorter time period than specified above. If installation is not completed within the specified time period, or if contamination is presently occurring, **WATER SERVICE MAY BE IMMEDIATELY**

DISCONNECTED in order to protect the potable water system and public health.

(7) All backflow prevention assemblies must be installed and maintained on the water service customer's premises as part of the water service customer's private water system at or near the service connection and before the service line is connected to any other pipes except as authorized by the Backflow Administrator.

(8) If it has been determined that a backflow prevention assembly cannot be installed at the meter service, due to Zoning or DOT Right-of-Way, an approved backflow prevention assembly must be installed before any branch of plumbing that is installed between the service meter and the service backflow prevention assembly.

(9) Any branch of plumbing installed on the private water system that may be subject to a greater hazard than the supply line, (example: Irrigation systems or pump systems, etc.) shall be protected with the appropriate backflow prevention device, as determined by the Backflow Administrator.

(10) Approved backflow prevention assemblies: Meets American Society of Sanitary Engineers (ASSE) standard and carries ASSE seal or is on the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC FCCHR) approval list. Also see the current revision of the City of Eden Backflow Assemblies Specification sheets.

(11) Any water service customer installing any backflow prevention assembly must provide the following information to the Backflow Administrator:

- a. Owner's name and address;
- b. Service address where assembly is installed;
- c. Description of assembly's location;
- d. Date of installation;
- e. Size of assembly
- f. Type of assembly;
- g. Manufacturer;
- h. Model number;
- i. Serial number;
- j. Test results/reports.

(12) Reserved

(13) Each backflow prevention assembly that is required must function properly at time of installation. Each water service customer will be required to maintain, and repair each assembly required as part of their private water system. Testing shall be done immediately following installation of any backflow prevention assembly prior to receiving a CO (certificate of occupancy) and annually thereafter. The owner at their own expense shall have a certified backflow prevention assembly tester conduct the tests and forward the results to the City within ten business days.

(14) If an assembly needs to be repaired it must be re-tested immediately following any repairs. The owner at their own expense shall have a certified backflow prevention assembly tester conduct tests and forward the results to the City. A complete duplicate copy of any testing and/or repair shall be sent to the Backflow Administrator within ten business days of completion of test or repair. Each water service customer must maintain a complete copy of test or repair for no less than five

years. All test and repair records must be maintained on forms approved by the Backflow Administrator of the City of Eden.

(15) All rubber components must be replaced every five years in every backflow prevention assembly or as often as needed, according to manufacturer's directions and components condition.

(16) Any existing backflow prevention assembly that was installed prior to the adoption of this article, which does offer the proper level of protection type for the hazard will need to be replaced. At that point the assembly shall be replaced, by the water customer, with the proper type of assembly for the current hazard classification.

B. Installation location requirements:

(1) Backflow prevention assemblies must be located in a place where it is readily accessible for regular testing, maintenance, repair, and inspection. Any water service customer's water service that is critical and cannot be shut down for annual testing or maintenance shall install parallel backflow prevention assemblies in order to maintain the continuity of water flow for testing and repair; or in the case of the assembly failing. Bypass lines parallel to a backflow prevention assembly shall have an approved backflow prevention assembly that is equal to that on the main line.

(2) No backflow preventer shall be installed in a manner by which it is subject to freezing. All above ground backflow preventers shall be installed in an ASSE standard 1060 "freeze retardant" enclosure with a minimum R value of 8.0. All above ground backflow preventers shall be installed with permanent piped electrical service to a thermostatically controlled heater or heat tape. Backflow for lawn irrigation systems may be installed with unions and an upstream shut off valve not subject to freezing. All underground piping must be installed a minimum of 12 inches below grade and must meet the requirements of underground water service piping.

Reduced pressure zone assembly (RPZ).

- a. Above ground outdoor installation is preferred and encouraged.
- b. Below ground and indoor installations are strongly discouraged, and shall only be allowed in special cases as approved by the Backflow Administrator. The vault shall have positive drainage with adequate gravity drainage to atmosphere to accommodate for the maximum discharge of the relief valve(s) on the assembly(s) and must be in a location where no portion of assembly can become submerged at any time or under any circumstances or conditions.
- c. Twelve inches minimum and a maximum of 36 inches clearance from vault floor and a minimum of 24 inches clearance from a wall or another fixture for the purpose of testing and repair.
- d. No vertical installation unless USC FCCHR approvals allow otherwise.
- e. Installation in accordance with manufacturer's recommendations.
- f. Located where it is readily accessible for regular testing, maintenance, and inspection.
- g. Must be in a location where no portion of assembly can become submerged at any time under any circumstances or conditions

Double check valve assembly (DCVA).

- a. Above ground outdoor installation is preferred and encouraged.

- b. Below ground installation is strongly discouraged, and shall only be allowed in special cases as approved by the Backflow Administrator. The vault shall have positive drainage with adequate gravity drainage to atmosphere and must be in a location where no portion of assembly can become submerged at any time or under any circumstances or conditions.
- c. Twelve inches minimum and a maximum of 36 inches clearance from vault floor and a minimum of 24 inches clearance from a wall or another fixture for the purpose of testing and repair.
- d. Vertical or horizontal installation acceptable with USC FCCHR approvals. e. Installation in accordance with manufacturer's recommendations.
- e. Located where it is readily accessible for regular testing, maintenance, and inspection.

Air gap (AG).

- a. Above ground installation only.
- b. Must be in a location where no portion of assembly can become submerged at any time under any circumstances or conditions

§ 16-53 DEGREE OF HAZARD.

A. Determination.

(1) No service shall be completed until the Backflow Administrator has been provided with information or has surveyed the private water system to determine the degree of hazard and decides the type of backflow prevention assembly needed to protect the City of Eden public water supply.

(2) Any water service customer, making any modification to the private water system's use or configuration, which may change the degree of hazard, shall notify in writing the Backflow Administrator before any modification is made. If the Backflow Administrator determines that such modification requires a greater degree of backflow prevention assembly, that assembly must be installed prior to any modification of use or configuration.

(3) If the City of Eden Backflow Administrator or his designee is unable to survey any portion of a private water system to determine the degree of hazard, due to confidential activities, a reduced pressure zone assembly will be required.

B. Degree of Hazard

(1) Health hazard: Actual or potential threat of contamination that presents an imminent danger to the public health with consequence of serious illness or death.

(2) Non-health hazard: One that presents foreseeable and significant potential for pollution, nuisance, aesthetically objectionable or other undesirable alterations of the City of Eden public drinking water supply.

C. Minimum backflow prevention assembly requirements

(1)	Degree of Hazard:	RPZ or RPDA	DCVA or DCDA	AG
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	Health hazard	X		X
	Non-health hazard		X	
	AG = Air gap			
	DCVA = Double check valve assembly			
	DCDA=Double Check Detector Assembly (Fire protection systems w/o chemicals or pumps)			
	RPZ = Reduced pressure zone assembly			
	RPDA=Reduced Pressure Detector Assembly (Fire protection systems with chemicals and/or pumps)			

(2) Facilities that require a backflow prevention assembly:

- a. Residential dual check valve. If no other backflow prevention assembly is specified a dual check valve assembly must be installed on all private water systems.
- b. Non-health hazard.
 1. Connection to tanks, lines, and vessels that handle non-toxic substances
 2. Fire sprinkler systems without chemicals
 3. Most commercial establishments
 4. Churches
 5. Other facilities as determined by the Backflow Administrator.
- c. Health hazard.
 1. Irrigation systems
 2. Wastewater treatment plants
 3. Beauty shop and salons
 4. Connection to tanks, lines, boilers or vessels that handle sewage, lethal substances, toxic or radioactive substances
 5. Connection to an unapproved water system or auxiliary water supply
 6. Buildings with five or more stories above ground
 7. Hospitals and other medical facilities
 8. Morgues, mortuaries and autopsy facilities
 9. Metal plating facilities.
 10. Breweries, bottling plants
 11. Schools, daycares and colleges
 12. Bakeries, restaurants, etc.
 13. Solar hot-water systems
 14. Canneries
 15. Battery manufacturers
 16. Exterminators and lawn care companies

17. Chemical processing plants
18. Dairies
19. Film laboratories
20. Car wash facilities
21. Dye work
22. Laundries
23. Swimming pools
24. Waterfront facilities
25. Concrete/ asphalt plants
26. Airports
27. Oil and gas production, storage, or transmission facilities
28. Sand and gravel plants.
29. Furniture manufacturing plants
30. Interconnection with other water purveyor's potable water systems
31. Gas/service stations
32. Other facilities as determined by the Backflow Administrator

*This is not intended to be an exhaustive list. Any other type facilities or services not listed above may also be required to install an approved backflow prevention assembly if determined by the Backflow Administrator. All assemblies and installations shall be subject to inspection and approval by the City of Eden Backflow Administrator or his designee's.

(3) Filling of tanks/tankers or any other container from a City of Eden fire hydrant is strictly prohibited unless it has been equipped with the proper meter and approved backflow prevention assembly. The City of Eden will issue a permit for this tank/tanker or container. Any unauthorized connection to a fire hydrant is considered an illegal cross-connection to the City of Eden public water system and will be subject to penalties as set forth in the City of Eden Fee Schedule.

*Exemption: All fire apparatuses are exempt from the backflow prevention requirements only if fighting fire or training. If training they are asked to notify the City's Collection and Distribution Division. However, if fire apparatus has been used to haul non-potable water, it is to be cleaned and recertified prior to connecting to a City of Eden fire hydrant.

*All double check valve assemblies installed on irrigation systems prior to 2020 shall be allowed to remain in service until they fail and can longer be repaired. At that time, they shall be replaced with a reduced pressure principle assembly in order for the irrigation system to remain in service.

(4) Imminent hazard: If it has been determined a water service customer's private water system has an imminent hazard: the water service customer must install an approved backflow prevention assembly specified by the City of Eden Backflow Administrator and this article. This assembly must be installed within 24 hours of notification from the Backflow Administrator. If the water service customer fails to install the specified assembly within the allowed time period, water service to the water service customer's private water system will be terminated and the water service customer may be subject to civil penalties. In the event the Backflow Administrator is unable to notify the water service customer within 24 hours of determining an imminent hazard exists, the Backflow Administrator may terminate water service until the specified assembly is installed. These actions may be carried out under the Safe Drinking Water Act.

§ 16-54 NOTICE OF CONTAMINATION OR POLLUTION.

(1) In the event the water service customer's private water system becomes contaminated or polluted the water service customer shall immediately notify the City of Eden Backflow Administrator or the Collection and Distribution Superintendent.

(2) In the event the water service customer has reason to believe that a backflow incident has occurred between the water service customer's private water system and the public water system the water service customer shall immediately notify the City of Eden Backflow administrator or the Collection and the Distribution Superintendent so that appropriate actions can be taken to isolate and remove the contamination or pollution.

§ 16-55 VIOLATIONS AND CIVIL PENALTIES.

Notification of violation

- (1) A written notice will be presented to any water service customer/person who has been found to be in violation of any part of this article.
- (2) This first notice must explain the violation and give the time period within which the violation must be corrected.
- (3) A second notice will give 30 additional days to correct all violations as required by this article.
- (4) A third notice will be a civil penalty allowing 15 more days to comply before the penalties begin.
- (5) In the event a water service customer found to be in violation of this article fails to correct the violation within the specified time or, fails to pay any civil penalties expense assessed under this article, water service will be terminated.

A. Civil and other penalties

(1) Unprotected cross-connection involving a private water system, which is of a health hazard: \$1,000.00 per day not to exceed \$10,000.00.

(2) Unprotected cross-connection involving a tank/tanker or other container hooked to a fire hydrant—\$1,000.00 per occurrence.

(3) Unprotected cross-connection involving a private water system, which is of a non-health hazard—\$500.00 per day not to exceed \$5,000.00.

(4) Any violation of the requirements and prohibitions of this Article including failure to address an unprotected cross connection is hereby declared a public nuisance and shall be corrected or abated as directed by the requirements of this Article. Any person(s) creating a public nuisance or failing to abate such shall be subject to the provisions of City Code, Chapter 6 Article II: Nuisances, governing such nuisances, including reimbursing the City of Eden for any costs incurred in removing, abating or remedying said nuisance.

(5) Submitting false records which are required by this article—\$1,000.00. Also, this will result in removal of the tester from the approved testers list. Notification of the school where the

tester was certified and the tester's behavior shall be reported to the North Carolina Division of Water Resources.

(6) Failure to submit records which are required by this article—\$500.00.

(7) Failure to test or maintain backflow prevention assemblies as required by this article—\$100.00 per day up to and including termination of water service.

APPROVED, ADOPTED AND EFECTIVE, this 21st day of January, 2020.

CITY OF EDEN

By: _____
Neville Hall, Mayor

ATTEST:

Deanna Hunt, City Clerk



City of Eden

MANUAL FOR THE PREVENTION OF BACKFLOW AND CROSS-CONNECTION CONTROL

Section 1. POLICY: CROSS-CONNECTION CONTROL

This Program will comply with:

- 1) Federal Safe Drinking Water Act of 1974, 1986 & 1996 (42 US Code, Chapter 6A, Subchapter XII), Title 14 of the Public Health Service Act, Safety of Public Water Systems and the EPA Cross-Connection Control Manual
- 2) North Carolina State Administrative Code (Title 15A, subchapter 18C, including Appendix B figure 2): NORTH CAROLINA GUIDELINES CROSS-CONNECTION CONTROL IN WATER DISTRIBUTION SYSTEMS.
- 3) The Water Use Ordinance City of Eden, Article II, Division 2A.

This Program shall apply to all users connected to the City of Eden Water System.

Section 2. OBJECTIVES:

The specific objectives of the Cross-Connection Control Ordinance are as follows:

- 1) To protect the public potable water supply systems of the City of Eden against actual or potential contamination and pollution by containment within the water customer's water system, contaminants or pollutants which could, under adverse conditions, backflow through uncontrolled cross-connections into the public water systems.
- 2) To eliminate or control existing cross-connections, actual or potential, between the water customer's potable water system(s) and non-potable water system(s).
- 3) To provide a continuing inspection program for cross-connection control that will systematically and effectively control all actual or potential cross-connections which may be installed in the future.

Section 3. RESPONSIBILITIES:

1) Health Agency, NC DEQ, NC DWR

The North Carolina Department of Environmental Quality (Division of Water Resources) has the responsibility for promulgating and enforcing laws, rules, regulations and policies applicable to all water purveyors in the State of North Carolina in carrying out an effective Cross-Connection Program.

2) The City of Eden

The Director of Municipal Services for the City of Eden, as a water purveyor, is responsible for ensuring a safe water supply, beginning at the source and including all of the public water distribution systems, including the service connection, and ends at the point of delivery to the water customer's water system(s). In addition, the water purveyor shall exercise reasonable vigilance to insure that the water customer has taken proper steps to protect the public potable water system. To ensure that the proper precautions are taken, the Director of Municipal Services for the City of Eden or his designated agent, is required to determine the degree of hazard or potential hazard to the public potable water system; to determine the degree of protection required; and to ensure proper containment protection through an ongoing inspection program before and after construction.

3) The Water Customer

The water customer has the responsibility of preventing pollutants and contaminants from entering his/her potable water system(s) or the public potable water system. The water customer's responsibility starts at the point of delivery from the public potable water system and includes all of his/her water system(s).

When it is determined that a backflow prevention assembly is required for the protection of the public water system, then the City of Eden shall require the water customer, at the customer's expense, to install an approved backflow prevention assembly at each service connection.

The water customer, at his/her own expense, shall install, operate, test and maintain approved backflow prevention assemblies as directed by the City of Eden. The water customer shall maintain accurate records of test and maintenance for a period of five (5) years. All rubber parts in these assemblies shall be replaced every five years. The records shall be on forms approved by the City of Eden and shall include the list of materials or replacement parts used. Following any repair, overhaul, re-piping or relocation of an assembly, the water customer shall have the assembly tested to insure that it is in good operating condition and will prevent backflow into the City of Eden's potable water system. Testing, maintenance and repair of backflow prevention assemblies shall be made by an approved certified backflow prevention assembly tester.

4) Certified Backflow Prevention Assembly Testers

The City of Eden shall maintain a list of approved, certified backflow testers for water customers to use for testing and repair of their backflow assemblies.

When directed by the water customer the certified backflow tester shall test, repair, overhaul and maintain all containment backflow prevention assemblies connected to the City of Eden public potable water system.

A backflow prevention assembly tester will have the following responsibilities:

The tester will be responsible for making competent inspections and for repairing or overhauling backflow prevention assemblies and making reports of such repairs to the water customer and the City of Eden on forms approved by the City of Eden. The tester shall include the list of materials or replacement parts used. The tester shall be equipped with and be competent to use all necessary tools, gauges, manometers and other equipment necessary to properly test, repair and maintain backflow prevention assemblies. It will be the tester's responsibility to insure that original manufactured parts are used in the repair or replacement of parts in a backflow prevention assembly. It will be the tester's further responsibility not to change the design, material or operational characteristics of an assembly connected to the City of Eden water distribution system during repair or maintenance without prior written approval of the City of Eden. A certified tester shall perform the work and be responsible for the competency and accuracy of all test and reports. A certified tester shall provide a copy of all test and repair reports to the water customer and to the City of Eden Superintendent of Collection & Distribution within 10 business days of any completed test or repair work. A certified tester shall maintain such records for a minimum period of five (5) years.

All test equipment shall be checked for accuracy annually (at a minimum), and calibrated, if necessary and provide a copy of calibration results to City of Eden. All test and calibration records shall be maintained by the customer for a minimum period of five (5) years.

Section 4. DEFINITIONS:

- 1) **Approved:** Accepted by the Director of Municipal Services a meeting an application specification stated or cited in this regulation, or as suitable for the proposed use.
- 2) **Approved Assembly:** A backflow prevention assembly used for the correct application and meeting approvals by ASSE (American Society of Safety Engineers), ASTM (American Section of the International Association for Testing Materials), USCFCCHR (University of Southern California Foundation for Cross-Connection Control and Hydraulic Research).
- 3) **Backflow:** The term “backflow” shall mean the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of the water customer or the public potable water system from any source or sources.
 - a) **Backpressure Backflow**

A reversal of flow due to an increase in pressure of the water customer’s water system by means of a pump, elevation of piping, heat or steam and/or air pressure, above the supply system pressure at the point of delivery.
 - b) **Backsiphonage Backflow**

A reversal of the normal direction of flow in the pipeline due to a negative pressure (vacuum) being created in the supply system line with the backflow source subject to atmospheric pressure. Examples include a fire truck pulling from the system or a broken water main.
- 4) **Backflow Administrator:** An employee of the City of Eden, trained and certified by the State of North Carolina as a Cross-Connection Control Operator in Responsible Charge, designated to administer and enforce this article, also known as the Cross-Connection Control Technician.
- 5) **Backflow prevention Assembly – Approved:** A backflow prevention assembly that is approved by the City of Eden to prevent backflow into a potable water system. The type of assembly used should be based on the degree of hazard either existing or potential (as defined herein). The types are:
 - a. Fixed Air Gap (AG)
 - b. Double-Check Valve Assembly (DCVA)
 - c. Double-Check Detector Assembly (Fire System) (DCDA)
 - d. Reduced Pressure Zone Assembly (RPZ)
 - e. Reduced Pressure Zone-Detector Assembly (Fire System) (RPDA)
- 6) **Certified Backflow Prevention Assembly Tester:** A person who has proven their competency to the satisfaction of the City of Eden. Each person who is certified to make competent tests, or to repair, overhaul, and make reports on backflow prevention assemblies shall be knowledgeable of applicable laws, rules, and regulations and must hold a current certificate of completion (not more than two years

old) from a training program in the testing and repair of backflow prevention assemblies that is approved by the City of Eden.

- 7) **Containment:** The prevention of backflow from a non-potable system utilizing an approved, properly functioning backflow prevention assembly which is installed, operated, and maintained in accordance with the provisions of this article.
- 8) **Contamination:** An impairment of the quality of the water, that creates an actual hazard to the public health through the introduction of hazardous or toxic substances or waterborne health hazards in the form of physical or chemical contaminants or biological organisms and pathogens.
- 9) **Cross-connection:** Any actual or potential connection or piping arrangement between a potable water supply and any other non-potable source or system whereby water or other liquids, mixtures, or substances may flow into or enter the potable water supply system. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary or permanent devices through which or because of which backflow can or may occur are considered to be cross-connections.

10) Hazard (Health/Severe)

An actual or potential threat of **contamination** of a physical, chemical or biological to the public or water customer's potable water system to such a degree or intensity that there would be a danger to health.

- a. **Physical** - radioisotopes/radionuclides;
- b. **Chemical** - lead, mercury and other heavy metals, organic compounds, other toxic and hazardous substances;
- c. **Biological** - microorganisms and pathogens such as cryptosporidium, typhoid, cholera, legionella and E. Coli

11) Hazard (Imminent): An immediate threat of contamination to the public water system that could cause serious illness or death.

12) Hazard (Non-health): An actual or potential threat of damage to the physical components comprising the public water system or to a water service customer's potable water system, or of pollution to the public water system or to a water service customer's potable water system.

13) Hydrant Meter: A water meter designed to be connected to a fire hydrant for the purpose of obtaining water on a temporary basis where no regular water connection is available that will perform the purpose needed. This device should include a Reduced Pressure Zone (RPZ) backflow preventer to protect the potable water system from contamination. This assembly shall be fitted 2 ½ inch fire hose connection.

14) Isolation: The prevention of backflow in which a backflow preventer, such as a hose bib or an atmospheric vacuum breaker, is located to correct a cross-connection at a specific location on a private potable water system rather than at a water service connection. This protects the drinking water in the building and is covered by NC Plumbing Code.

- 15) Owner:** Any person who has legal title to, or license to operate or habitat in, a property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.
- 16) Person:** Any individual, partnership, company, public or private corporation, political subdivision or government agency or any other legal entity.
- 17) Pollution.** An impairment of the quality of the water to a degree which does not create an actual hazard to the public health, but which does adversely and unreasonably affect the aesthetic qualities of such waters for domestic use.
- 18) Potable Water:** Water from any source which has been approved for human consumption by the State of North Carolina, Department of Environmental Quality, Division of Water Resources, Public Water Supply Section.
- 19) Private Water System:** Any water system located on the water service customer's premise, whether supplied by public potable water or an auxiliary water supply. The system or systems may be either a potable water system or an industrial piping system.
- 20) Public Potable Water System:** The potable water system owned and operated by the City of Eden. This includes all storage tanks, distribution mains, lines, pipes, connections, fixtures and other facilities, conveying potable water from the water treatment plants to the service connections of each water service customer.
- 21) Service Connection:** The terminal end of a service connection from the public potable water system, i.e., where the City of Eden loses jurisdiction and control over the water at its point of delivery to the water customer's water system.
- 22) Water Purveyor:** The owner or operator of a public potable water system, providing an approved water supply to the public.
- 23) Water Supply (Auxiliary):** Any water supply on or available to the water customer's premises other than the water purveyor's public potable water system. The auxiliary water may include water from another purveyor's public potable water system or any natural source such as a well, spring, river, stream, etc., and used or objectionable.
- 24) Water Supply (Unapproved):** Any water supply, which has not been approved for human consumption by the State of North Carolina, Department of Environmental Quality, Water Resources Division, Public Water Supply Section.

Section 5. RIGHT OF ENTRY:

Authorized representative(s) from the City of Eden shall have the right to enter, upon presentation of proper credentials and identification, any building, structure, or premises during normal business hours, or at time during the event of an emergency, to perform any duty imposed by this Ordinance. Those duties may include sampling and testing of water, or inspections and observations of all piping systems connected to the public water supply. Where a water customer has security measures in force which would require proper identification and clearance before entry into their premises, the water customer shall make necessary arrangements with the security guards so that upon presentation of suitable identification, City of Eden personnel will be permitted

to enter, without delay, for the purposes of performing their specific responsibilities. Refusal to allow entry for these purposes may result in discontinuance of water service.

On request, the water customer shall furnish to the City of Eden any pertinent information regarding the water supply system on such property where cross-connections and backflow are deemed possible.

Section 6. ELIMINATION OF CROSS-CONNECTIONS:

- 1) Cross-Connection Control is not subject to any grandfathering. When cross-connections are found to exist, the owner, his/her agent, occupant, or tenant will be notified in writing to disconnect the same within the time limit established by the City of Eden. Degree of protection required and maximum time allowed for compliance will be based upon the potential degree of hazard to the public water supply system. The maximum limits are as follows:
- 2) Cross-connections with private wells or other auxiliary water supplies require *immediate* disconnection.
- 3) All facilities which pose a health hazard to the potable water system must have a reduced pressure zone backflow prevention assembly within 60 days of notification by the City of Eden.
- 4) All industrial and commercial facilities not identified as a “health hazard” shall be considered non-health hazard facilities. All non-health hazard facilities must install a double check valve assembly within 90 days of notification by CITY OF EDEN.
- 5) If, in the judgment of the Municipal Services Director, **an imminent health hazard** exists, water service to the building or premises where a cross-connection exists **SHALL be terminated unless an air gap is immediately provided or the cross-connection is immediately eliminated.**
- 6) In the event that a City of Eden Cross-Connection Control Representative does not have sufficient access to every portion of a private water system to allow a complete evaluation of the degree of hazard associated with such private water system, an approved reduced pressure zone assembly shall be required as a minimum of protection.
- 7) No person shall fill special use tanks or tankers from the public water system except at a location equipped with an inspected and approved air gap or an approved reduced pressure zone backflow prevention assembly properly installed on the public water supply. The City of Eden may provide protected fill station locations for tanks and tankers without backflow prevention to fill at.

Section 7. INSTALLATION OF ASSEMBLIES:

- 1) All backflow prevention assemblies shall be installed in accordance with the specifications furnished by the City of Eden and the manufacturer’s installation instructions and/or the latest edition of the North Carolina Building Code, whichever is most restrictive.

- 2) All new construction plans and specifications, when required by the North Carolina Building Code and the North Carolina Division of Health Services, shall be made available to the City of Eden for review and approval and to determine the degree of hazard.
- 3) Ownership, testing and maintenance of the assembly shall be the responsibility of the water customer.
- 4) All containment backflow prevention assemblies are to be installed on the customer's water service after the water meter and prior to any pressure reducing valves, branches or fixtures
- 5) All double check valve assemblies for containment may be installed in below ground boxes with a drain to atmosphere wherever below ground installation is possible. Above ground installation may be required in areas where a below ground installation would submerge the assembly. This requires an insulated box with the ASSE 1060 rating. Heat must be supplied to the above ground box if the water is used year around.

*Where drain to atmosphere is not available within 12 feet of the below ground installation a 12 inch clean stone bed, 57s preferred, may be used instead as long as water does not submerge any part of the installation including the required clearance, the inspector may require an above ground installation where necessary.

- 6) Reduced pressure zone assemblies must be installed in a horizontal position and in a location in which no portion of the assembly can become submerged in any substance under any circumstances. Containment installations are to be in an above ground in an insulated box with the ASSE 1060 rating. Heat must be supplied to the above ground box if the water is used year around. Installations in a below ground box / vault below grade are prohibited.
- 7) Double check valve assemblies and reduced pressure zone assemblies may be installed in a vertical position with proper USCFCCCHR approvals, provided the flow of water is in an upward direction.
- 8) The installer is responsible to make sure a backflow prevention assembly is working properly upon installation and is required to furnish the following information to the City of Eden within 15 days of installation.
 - a. Service address where assembly is located.
 - b. Owner (and address if different from service address).
 - c. Description of assembly's location on property.
 - d. Date of installation.
 - e. Installer's name, plumbing company or utility contractor represented, license number, and project permit number).
 - f. Type and size of assembly, manufacture, model and serial numbers.
 - g. Test results / report.
- 9) Following installation all approved backflow prevention assemblies shall be tested within ten (10) days by an approved certified backflow prevention assembly tester.
- 10) Provisions shall be made for a "parallel installation" of backflow prevention assemblies when it is not possible to interrupt water service for testing, repair or replacement. The

City of Eden will not accept an unprotected bypass around a backflow prevention assembly.

11) Upon written notification from the City of Eden, the customer shall install the appropriate approved backflow prevention assembly within the following time frame:

Health Hazard	60 days
Non-Health Hazard	90 days

Section 8. TESTING AND REPAIR OF ASSEMBLIES:

- 1) All initial and follow up testing and repair of backflow prevention assemblies shall be made by certified backflow prevention assembly tester who is on the City of Eden’s “Approved Backflow Testers List”, at the customer’s expense. The initial test shall be performed and the paperwork submitted to the City of Eden within ten days of installation or initiation of water service with the City and the assembly is to be tested annually thereafter. A record of all testing and repair is to be retained by the customer for a period of five (4) years. Copies of the records must be provided to the City of Eden’s O.R.C. for Cross-Connection Control within ten (10) business days after completion of any test and/or repair work.
- 2) Any time that repairs to backflow prevention assemblies are deemed necessary, whether through annual or required testing or routine inspection by the owner or by the City of Eden, these repairs must be completed within a specified time in accordance with the degree of hazard. In no case shall this time period exceed:
 - a. Health Hazard Facilities – 14 days
 - b. Non-Health Hazard Facilities – 21 days.
- 3) All certified backflow prevention assembly testers must obtain and employ backflow prevention assembly test equipment which has been evaluated and/or approved by the City of Eden. All test equipment shall be checked for accuracy annually and calibrated, if necessary. Testing and calibration records shall be retained by the tester for a period of five (5) years. Copies of test reports must be provided to the City of Eden, Superintendent of Collection & Distribution within ten (10) business days after testing. Current certifications and calibration forms must be submitted prior to testing any backflow prevention assembly connected to the City of Eden’s potable water system.
- 4) It shall be unlawful for any customer or certified tester to submit any record to the City of Eden which is false or incomplete in any material respect. It shall be unlawful for any customer or certified tester to fail to submit the City of Eden any record which is required by the City of Eden’s Cross-Connection Control Ordinance. Such violations may result in any of the enforcement actions outlined in the ordinance.
- 5) The City of Eden shall maintain and overhaul all residential dual-check backflow preventers.

Section 9. FACILITIES REQUIRING PROTECTION:

Approved backflow prevention assemblies shall be installed on the service line to any premises that the City of Eden has identified as having a potential for backflow. The following types of facilities or services have been identified by the City of Eden as having a potential for backflow of non-potable water into the public water supply system. Therefore, an approved backflow prevention assembly will be required on all such services according to the degree of hazard present. Other types of facilities or services not listed below may also be required to install approved backflow prevention assemblies if determined necessary by the City of Eden. As a minimum requirement, all commercial services will be required to install a Double Check Valve Assembly, unless otherwise listed on the following page.

Degree of Hazard:	RPZ or RPDA	DCVA or DCDA	AG
Health hazard	X		X
Non-health hazard		X	
AG = Air gap			
DCVA = Double check valve assembly			
DCDA=Double Check Detector Assembly (Fire protection systems w/o chemicals or pumps)			
RPZ = Reduced pressure zone assembly			
RPDA=Reduced Pressure Detector Assembly (Fire protection systems with chemicals and/or pumps)			

a. Residential dual check valve. If no other backflow prevention assembly is specified a dual check valve assembly must be installed on all private water systems.

b. Non-health hazard.

1. Connection to tanks, lines, and vessels that handle non-toxic substances.
2. **Fire sprinkler systems without chemicals.**

3. Most commercial establishments.
4. Churches.
5. Other facilities as determined by the Backflow Administrator.

c. Health hazard.

1. Irrigation systems
2. Wastewater treatment plants.
3. Beauty shop and salons.
4. Connection to tanks, lines, boilers or vessels that handle sewage, lethal substances, toxic or radioactive substances.
5. Connection to an unapproved water system or auxiliary water supply.
6. Buildings with five or more stories above ground.
7. Hospitals and other medical facilities.
8. Morgues, mortuaries and autopsy facilities.
9. Metal plating facilities.
10. Breweries, bottling plants
11. Schools, daycares and colleges.
12. Bakeries, restaurants, etc.
13. Solar hot-water systems
14. Canneries.
15. Battery manufacturers.
16. Exterminators and lawn care companies.
17. Chemical processing plants.
18. Dairies.
19. Film laboratories.
20. Car wash facilities.
21. Dye works.
22. Laundries.
23. Swimming pools.
24. Waterfront facilities.
25. Concrete/ asphalt plants.
26. Airports.
27. Oil and gas production, storage, or transmission facilities.
28. Sand and gravel plants.

29. Furniture manufacturing plants.
30. Interconnection with other water purveyor's potable water systems
31. Gas/service stations.
32. Other facilities as determined by the Backflow Administrator.

All assemblies and installations shall be subject to inspection and approval by the City of Eden.

Section 11. CONNECTION WITH UNAPPROVED SOURCES OF SUPPLY:

- 1) No person shall connect or cause to be connected any supply of water not approved by the North Carolina Department of Environment and Natural Resources to the water system supplied by the City of Eden. Any such connection allowed by the City of Eden must be in conformance with the backflow prevention requirements of this Ordinance.
- 2) In the event of contamination or pollution of a public or water customer potable water system, the water customer shall notify The City of Eden immediately in order that appropriate measures may be taken to overcome and eliminate the contamination or pollution

Section 12. FIRE PROTECTION SYSTEMS:

- 1) All connections for fire protection systems shall be protected by backflow prevention assemblies meeting **FM** (Factory Mutual) and **UL** (Underwriters Laboratories) approval for installation on fire protection systems. All connections for fire protection systems connected with the public water system shall be protected with an approved **double check detector assembly (DCDA)** as a minimum requirement. All fire systems using toxic additives or booster pumps shall be protected by an approved, **reduced pressure detector assembly (RPDA)** at the main service connection. *A detector assembly is a type of backflow preventer that is **designed** with a bypass to a second smaller backflow preventer in order to measure usage of "unmetered" water in order to detect leaks or illegal usage.*
- 2) All existing backflow prevention assemblies that were initially approved by the City of Eden shall be allowed to remain on the premises, as long as they are being properly maintained, tested and repaired as required by this Ordinance. If, however, the existing assembly must be replaced (once it can no longer be repaired), or in the event of proven water leakage or theft through an un-metered source, the water customer shall be required to install an approved **double check detector assembly(DCDA)** or as required by this provision.

Section 13. ENFORCEMENT

- 1) The water customer, owner, manager, supervisor or person in charge of an installation found not to be in compliance with the provisions of the City of Eden's ordinance for Cross-Connection Control shall be notified in writing with regard to the corrective action(s) to be taken.
- 2) The water customer, owner, manager, supervisor or person in charge of any installation which remains in non-compliance after the time prescribed in the initial notification, as outlined in the City of Eden's Cross-Connection Control Ordinance, and may be issued a notice of non-compliance by the City of Eden. The notice of violation (NOV) shall specify the nature of the violation and the provision(s) of the Ordinance violated, and further notify the offender of the civil penalty for said violation and is to be paid to the City of Eden, North Carolina.
- 3) If, in the judgment of the City of Eden, any water customer, owner, manager, supervisor or person in charge of any installation found to be in non-compliance with the provisions of the City of Eden Cross-Connection Control Ordinance, neglects their responsibility to correct any violation may result in the **termination of water service** until compliance is achieved.
- 4) Failure of a water customer or certified tester to submit any record required by this Ordinance, or the submission of falsified reports/records may result in a civil penalty of up to **\$1000.00** per violation. **If a certified backflow prevention assembly tester submits falsified records to the City of Eden, the City shall permanently refuse acceptance of any reports or records from such tester, notify the school that certified the tester as well as other public potable water systems where this tester may also be operating. The tester's behavior shall be reported to the North Carolina Division of Water Resources.**
- 5) Failure of a water customer to test or maintain backflow prevention assemblies as required shall be subject to a civil penalty of **\$100.00** per day leading up to termination of water service.
- 6) Enforcement of this program shall be administered by the Municipal Services Director for the City of Eden or his/her authorized representative.

Standards Organizations for Backflow Prevention Assemblies

ASSE: The American Society of Sanitary Engineering.

ASTM: American Society for Testing and Materials International

AWWA: American Water Works Association

***FM:** Factory Mutual

***UL:** Underwriters Laboratory

USCFCCCHR: University of Southern California Foundation for Cross-Connection Control and Hydraulic Research

APPROVED TESTER CERTIFICATION SCHOOLS

(Certification Renewal Every Two Years)

Fayetteville Public Works Commission

Tim Davis
P.O. Box 1089
Fayetteville, NC 28302
Tele: (919) 223-4699

Charlotte-Mecklenburg Utility Department Engineering Division

Mark Krouse
5100 Brookshire Boulevard
Charlotte, NC 28216
Tele: (704) 399-2426

Greenville Utilities

Water Resources Department

Deanna Castellow
PO Box 1847
Greenville, NC 27835
Tele: (252) 551-1551 or (252) 551-3399

NC Rural Water Association

Mac Merritt
Tele:(336) -731-6963
Email: training@ncrwa.com

**University of Southern California
Foundation of Cross-Connection Control and Hydraulic Research**

School of Engineering
BHE - 315 University Park MC-0231
Los Angeles, California 90089-0231
Tele: (866) 545-6340
Email: fccchr@usc.edu

University of Florida
Center for Training Research and Education for Environmental Occupations (TREEO)
3900 SW 63rd Boulevard
Gainesville, Florida 32608
(904) 392-9570

**City Manager's Report
January 2020**

BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

INDUSTRY

Gildan Yarns

Gildan is seeking machine electricians, spinning and carding technicians, spinning and carding operators, and can haulers. There are some day shift positions, but the majority of these openings are on the night shift. Most positions are for 12-hour shifts on a 2-2-3 schedule. For more information, visit their 335 Summit Road facility.

Armor Express (Formerly KDH Defense Systems)

Armor Express has merged with KDH Defense Systems. The new company will be called Armor Express. Currently, they employ 300 people in their Eden facility. They have immediate openings for sewers, inspectors and utility workers. They offer a competitive compensation package including health and dental insurance, paid time off and 401K. Send your resume to nshreve@kdhtech.net or visit their 750A Fieldcrest Road facility.

NC Works and U.S. Census Quick facts data

- The current Rockingham County unemployment rate is 4.0%; it is 3.8% for the state and 3.5% for the U.S., the lowest rate in 50 years.
- 811 jobs are available in Rockingham County.
- Eden's poverty rate has dropped 25% since 2016 although it is higher than state average.

UNC Rockingham Health Care Implements Flu Restrictions

UNC Rockingham Health Care has implemented flu restrictions as a precaution to protect patients, families and staff from exposure to influenza. A rapid increase in flu cases in UNC Rockingham facilities and in the area prompted the decision that was made on Jan. 9.

These temporary restrictions are in place:

- Children ages 11 and younger are asked not to visit patients at UNC Rockingham Hospital or residents at UNC Rockingham Rehabilitation and Nursing Care Center.
- People who have symptoms such as fever, sore throat, cough, nasal congestion or body aches should not visit the facilities

Flu, a contagious respiratory illness, is a virus that is spread mainly by droplets that occur when people with flu cough, sneeze or talk. It can also spread by touching surfaces that may have been exposed to the virus droplets. Flu can be mild to severe and can lead to death.

The best protection against flu is to get a flu vaccine. Conditions at UNC Rockingham Health Care facilities will be monitored and restrictions will be lifted when it is determined that it is safe to do so.

MVP Pipeline

Mountain Valley Pipeline, LLC announced its proposed 74-mile interstate natural gas transmission pipeline in 2008. It is designed to meet customer demand for low-cost natural gas supply access in southern Virginia and central North Carolina. Dominion Energy North Carolina (DENC), formerly PSNC Energy, is a local natural gas distribution company that signed a long-term agreement to purchase natural gas from MVP Southgate. The North Carolina Utilities Commission has recognized MVP Southgate as the best option for meeting DENC customers' growing demand for natural gas. Project facts:

- A majority of the route is collocated along existing natural gas and electric transmission line corridors.
- Survey work has been completed on 95 percent of the route.
- A majority of the project right-of-way has been acquired.
- Construction is targeted to start in 2020.
- In-service date is projected to be 2021.
- MVP has worked collaboratively with state regulators (NCDEQ) and has determined the project would result in:
 - No permanent impact to streams in NC
 - No permanent loss of wetlands in NC
 - No crossing of the Haw River

Duke Energy

Duke Energy offered tours of its Belews Creek facility in December of 2019. Some interesting facts were provided attendees:

- Duke Energy serves 7.5 million customers impacting 23 million lives.
- Belews Creek is a 50% coal/50% natural gas facility.
- The company goal is to reduce emissions by 30% by 2030 and 100% by 2050 (although the technology does not yet exist to reach the latter goal).
- There has been a 70% reduction in ash produced by their plants over the last decade.
- 0% of ash is going into basins as of early 2019. More ash will be recycled than produced once three recycling units are opened.
- The EPA has determined that coal ash is non-hazardous with less than 1% containing trace elements.
- Thousands of monitoring wells show groundwater impacts are not reaching neighborhood wells.

Envision Career Expo

This event will expose Rockingham County seventh graders to available jobs in area companies on the RCC campus on April 2. Area companies will showcase their operations. Small business and industry will participate. Many of Eden's local industry partners have expressed interest in participating. The event will open remain open until 6 p.m. that evening for adults interested in learning more about area companies.

COMMERCIAL

Lidl

The company is finalizing a deal with a broker to represent the building. This resulted after much prodding by the City to put it on the market.

Skywalker Windows & Siding

Skywalker Windows & Siding is a full-service, family-owned home improvement solutions provider that is proud to be your contractor of choice, headquartered in Stokesdale, but formerly of Eden. They bring extensive experience in windows replacement, vinyl siding and siding replacement, and other related services to Rockingham County and the rest of the Piedmont Triad. They have completed 15,500 projects and counting, and are proud to say that they have a 99% customer approval rating and maintain an A+ rating with the Better Business Bureau. Skywalker is one of the most respected, trusted, and awarded home improvement contractors serving Rockingham County and other areas of NC and VA. They would love to discuss how they can help meet your individual needs too. Call 336-265-9595 for more information.

Belladonna Antiques and Interiors

A shop filled with cherished interior products is located at 646 Washington Street in Eden. Owners Mark Stevens and Eddie Vernon have just the right item you will need to complete your interior home renovation. They are open Monday-Saturday and can be reached at 336-623-0984.

COMMERCIAL DISTRICTS

Old Leaksville Commercial District

Work at 620 Washington Street has ramped up dramatically. Five new apartments will be ready for rent February 6. Three apartments have been preleased. The pedestrian passage to the Bridge Street parking lot will be finished in the next phase of construction.

Family Video has announced they are closing their Bridge Street location. They are currently liquidating their inventory.

The Dancewear Boutique at 640 Washington Street has received massive upgrades. New plumbing, HVAC, flooring, lighting has been installed. Painting inside is complete and a new paint scheme for the exterior will be completed as the temperatures warm.

The Hair Company at 624 Monroe Street celebrated its 45th year in business in December. They will be recognized for this achievement at the January City Council meeting.

A CrossFit St. Paddy's Smackdown is scheduled March 24. Contestants from 10 other states have been invited to compete. Seventy-two two-person teams can compete, and most teams will bring several spectators.

Eden Downtown Development Inc.

The December EDDI meeting voted in members for the 2020-2023 term. City Council designated Phil Hunnicutt to serve as a non-voting liaison between the Board and City body.

The term of office will be one year, yet the liaison may serve as many consecutive years as the Board designates.

Boulevard Merchants

The merchants have planned their 2020 calendar of events. Food Truck Rodeos are planned for April 18 and August 8, Cars and Crabs are May 23 and October 17, Halloween parade October 31, and an Adult Easter Egg Hunt April 11. A prayer walk is scheduled January 25.

Klyce Street Landing

Stairs have been installed. A concrete pad is being poured at the base and a bulkhead is being installed. Landscaping and signage should complete the project in time for spring.

Entrepreneurship Training

Main Street Manager Randy Hunt received Facilitator Certification for Entrepreneurship Mindset authorizing training for Ice House Entrepreneurship programs. This curriculum will be used in the series of entrepreneurial classes soon to be offered in a joint project with the city, county and community college.

TOURISM & EVENTS

Event Entertainers

Calling all bands! We are already planning for RiverFest 2020! If your band is interested in performing please submit an EPK or detailed information to Cindy Adams at cadams@edennc.us. The dates for this year are September 18 and 19. Local and regional bands will play on two stages Saturday. Thank you and we look forward to listening to your music!

Rivers & Trails Group

The Rivers & Trails Group will meet Wednesday, January 29 at 3:30 in the front conference room at City Hall located at 308 E. Stadium Drive.

Pottery Festival

We would like to invite all our talented potters to apply for our upcoming 18th Piedmont Pottery Festival that will take place Saturday, June 6. Applications can be found on ExploreEdenNC.com or can be obtained in the Tourism Office at City Hall or can be mailed to you. Please call 336-612-8049 for more information.

Heritage & Heroes

Mark your calendars now for a very exciting new event coming October 17 of 2020! More information coming soon. You do not want to miss it!

PARKS & RECREATION

Staff will conduct the Monthly Pod Cast with Mike Moore Media on Parks and Recreation on February 7 and attend a Be Healthy Rockingham County Meeting on February 12.

The City's Youth Basketball program is in full swing and players are practicing and playing at the Bridge Street Recreation Center and the Mill Avenue Gym. There are games scheduled with the

Parks & Recreation teams, Eden YMCA and the Eden Boys and Girls club. Games will continue through March and will conclude with the Rockingham County Youth Basketball Tournament.

PLANNING & INSPECTIONS

Code Enforcement

Eight notices were mailed by certified mail and first class mail that affect the following number of properties: two for violation of the Non-Residential Building Maintenance Standards and two for zoning violations. Staff has reviewed the current Code Compliance Report and plan to revisit all properties listed on the report to establish the current condition of the property and proceed with the necessary action to abate the violations.

Collections

Statements were mailed to all property owners with an outstanding balance for code enforcement action. The buyer of the property at 416 Decatur Street delivered a certified check for the balance due and the Facility Maintenance Department was notified that they no longer needed to mow the property.

Unified Development Ordinance

On January 9 at a special meeting of the Eden City Council, a presentation was made regarding the process for the development and adoption of updated land use regulations for the City. The new regulations will also meet the deadline for statutory compliance with the new enabling legislation for land use planning that will be effective as of January 2021. Chad Sary from Stewart Inc. made the presentation.

Community Appearance Commission

Commission discussed possible projects and budget items for upcoming year, including: downtown banners; Draper downtown sign; downtown planters; new American flags. A representative from the Boulevard Merchants also attended to discuss possible projects for The Boulevard. Community Appearance Award went to Planet Fitness.

Historic Preservation Commission

Upcoming meeting on Jan. 13 and will discuss possible projects and budget items for upcoming year including: new historic district signs; state historic marker for Draper Speedway; historic property inventory updates. Commission also plans to adopt a resolution in support of renaming the Washington Street Park in honor of Jean Harrington.

Vacant Commercial Property Registration

Preparing second letter to send to vacant downtown property owners who did not respond to first letter. Civil penalties may be applied if property owners do not reply to this letter.

Sight Obstruction Ordinance

Codes Inspector Josh Woodall and Engineering's Kevin London have been working to make changes to the current sight obstruction triangle ordinance. They have studied other communities' ordinances and gone out and looked at various situations that would not be covered by our current sight triangle ordinance.

CITY OF EDEN, N.C.

The regular meeting of the City Council, City of Eden, was held on Tuesday, December 17, 2019 at 6 p.m. in the Council Chambers, 308 E. Stadium Drive. Those present for the meeting were as follows:

Mayor:	Neville Hall
Council Members:	Jerry Epps Sylvia Grogan Jim Burnette Angela Hampton Darryl Carter
Council Members Elect:	Bernie Moore Phil Hunnicutt Jerry Ellis Bruce Nooe
Interim City Manager:	Terry Shelton
City Clerk:	Deanna Hunt
City Attorney:	Erin Gilley
News Media:	Roy Sawyers, Rockingham Update Mike Moore, Mike Moore Media Lisa Griffith, Eden's Own Journal

MEETING CONVENED:

Mayor Hall called the regular meeting of the Eden City Council to order and welcomed those in attendance. He explained that the Council met the third Tuesday of each month at 6 p.m. and worked from a prepared agenda; however, time would be set aside for business not on the printed agenda.

INVOCATION:

Pastor Lem Hardison of North Spray Christian Church gave the invocation followed by the Pledge of Allegiance led by Fire Chief Tommy Underwood.

RECOGNITIONS & PROCLAMATIONS:

- a. Recognition of Bayberry Retirement Inn's 30th Anniversary.

Mayor Hall called on Economic Development Director Mike Dougherty.

Mr. Dougherty said the Eden Bayberry was one of six of the facilities, also located in West Virginia and South Carolina. The Bayberry prided on creating a welcoming, home-like environment and believed the enhanced intimacy their facility provided translated to better quality of life.

Mayor Hall presented Bayberry Retirement Inn Director Jenny Jones with a plaque to commemorate the Inn's 30 years of business in Eden.

Ms. Jones said the Bayberry was proud to be in their 30th year of serving seniors.

- b. Recognition of Tri-City Glass & Mirror Co.'s 70th Anniversary.

Mr. Dougherty said owner Dana Hussey was president and his son Dustin was vice president. Some of the company's employees had been there as long as 25 years. When the Eden Sheetz was being built, they had a problem with their Pennsylvania glass supplier, creating an opening for what was now a still-strong partnership with Tri-City Glass & Mirror Co. As of November, Tri-City had provided glass for more than 100 Sheetz stores. Mr. Dougherty thanked the Husseys for their long-term investment and jobs in the community.

Mayor Hall presented the Husseys with a plaque to commemorate their 70 years of business in Eden.

Dana Hussey said being in business that long took hard work and good employees and he was thankful. The Lord had blessed their organization. Agnes Martin, wife of Robert Martin and one of the founders of the business in 1949, was there with him at the meeting and he wanted to share that honor with her.

c. Proclamation honoring Dana Weston.

Mr. Dougherty called Ms. Weston, Cornelius Graves and Council Member Burnette to the front.

Mr. Dougherty said for five years Ms. Weston had been involved in the community, first as a consultant and then as president of the hospital. She had been a dynamic and award-winning leader, fierce proponent of the hospital and a friend to Eden. She helped save the hospital, Eden's largest employer. He recognized Council Member Burnette as being on the UNC Rockingham Health Care Board of Trustees and was in the trenches with Ms. Weston when the hospital went through its difficulties. With the help of many people and under Ms. Weston's leadership, the hospital started a new path in the UNC system. A few years before, he attended a meeting at the hospital that Ms. Weston was presiding over. At that meeting, a cafeteria employee brought Ms. Weston a cup of coffee and hugged her. Only an employee shown respect and appreciation from the hospital president would have done that. Ms. Weston was one of the most talented speakers he had ever had the pleasure of hearing. Her 2016 RCC commencement speech was something to google and enjoy. She mentioned Eden fondly in many of her speeches across the state. He thanked Mr. Graves for his support of Ms. Weston and had enjoyed getting to know him. The couple had recently become engaged. They knew Eden would not keep someone as talented as Ms. Weston for long and they were sad to see her go.

PROCLAMATION HONORING DANA WESTON

WHEREAS, Dana Weston first came to Eden in 2014 as a consultant with Novant Health and in 2015 was named president of Morehead Memorial Hospital, bringing a wealth of energy and talent to the position; and

WHEREAS, Dana managed the difficult task of shepherding the hospital through a bankruptcy and into the UNC Health Care system as UNC Rockingham Health Care, giving new hope and optimism to the Eden community and its largest employer; and

WHEREAS, the employees at UNC Rockingham Health Care admired and respected Dana's work ethic and dedication as she navigated the arduous process of converting the hospital into the UNC system; and

WHEREAS, Dana also found time to serve on the boards of the Eden YMCA, United Way, and Citizens' for Economic Development, providing her valuable expertise; and

WHEREAS, Dana assumed the chairman's position of the Eden Strategic Planning Commission, leading the members in support of projects resulting in the betterment of the Eden community; and

WHEREAS, Dana used her frequent speaking engagements to promote the welcoming nature of Eden and benefits of living in our City; and

WHEREAS, Eden is a far better place for having Dana Weston as one of its residents; an inspirational leader, citizen and advocate who so many people admire,

NOW, THEREFORE, BE IT RESOLVED that the Eden City Council does hereby honor Dana Weston for her leadership and commitment to the hospital and the Eden community at large and someone who will be greatly missed.

This the 17th day of December, 2019
Neville Hall, Mayor
ATTEST: Deanna Hunt, City Clerk

Ms. Weston said she moved to Eden with the goal of giving everything she had to the community and she wanted to thank the community for giving her more than she could have ever given them. Eden would always have a special place in her heart.

d. Recognition of outgoing Council Members Jim Burnette and Sylvia Grogan.

Mayor Hall said Council Member Grogan came with experience as a former educator and a leader in local and national organizations. She obtained her bachelor's degree from UNC-G and taught at Newport News High School, Morehead High School and Rockingham Community College. She retired from the public relations and marketing departments at Morehead Memorial Hospital and had served on that hospital's board of trustees. She had a long history with the American Heart Association, having served as president of the Rockingham County Heart Association, first female chair of the North Carolina Heart Association Board, first female chair of the Mid-Atlantic Regional Heart Committee and part of the national center's speaker's bureau. Among her many local leadership titles, she was president of the Eden Junior Woman's Club, president of the Eden Junior Service League, president of the Rockingham County Community Services Council, chair of former state Sen. Bill Goldston's Senate campaign and co-chair of Rockingham County Healthy Carolinians. She also served on the organization founding groups of HELP, Inc., Cooperative Christian Ministries, the Rockingham County Education Foundation and the Literacy Project for preschool children for Rockingham County Schools. She was in the Rockingham County Democratic Party Hall of Honor and held a Governor's Award for Volunteerism. Her late husband John was the former mayor and a long-time member of Council. Their family had contributed an unmeasurable amount of time and effort into Eden. He thanked Council Member Grogan for her service and presented her with a framed painting.

Council Member Grogan said someone had asked that day if she was glad to be leaving Council and she said no, but she was happy to turn the seat over to the Council Member Elect Hunnicutt. It was amazing what she had learned on Council and studying what was best for the City. It had been one of the greatest learning experiences of her life. The people there had been so supportive.

Council Member Burnette was a past board member of the Eden Chamber of Commerce, founding member and past chair of the Rockingham County Education Foundation, past board member of the Rockingham County Red Cross, past chair of the Rockingham County United Way, SCORE member assisting small businesses, member of Strive Literacy Workshop for Childhood Education, past chair of Morehead Memorial Hospital, board member and Council liaison to the Eden Downtown Development Corporation, chair of the Eden Family YMCA Board of Directors, finance chair of UNC Rockingham Health Care Board of Directors, board member of Rockingham County Foundation, founder and advisor of the Eden Youth Council, Council Member since 2007 and Mayor Pro Tem since 2013. Mayor Hall said they were thankful for the amount of time Council Member Burnette had given to the City, City Council and all the organizations he had mentioned. He had been a great mentor to and was a great friend of

Mayor Hall. He thanked Council Member Burnette for his service and presented him with a framed painting.

Council Member Burnette said had enjoyed his time on Council and felt progress had been made. There were some things in place so that progress would continue and he was pleased to have been part of that. He looked forward to helping the Council and City any way he could.

Mayor Hall called the Eden Youth Council forward and member Harrison Smith read a framed plaque the group presented to Council Member Burnette: you led by example, influenced greatness, created opportunities, inspired creativity, went above and beyond, motivated our team, nurtured new ideas, inspired us to achieve, demonstrated conviction, strengthened bonds, expanded potential, uncovered solutions, promoted cooperation, rose to the challenge, believed in our mission, accomplished goals, made things happen, left an impression, touched lives and made a difference.

OATHS OF OFFICE:

- a. Introduction of the Honorable Judge Stan Allen.

Mayor Hall said Judge Allen was elected as Superior Court Judge on November 4, 2014 for an eight-year term. Judge Allen had been involved in the community for a long time.

- b. Swearing in of newly elected Council Member Bernie Moore – Ward 1.

Council Member Moore was sworn in by Judge Allen.

- c. Swearing in of newly elected Council Member Bruce Nooe – Ward 2.

Council Member Nooe was sworn in by Judge Allen.

- d. Swearing in of newly elected Council Member Phil Hunnicutt – Ward 6.

Council Member Hunnicutt was sworn in by Judge Allen.

- e. Swearing in of newly elected Council Member Jerry Ellis – Ward 7.

Council Member Ellis was sworn in by Judge Allen.

SELECTION OF MAYOR PRO TEM:

A motion was made by Council Member Epps to nominate Council Member Carter to serve as Mayor Pro Tem. Council Member Moore seconded the motion. All members voted in favor of the motion. The motion carried.

MAYORAL APPOINTMENTS:

- a. ABC Board

Mayor Hall nominated Tom Barbour for reappointment.

- b. ABC Board Chair

Mayor Hall nominated Tommy Flynt to continue as chair.

c. Rockingham County Solid Waste Committee

Mayor Hall nominated Council Member Moore to continue on the committee.

d. Piedmont Triad Regional Council

Mayor Hall nominated Mayor Pro Tem Carter to continue on the committee.

A motion was made by Council Member Ellis to approve the Mayor's nominations to ABC Board, ABC Board Chair, Rockingham County Solid Waste Committee and Piedmont Triad Regional Council. Council Member Hampton seconded the motion. All members voted in favor of the motion. The motion carried.

SET MEETING AGENDA:

A motion was made by Mayor Pro Tem Carter to set the agenda. Council Member Epps seconded the motion. All members voted in favor of the motion. The motion carried.

AUDIT REPORT: PRESENTATION OF THE 2018-2019 AUDIT BY ROUSE, ROUSE, ROUSE & GARDNER:

Mayor Hall asked Judy Rouse, CPA of Rouse, Rouse, Rouse and Gardner, to come forward.

Ms. Rouse referenced the 2018-2019 audit report, starting on page 1 and noted the firm had audited the governmental and business-type activities, the discretely presented component unit, each major fund and the aggregate remaining fund information as of and for the year ending June 30, 2019 and the related notes to the financial statement which collectively comprised the City's basic financial statements as listed in the table of contents. On page 2, in the firm's opinion, based on their audit, the financial statements referred to above presented fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information for the City as of June 30, 2019 the respective changes in financial position and cash flows, where appropriate, thereof and the respective budgetary comparison for the General Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America. She explained that meant a clean opinion on the City's financial statements. The audit was prepared on state and federal uniform guides and with the implementation of Governmental Accounting Standard Board (GASB) Statement 34 and GASB Statement 75. The Eden ABC Board Financial Statement was presented as a component unit of the City on pages 15 and 16.

The audit report included the financial information from the actuarial studies on the City's Law Enforcement Separation Allowance and the Other Post Employment Benefits (OPEB) which was a self-funded health plan. There was also an actuarial study on the Pension Plan which was prepared by the state auditor's office. The information related to those actuarial studies was in the first part of the report on pages 15-28.

The synopsis of the audit report was prepared by the City's financial staff with input from the interim city manager. She had reviewed the report and found it accurate. Financial department employees continued to attend classes in governmental accounting. The number of adjusting entries continued to remain at a very low level.

On page 94, the General Fund fund balance increased from \$9,408,745 to \$10,189,842. In the prior year, fund balance increased from \$8,722,152 to \$9,408,745. The cash decreased from \$8,473,756 to \$8,176,989. The total liabilities decreased from \$1,230,952 to \$762,042. The unassigned fund balance was \$6,783,552 with \$500,000 appropriated to the 2019-20 budget, which was the same thing appropriated in the prior year for the current year. On page 110, the total expenditures in the General Fund were \$16,597,232. One-twelfth of that amount multiplied by three months would be \$4,149,309. The amount unassigned at June 30, 2019 was \$2,634,243 above the three months' operating expenses. The three months' working capital policy was adopted by Council in 1998-99. The fund balance available was comprised of an amount shown as restricted, committed, assigned or unassigned according to the Local Government Commission (LGC). Using that theory, the fund balance for the City was 59.73 percent of expenditures. The 2018 statewide level of total fund balance maintained by municipalities without electrical and with a population in the City's range was 55.47 percent. The City was above the state average by 2.26 percent.

On page 96, Ms. Rouse pointed out the budgeted revenues were \$15,910,100 while the actual revenues were \$16,102,982 for a favorable variance of \$192,882. The revenues in the prior year were \$14,972,326. The synopsis analyzed the difference in the revenues by line items. On page 110, the budgeted operating expenditures were \$17,767,000 while the actual expenditures were \$16,597,232 for a favorable variance of \$1,169,768. The actual expenditures for year ending June 30, 2018 were \$16,596,728. Total expenditures were up very little from the prior year. The synopsis recapped expenditures in each department, listing the budgeted and actual amounts as well as the variance between those. The reimbursement to each department from the Water and Sewer Fund was noted. No department spent over their budgeted amounts.

Mayor Hall said that was a tribute to the department heads and staff.

Ms. Rouse said the Water and Sewer reimbursed \$2,175,460 to the General Fund for utility user fees, compared with \$2,071,393 for the prior year as found on page 129. On page 111, the General Fund had revenues over expenditures of \$781,097 compared to \$686,593 in the prior year.

Page 118 was a comparative balance sheet for the Water and Sewer Fund comparing it to the prior year. The net position in the fund increased from \$47,769,488 to \$51,904,858. The cash and investments decreased from prior year \$5,190,502 to \$4,550,216. Total assets and deferred outflows of resources were \$69,198,139 compared to prior year \$64,514,382. Other receivables from the prior year were \$425,557 and in 2018-19 were \$2,379,140. \$1.9 million of that receivable was due from the N.C. Connect Bond grant and the loan. Since June 30, 2019, the entire receivable had been approved by the N.C. Department of Environmental Quality Division of Water Infrastructure and had been collected by the City. There had not been as much cash, but there was a receivable for reimbursement, half a loan and the other half a grant. The total liabilities increased from \$16,672,037 to \$17,161,571.

On page 119, the Water & Sewer Fund operating revenues were \$12,900,326, up from the prior year of \$10,241,441. Most of the increase was in sewer charges where the City processed leachate from Duke Energy. Capital contributions from grants increased from \$579,412 to \$1,820,247, which mostly came from the N.C. Connect Bond grant and Rockingham County reimbursing the City for half of a land purchase. Operating expenses increased from \$10,257,849 to \$10,515,769. The depreciation expense went down from \$2,572,825 to \$2,306,835 because the City had been a lot of money related to infrastructure related to engineering fees, but they did not start depreciating infrastructure until it had been finished. It was considered construction in progress. The Mega Park Waterline Project Fund and the EPA Administrative Order of Consent had been consolidated into the Water & Sewer Fund so the Water & Sewer Fund was presented on a complete accrual basis. On a positive note, the City had paid off some debt so the interest expense went down from \$269,803 to \$209,751. Change in net position was net income and that was \$4,135,370 compared to \$366,417 the prior year. On page 120, they could see that

the cash went down to \$4,884,735 from \$5,516,512 because they had to pay out engineering fees related to infrastructure projects. The reimbursement came from the state and she had recorded it as other receivables.

Mayor Hall asked if the change in net position reflected some of the expected expenses for the projects the City would be starting on. He knew they had started engineering on them but the money was being built up for the waterline, etc.

Ms. Rouse said that was correct. The cost of engineering added to the capital outlay. Once that project or a portion of the project was completed, it would start depreciating. Currently, it was a capital asset until it was in operation. Infrastructure was usually depreciated over a 50-year life.

In the footnotes on page 43, Ms. Rouse said there were two sub-funds of the Water & Sewer Fund set up for construction commitments, the Mega Park Water Improvements and the Remediation Plan Expenditures. Listed were the estimated dates of completion, total for project ordinance, spent to date and remaining commitment. Revenues were anticipated for the Remediation Plan Expenditures from the Connect N.C. grant and loan and some from Water & Sewer Fund operations.

Mayor Hall noted the information may look different the next year as some of the bids they had received two or three years ago were higher. Some of the projects would have to be rebid. They did not have money to do the projects at one time. When the City was ready to start the work, at times they were told the jobs would have to be bid again.

Ms. Rouse said there was an important footnote on page 85 for Council and the community to understand. On April 22, 2017, the Environmental Protection Agency (EPA) issued an Administrative Order of Consent to the City related to sewer overflows based on requirements of the Clean Water Act. That was why the City was having to do new infrastructure, new lines. The EPA mandated that the City had five years to remediate the sewer overflows to satisfy the administrative order, ending February 28, 2022. If the city did not meet the deadline, the City would have daily civil penalties as high as \$37,500 per day for each violation and also could potentially face additional criminal penalties. It was important that the City follow those costs on a very close basis. They should make sure they were bidding those jobs out as they were under a timeframe. The City had tried to get an extended deadline but it was denied. It was a mandate and the City was working on it. It was an important part of the audit report.

On page 82, Ms. Rouse pointed out the total debt of the City with interest added was \$19,784,551, \$5,202,796 was debt related to governmental activities while \$14,481,755 was debt for water and sewer. The legal debt margin was 8 percent of the assessed valuation. On page 141, the property valuation for the City was \$897,023,866. Eight percent of that was \$71,761,909. She hoped the City never had to have that much debt. The City had cash to pay for smaller items between \$25,000 to \$50,000. She recommended paying cash for those items instead of setting up more installment sales. The current year's collection rate for tax levies was 98.54 percent. In the prior year it was 98.21 and 98.64 in 2017. The state average collection rate for 2018 in Eden's population range (up to 25,000 people) was 96.9, excluding vehicles, so Eden was above the state average.

Ms. Rouse read from pages 144 and 145: In planning and performing our audit of the financial statements, we considered the City of Eden's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City of Eden's internal control. Accordingly, we do not express an opinion on the effectiveness of the City of Eden's internal control. In our consideration of internal control there was a material weakness or significant deficiency. She said they had described it in a schedule of findings and questioned costs. Page 150 noted that per the Internal Control Policy in the City of Eden's Administrative Policies and

Procedure Manual, timesheet submission was required for all employees and each individual's pay record per pay cycle was approved by Department Heads and Superintendents prior to posting. The City Manager was altering and approving timesheets thus overriding the approval of time records by department heads and superintendents. The City Manager was approving hours not worked by employees thus overstating payments to employees. Per investigation, this was a systematic problem. Management was overriding controls set in the City's Internal Control Policy. The City Manager should never be allowed to override controls set in the Internal Control Policy. The governing board should actively review and monitor the actions of the City Manager. The next page was the City's response. Many of those things had been addressed in the November Council meeting. Council had put controls in place to better monitor the situation in a lot of areas.

On a positive note, interest income for the City was \$295,425 compared to \$162,564, which was a nice improvement. Ms. Rouse noted the City had a good staff and they were able to work with the firm to get the report out with very few adjustments. It was important that the finance personnel continue with education because the Governmental Accounting Standards Board changed information often. The City needed to continue with the actuarial studies as they were an integral part of the audit report. Item 3 in the management letter noted the firm was pleased the City had two capital project funds that had been set up as sub-funds of the Water & Sewer Fund. That was easier to follow. Greater care needed to be made to review the engineer and other contractor invoices related to the EPA order. It was going to be a big expenditure and the City would be asking for reimbursements with grant money or loans. The City would want those to be accurate. Regarding the management override of controls, the firm thought a review should be done of all travel reimbursements by the city manager and discretionary spending analysis related to the city manager. The city manager should have a yearly review and contract review by Council where sick pay and vacation pay were addressed. She asked if she was correct that Council had taken care of those issues.

Mayor Hall said she was correct.

Ms. Rouse said for internal control, all department heads and superintendents should be reeducated on their roles in approving timesheets and other internal control policies already in place. She thanked Council for the opportunity to work on the audit and noted it was a challenge. The Finance Department was a big help and she appreciated their efforts.

Council Member Ellis thanked the Rouses and their firm for their work. He appreciated that Ms. Rouse had emphasized the important of the EPA AOC.

Ms. Rouse thanked her CPA partner Trevor Gardner for his tremendous work on the audit.

Council Member Ellis agreed and was thankful Mr. Gardner, a Morehead High School graduate, had returned to Eden for his career.

PUBLIC HEARINGS:

- a. (1) Consideration of a zoning map amendment request to rezone 104 Morgan Road and adjoining parcels (PIN 7070-15-63-6765, 7070-15-64-8087, and 7070-15-64-9674) from Industrial-1 to PUD-Mixed Use. Submitted by James Maynard, member of Nantucket Mill, LLC, property owner.
- (2) Consideration of a resolution adopting a statement of consistency regarding the proposed map amendment request to rezone 104 Morgan Road and adjoining parcels (PIN 7070-15-63-6765, 7070-15-64-8087, and 7070-15-64-9674) from Industrial-1 to PUD-Mixed Use.

Mayor Hall declared the public hearing open and called on Planning & Inspections Director Kelly Stultz.

Ms. Stultz said the property was known as Nantucket Mill and was a local historic landmark. The owners planned to apply for the eligible tax credits which meant the exterior of the building would be preserved. The rezoning, approved unanimously by the Planning Board, would allow for housing and other uses over time. It was a great benefit to the community's morale and economy to adaptively reuse older buildings. It was anticipated that \$23 million would be spent to rehabilitate the building and bring it up to code. She recommended that the request be approved and include conditions that needed to be added at the time when a final development plan was presented.

Council Member Hunnicutt asked Ms. Stultz if there was any anticipated use in the PUD overlay that would cause issues.

Ms. Stultz said there was not. In other communities, those types of developments had apartments, condos, live/work space and even small cottage industries. They would have the opportunity to weigh in on the final development plan when it was ready.

Council Member Hunnicutt noted it was not a large site relative to available parking. He assumed as the plan was submitted, staff would review the parking.

Ms. Stultz said they would and that was why this included the smaller parking lots. Parking would be available on those and other parcels.

An audience member questioned if the housing would be for elderly and low-income residents.

Ms. Stultz answered at that time, the housing was not anticipated to be for the elderly, but there were several housing facilities in Eden that were and were based on income. She offered that they could visit her office for assistance.

As there was no further discussion, Mayor Hall declared the public hearing closed.

A motion was made by Council Member Epps to approve the zoning map amendment request to rezone 104 Morgan Road and adjoining parcels (PIN 7070-15-63-6765, 7070-15-64-8087, and 7070-15-64-9674) from Industrial-1 to PUD-Mixed Use and to adopt a resolution for a statement of consistency regarding the proposed map amendment request to rezone 104 Morgan Road and adjoining parcels (PIN 7070-15-63-6765, 7070-15-64-8087, and 7070-15-64-9674) from Industrial-1 to PUD-Mixed Use. Mayor Pro Tem Carter seconded the motion. All members voted in favor of the motion. The motion carried.

REQUESTS AND PETITIONS OF CITIZENS:

Mayor Hall asked City Attorney Erin Gilley to read the City's policy for speakers.

Arthur White, 2603 Price Road, thanked Council for the new improvements in Eden, like the mural on Washington Street and painted hydrants. He had a suggestion for the greenways. He thought the concrete sewer structures along the greenway should also be painted, preferably with nature themes. Having local

artists paint them as they painted the hydrants would be an asset to the greenways. Some other communities had installed rail to trail systems and he would like to see Eden do that as well on the unused railways, particularly the line that had went by Barnett Canal and into Fieldcrest in downtown Leaksville. That could provide a trail for biking or walking efficiently between Leaksville and Spray. He also thought motorized scooters would be a benefit to citizens, as were used in other communities. Regarding the future otter sculpture in the Spray Traffic Circle, he noted there needed to be a pedestrian walkway to access it and there was not one. His wife loved otters and he knew that when it was installed, she would want a picture. There should be safe access to it.

Mayor Hall said he appreciated the comments and suggestions. He called on Coordinator of Tourism and Special Events Cindy Adams to address the art project.

Ms. Adams said the Smith River Greenway would be converted into a butterfly trail and part of that would be a local artist painting the concrete sewer structures to fit into the natural landscape. They were no current projects for it on the Matrimony Creek Nature Trail. A location in the Smith River Greenway area was being examined for the otter sculpture which would allow pedestrians to walk up to it and it would not require permission from the N.C. Department of Transportation.

Mayor Hall said connectivity was something the City was trying to accomplish with the greenways and trail systems. It was a matter of funding and they were limited on how much they could do each year. He liked the idea of the rails to trails. He loved going to the Virginia Creeper Trail. Problems with developing it in Eden was that some or all of the property may be owned by railroad companies who may not be willing to give the land and with dangerous crossings across roadways.

Mayor Pro Tem Carter thought Ms. Stultz had investigated the rail to trail system.

Ms. Stultz said she and Parks & Recreation Director Johnny Farmer had both looked into the possibility. The Greenway Master Plan did include some former railway beds.

UNFINISHED BUSINESS:

There was no Unfinished Business at this time.

NEW BUSINESS:

- a. Consideration of 2020 Boards and Commissions appointments.

Mayor Hall called on Ms. Stultz.

Ms. Stultz reminded the Council that the appointees served on staggered three-year terms.

Ward 1 – Council Member Moore nominated Everall Peele to continue on the Historic Preservation Commission and Eddie Barker to continue on the Planning Board.

Ward 2 – Tabled until the next meeting.

Minutes of the regular December 17, 2019 meeting of the City Council, City of Eden:

Ward 3 – Council Member Hampton nominated Karla McDonald for the Community Appearance Commission, Barbara Garland to continue on Planning Board and Brian Ferris to serve on the Tree Board.

Ward 4 – Tabled until the next meeting.

Ward 5 – Mayor Pro Tem Carter nominated Cathy Carter to continue on the Community Appearance Commission and the Planning Board appointment was tabled until the next meeting.

Ward 6 – Tabled until the next meeting.

Ward 7 – Tabled until the next meeting.

Mayor Hall nominated Dale Warren to serve on the Tree Board.

David Everett was nominated to continue on the Board of Adjustment from the ETJ.

A motion was made by Council Member Moore to approve the nominations. Council Member Ellis seconded the motion. All members voted in favor of the motion. The motion carried.

b. Consideration to select a consultant for the Unified Development Ordinance.

Mayor Hall called on Ms. Stultz.

Ms. Stultz noted there had been a lot of discussion about the need for a Unified Development Ordinance and the deadline with all the statute changes as of January 1, 2021. A request for proposals went out the day after Council approved spending up to \$60,000 at their November meeting. One bid was received and was sufficient because it was a professional service. Stewart was a firm with a long history and big presence in the state. She was extremely satisfied with the information she had about them. She asked that Council approve Stewart as the consultant and authorize Mayor Hall to sign the contract.

Council Member Moore asked if Ms. Stultz had worked with Stewart before.

Ms. Stultz said she had not but she knew them. There had been some discussion about having a special meeting in January for Council to meet consultants from the firm and to have a discussion on how they would start and finish the project.

Council Member Moore said he had read of some of the cities Stewart had worked with and it looked like they were across the state from the coast to the mountains and in between.

A motion was made by Council Member Epps to select Stewart as consultant for the Unified Development Ordinance. Council Member Ellis seconded the motion. All members voted in favor of the motion. The motion carried.

Dan River Game Land

Council Member Hunnicutt said he had attended a public input meeting that week by the N.C. Wildlife Resources Commission for a management plan for the 1,800 acres they had acquired, formerly known as the Galloway Farm. Trails had been one of the requests by attendees. There were nearly four miles of continuous river frontage on the property. The Commission was open to including a trail and said if they public wanted it, they needed to email Raleigh with the request. The number of responses the

Commission received would determine to a large degree whether a trail happened or not. That did not mean the trail would happen, but it most likely would not happen if it was not pushed. Ms. Adams was at the meeting as well and he asked her what support could be given from the City.

Ms. Adams said the simplest way would be to send in an email. The information could be found on ExploreEdenNC.com or she could be contacted to provide it. Respondents could fill out an entire questionnaire from the Commission or they could just comment. The Commission did indicate that more responses would make them consider a trail. Public comments were very important.

Council Member Hunnicutt asked if it could be posted on the City's website so people could easily find it.

Ms. Adams would make sure it was. It would be a very easy process for anyone to complete.

Council Member said it was the potential for a four-mile trail that hopefully would be free. It could be a big plus in terms of tourism.

REPORTS FROM STAFF:

a. City Manager's Report.

Interim City Manager Terry Shelton said each Council Member had received a copy of the report. It was available online and in Eden's Own Journal. It was full of information that pertained to the City and he encouraged everyone to pick up a copy.

Mayor Hall noted that the report discussed WinterFest, which had gotten bigger and better and had a great turnout.

BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

Gildan Yarns

More than 150 people have applied for the 85 positions available at the 335 Summit Road facility. They are still taking applications at the plant so do not hesitate to complete an application if you are interested.

Morgan Olson Manufacturing

The former IKEA employees are being given first consideration for the 700 available jobs at this Danville, Va., facility. In February or March of 2020, the company will be advertising in Eden for potential applicants. More will be reported as the company progresses in their new location.

Loparex

This is the first Eden industry to participate in the Rock-A-Top Apprenticeship program offered through the Rockingham County Schools system. High school participants are paid during their apprenticeship period, then often are offered permanent positions within the companies for whom they apprentice. The program has been very successful in other county industry.

Lidl

The company has dedicated an individual to dispose of the Eden property and other locations they have closed or abandoned. We are hopeful that they will have a broker list the property by the first of the year. The City tried for nine weeks to obtain entry into the building to show a viable prospect before the company announced it would assign the property to a real estate broker to facilitate the sale of the property.

KFC

Construction is well on its way at this Highway 14 facility.

Bayberry Retirement Village – 30th Anniversary

Bayberry has six N.C. locations, the Eden location celebrating its 30th year in operation this year. The company will be honored at the December 17 Eden City Council meeting. We wish them another 30 successful years in Eden.

Tri-City Glass & Mirror – 70th Anniversary

This Eden company is celebrating its 70th anniversary this year. Earlier in December, the Rockingham County Board of Commissioners honored them. On December 17th, the Eden City Council will also honor owners Dana and Dustin Hussey. One great story about Tri-City Glass & Mirror is how they established a relationship with Sheetz, their Stadium Drive neighbor. When Sheetz was building the Eden store, they had issues with another supplier and gave Tri-City an opportunity to supply their glass. Almost 10 years later, Tri-City continues to supply glass for Sheetz stores, recently completing their 100th store. This is an example of a large business helping an Eden small business. If you see Dana or Justin, please congratulate them for reaching such a significant milestone.

Women’s League in Preppy Pirate Outfitters

The Eden Women’s League has opened a Dewey’s Bakery retail shop inside Preppy Pirate Outfitters, located at 347 Washington Street in Historic Downtown Eden. The Women’s League raises funds annually through different projects they undertake with all of the funds going to community causes. “We know there are needs in the Eden community, so we wanted to do a bigger fundraiser to help more,” stated President Tammy Shelton. “We have added members who will join us in serving the Eden community.” Past projects include giving annual scholarships to Morehead High School seniors, supporting Help Inc., the Eden Public Library and various classes in Rockingham County Schools such as the Morehead High School robotics team, as well as the Salvation Army. The store will be open Monday-Friday 11 a.m. to 6 p.m. and Saturday from 10 a.m. to 4 p.m. On December 15 and 22, the store will be open from 1 p.m. to 4 p.m. Santa will be in the store on the December Saturdays from 11 a.m. to 1 a.m. and 2 to 4 p.m. He will also be there on the two Sundays they are open. The Dewey’s bakery items include a variety of cookies and other delicious snacks. Your purchases help this organization help the Eden community. For more information, contact Preppy Pirate Outfitters at 336-589-9668.

Panther Pride: Good News

Over the last several months, the City of Eden has worked with Morehead High School in publishing the Panther Pride: Good News column about what great things are taking place in our local high school in Eden’s Own Journal. We have covered young professionals who have returned home to start their careers in Eden, the Automotive Technology Class led by Instructor Blair Pruitt and how he has helped students who thrive in a hands-on learning environment as well as students who visited the RCC Simulated Hospital to learn more about healthcare careers. The January issue will feature the MHS JROTC program and February will include a story about how students are learning entrepreneurship through the high school food and nutrition programs. There are lots of great things happening at Morehead High School. Learn more about them by following these columns each month.

Winterfest

What a great night! A huge thank you to everyone who came out and celebrated winter and the Christmas season with us! It was wonderful seeing all the children’s smiles and wide eyes! We would also like to thank everyone that made this the fun night it was:

- Santa Claus
- Elsa, Anna and Olaf from Frozen – Once Upon A Time Fairytale Parties
- Michael Gravely of Outdoor Entertainment – slide and movie screen
- Kris Robbins & Family – lighted balloon ice castle and oversized games
- Rockingham County Schools – fabulous raffle baskets
- Debbie Ellis & Dale Warren – manning the smore’s bar
- Hot Stuff Beverages – delicious hot chocolate, cider and coffee
- Tim & Diana Biggs – popcorn
- Councilman Jim Burnette & Family – lighting the Christmas tree
- Mike Dougherty, Randy Hunt & Jamison Taylor – setup and breakdown
- Eden Police Department – John Edwards – lighting
- Jimmy Dillon – duty over and above to make sure lights worked.
- Drew Chilton, Johnny Massey & Brett Curry – decorating Grogan Park

2020 Signature Event Dates – Mark Your Calendars

- May 12 – Hispanic Heritage Day

- May 21 – Spring Grown & Gathered
- June 6 – Piedmont Pottery Festival
- June 20 – Oink & Ale
- July 25 – Shaggin’ on Fieldcrest
- August 13 – Summer Grown & Gathered
- August 22 – Touch-A-Truck
- September 18 & 19 – RiverFest
- December 5 – WinterFest

ENGINEERING

Waterline Replacement Projects Update

Preparation of preliminary plans is underway for three waterline projects for proposed improvements along George Street, a section of Primitive Street south of Spring Street, the section of Spring Street west of Dameron Street, and for the installation of a small booster pump station off the east side of Jackson Street.

PARKS & RECREATION

Construction of Phase II of the Matrimony Creek Greenway has begun and this facility should be completed by December 27.

Staff hosted the Parks & Recreation podcast with Mike Moore Media on December 9.

The City of Eden Prowlers Football program held its banquet on December 8.

The Santa Calling and Visits began December 1 and will continue through December 22.

There was a NSA Tournament at Freedom Park December 7 – 8.

Staff participated in the Leaksville Christmas Parade on November 29 and the Draper Christmas Parade on December 7.

Staff attended a Be Healthy Rockingham County meeting on December 11.

Coming up, Staff will conduct the monthly podcast with Mike Moore Media on January 3 and attend a Be Healthy Rockingham County meeting on January 8.

The City’s Youth Basketball program is in full swing and players are practicing at the Bridge Street Recreation Center and the Mill Avenue Gym. Games will continue through March 2020.

PLANNING & INSPECTIONS

Community Development Block Grant

The City received a \$750,000 Housing and Infrastructure Grant aimed at the mill village in the Draper area. We have not been given the grant agreement yet. Work cannot start until we get that from the State. This is the first housing related grant we have received strictly aimed at this section of the City.

NCDOT Stadium Drive Sidewalk Project

In partnership with NCDOT, we are underway with a sidewalk project that will extend from the intersection of Pierce Street and Stadium Drive east to the intersection of Edgewood Road and Stadium Drive. This sidewalk is a part of our Greenway Master Plan and our existing Pedestrian Plan. The NCDOT portion of the project is estimated to be \$394,000 and the City portion to be \$98,106. Wetherill Engineering has been engaged to prepare the plans.

NCDOT Bike and Pedestrian Plan

We have recently been notified that we have received funding from NCDOT to update our Bike and Pedestrian Plan. This process will begin soon. The Piedmont Triad Council of Governments will assist us with the plan. A plan of this type is a requirement to receive funds for pedestrian and bike facilities from the NCDOT.

Unified Development Ordinance

Our land used regulations are still in the framework that they were in when adopted in the 1960s. In 2019, the N.C. General Assembly overhauled all of the statutes relating to land use planning and put them in an entirely new chapter. Beginning January 1, 2021, all related ordinances must be amended to be in compliance with the statutes. The Strategic Planning Commission recommended to the City Council that \$60,000 be committed for this vital project. The City Council approved the funds at the November regular meeting. We are expecting bids to be in for a consultant in time to be approved at the December regular City Council Meeting.

Nantucket Mill Rehabilitation

The Nantucket Mill located at the intersection of Morgan Road and Church Street is owned by Nantucket Mill LLC. The zoning case to create a mixed use planned unit development as approved by the Planning Board at their November meeting and will be on the City Council agenda for December. The owners are preparing for a \$26,000,000 renovation of the property. We are seeking grant funds to help them. The property is a Brownfield property but the State has recently released the prohibition of residential uses of the property. Engineering and design work is expected to begin in early 2020.

POLICE DEPARTMENT

Anti-Litter

The Eden Police Department continues to post a Public Service Announcement on the Eden Police Department's Facebook page asking citizens to Stand Against Litter as part of the countywide campaign to aggressively enforce littering and illegal dumping violations. We will continue to replay the announcement each month and aggressively enforce littering and illegal dumping statutes.

Fundraiser for County employee

This year, our department is participating in 'No Shave November/December' and 'Crazy Nail / Casual Dress November/December' fundraising campaign. We will be supporting one of the members of our "First Responder" family this year. Emily Thacker is a Rockingham County 9-1-1 Telecommunicator and a volunteer in the Eden Rescue Squad. Emily is a 34-year-old single mother of three children (ages 11, 6, 5) and lives in Eden. Emily was diagnosed with Stage 1 Invasive Ductal Carcinoma Breast Cancer. Emily has been a trooper since her diagnosis. She has had multiple doctor's appointments for testing, scans, and biopsies. Emily has had to leave work for appointments and came back to work afterwards. This will be not only a lengthy process for her but a costly one as well.

Firearms replacement

In 2016, we applied for a grant to replace our aging duty firearms. We received the funding, \$24,244, in 2019. We have completed the transition to the new Ruger American Duty Firearm.

Keep our streets safe

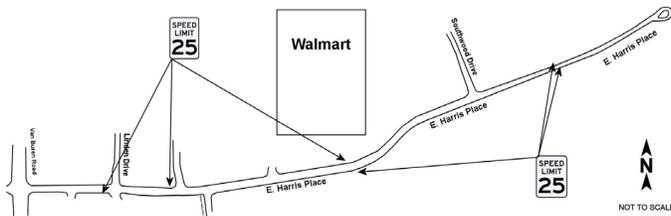
As we approach the Christmas holidays and New Year's Eve, we would encourage all our citizens to drink responsibly and utilize designated drivers. The Eden Police Department will have additional officers working throughout the holidays and New Year's Eve to keep our streets and highways safe. Facebook The Eden Police Department would like to continue to encourage the citizens of our community to utilize the Eden Police Department's Facebook page for updates and information concerning our community, as well as Crimestoppers, to provide anonymous information concerning illegal activity to keep our community safe. We all have to work together to keep our community safe.

CONSENT AGENDA:

Mayor Hall said the Consent Agenda had non-controversial items that were sent to the Council in advance for their review. He wanted to clarify that it did not include decisions regarding spending money. Those decisions were made during the budget retreat, budget workshop and the budget vote. The expenses on the Consent Agenda were items that had been included in the budget but had not been purchased yet. The funds had already been appropriated and were just being moved from the account over for payment.

- a. Approval and adoption of the November 19, 2019 minutes.
- b. Approval and adoption of an ordinance to lower the speed limit on E. Harris Place.

Sgt. Jim Robertson wrote in a memo that at the beginning of October, the Police Department was informed by Council Member Grogan of an issue of speeding on E. Harris Place. E. Harris Place currently had no speed limit signs in place. There are four apartment complexes along the length and terminus of E. Harris Place. An order was issued for speed surveys to be completed on E. Harris Place. Speed data was collected from 51 vehicles traveling through the area. Data indicated that 29% of the vehicles were traveling 26MPH-30MPH, 25% were traveling 31MPH-35MPH, 22% were traveling 21MPH-25MPH, 8% were traveling 16MPH-20MPH, 8% were traveling 10MPH-15MPH, and 8% were traveling 36MPH- 40MPH. In total, 76% of the recorded speeds were between 21MPH-35MPH. The speed data tended to indicate a pattern where a majority of drivers were adhering to a 35MPH speed limit (the citywide speed limit). Additionally, several residents were presented a survey letter as to their opinion about whether the speed limit on E. Harris Place should be 25mph, 35mph, neither, or either. Seventy-three 73 residents from the various apartment complexes responded to the survey letter. The responses revealed that 53% of the residents requested a 25MPH speed limit, 25% requested a 35MPH speed limit, 21% did not object to either a 25MPH or 35MPH speed limit, and 1% wanted neither a 25MPH nor a 35MPH speed limit (but actually wanted a lower speed limit). Many residents reported that there are a lot of children and elderly people who frequent the area on foot. Many commented that a reduced speed limit would improve the safety in the area. Due to the multiple apartment complexes in the area and the majority opinion of the residents, the recommendation of the Police Department is that the speed limit on E. Harris Place be reduced from the citywide speed of 35mph to 25mph. Below is a map of the proposed locations of the Speed Limit signs:



AN ORDINANCE REDUCING THE SPEED LIMIT ON E. HARRIS PLACE FROM S. VAN BUREN ROAD EASTWARD TO THE DEAD END OF E. HARRIS PLACE

BE IT ORDAINED BY THE CITY COUNCIL of the City of Eden, North Carolina, pursuant to authority granted by N.C.G.S. § 20-141(e) that:

Section 1 – The City Council of the City of Eden has determined that operation of a motor vehicle Thirty-Five (35) miles per hour on E. Harris Place from S. Van Buren Road eastward to the dead end of E. Harris Place is greater than is reasonable and safe under the conditions existing upon E. Harris Place from S. Van Buren Road eastward to the dead end of E. Harris Place.

Section 2 – It shall be an infraction to operate a motor vehicle on E. Harris Place from S. Van Buren Road eastward to the dead end of E. Harris Place in excess of Twenty-Five (25) miles per hour.

Section 3 – Signs shall be placed, erected or installed on each side of E. Harris Place from S. Van Buren Road eastward to the dead end of E. Harris Place giving notice of the speed limit to traffic traveling in each direction on said street/roadway.

Section 4 – The OFFICIAL TRAFFIC MAP of the City of Eden is hereby amended to conform with this Ordinance.

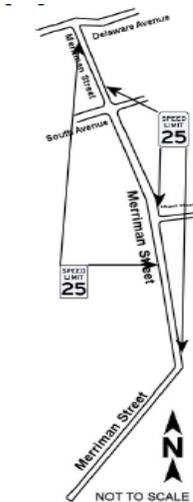
Section 5 – All ordinances in conflict with this Ordinance are hereby repealed.

APPROVED, ADOPTED AND EFECTIVE, this 17 day of December, 2019.

CITY OF EDEN
Neville Hall, Mayor
ATTEST: Deanna Hunt, City Clerk

c. Approval and adoption of an ordinance to lower the speed limit on Merriman Street.

Sgt. Robertson wrote in a memo that in mid-October, the Police Department was requested by Council Member Ellis to conduct a traffic study on Merriman Street for the speed to be lowered to 25MPH and signs to be erected. Merriman Street traverses a residential neighborhood of just over 40 households and currently has 35MPH speed limit signs in place. This road runs from Delaware Avenue southward for half a mile until it dead ends. A visual survey of posted speed limits in the area shows that Maryland Avenue, South Avenue, Hale Street, and Hundley Drive are posted 25 MPH. An order was issued for speed surveys to be completed on Merriman Street. Speed data was collected from 40 vehicles traveling through the area. Data indicated that 45% of the vehicles were traveling 21MPH-25MPH, 27% were traveling 26MPH-30MPH, 15% were traveling 16MPH-20MPH, 8% were traveling 31MPH-35MPH, 3% were traveling 36MPH- 40MPH, and 2% were traveling 10MPH-15MPH. In total, 80% of the recorded speeds were between 21MPH-35MPH. The speed data tended to indicate a pattern where a majority of drivers are adhering to the posted 35MPH speed limit. Also of note, 63% of the vehicles were already traveling at a speed of 25MPH or less. The Police Department recommended that the speed on Merriman Street be reduced to 25MPH. This decision is based on the following considerations: the residential nature of the area, the large number of households along the length of Merriman Street, the percentage of vehicle speeds already traveling at 25MPH and below. Below is a map of the proposed locations of the Speed Limit signs:



AN ORDINANCE REDUCING THE SPEED LIMIT ON MERRIMAN STREET FROM DELAWARE AVENUE
SOUTHWARD TO THE DEAD END OF MERRIMAN STREET

BE IT ORDAINED BY THE CITY COUNCIL of the City of Eden, North Carolina, pursuant to authority granted by N.C.G.S. § 20-141(e) that:

Section 1 – The City Council of the City of Eden has determined that operation of a motor vehicle Thirty-Five (35) miles per hour on Merriman Street from Delaware Avenue southward to the dead end of Merriman Street is greater than is reasonable and safe under the conditions existing upon Merriman Street from Delaware Avenue southward to the dead end of Merriman Street.

Section 2 – It shall be an infraction to operate a motor vehicle on Merriman Street from Delaware Avenue southward to the dead end of Merriman Street in excess of Twenty-Five (25) miles per hour.

Minutes of the regular December 17, 2019 meeting of the City Council, City of Eden:

Section 3 – Signs shall be placed, erected or installed on each side of Merriman Street from Delaware Avenue southward to the dead end of Merriman Street giving notice of the speed limit to traffic traveling in each direction on said street/roadway.

Section 4 – The OFFICIAL TRAFFIC MAP of the City of Eden is hereby amended to conform with this Ordinance.

Section 5 – All ordinances in conflict with this Ordinance are hereby repealed.

APPROVED, ADOPTED AND EFECTIVE, this 17 day of December, 2019.

CITY OF EDEN

Neville Hall, Mayor

ATTEST: Deanna Hunt, City Clerk

- d. Approval of financing for 2019-20 budgeted items: vacuum leaf machine, passenger van, sewer camera van and two police vehicles.

Assistant Finance Director Amy Winn wrote in a memo that in the 2019-2020 Budget, Council approved the purchase of a vacuum leaf machine for the Street Department, a 14-passenger bus for the Recreation Department, two police vehicles, and a sewer camera van for the Collection and Distribution Department, and they had been set up in the budget to be financed.

On November 25, she requested bids from our local banks for the financing for the leaf machine and received the following quotes: BB&T 2.38%, First National Bank 3.56%, United Financial (Home Trust) 2.14%. The total cost of the equipment was \$64,870 with annual payments of approximately \$13,818.69, which was within the budgeted amounts.

On November 25, she requested bids from our local banks for the financing for the 14-passenger bus and received the following quotes: BB&T 2.38%, First National Bank 3.56%, United Financial (Home Trust) 2.14%. The total cost of the equipment was \$54,132 with annual payments of approximately \$11,531.26, which was within the budgeted amounts.

On November 25, she requested bids from our local banks for the financing for two police vehicles and received the following quotes: BB&T 2.38%, First National Bank 3.56%, United Financial (Home Trust) 2.14%. The total cost of the equipment was \$88,258.98 with annual payments of approximately \$18,801.04, which was within the budgeted amounts.

On November 25, she requested bids from our local banks for the financing for the sewer camera van and received the following quotes: BB&T 2.38%, First National Bank 3.49%, United Financial (Home Trust) 2.14%. The total cost of the equipment is \$175,954.66 with annual payments of approximately \$37,482.08, which was within the budgeted amounts.

She respectfully asked that Council approve United Financial (Home Trust) as the successful bid for financing.

A motion was made by Council Member Moore to approve the Consent Agenda. Council Member Hampton seconded the motion. All members voted in favor of the motion.

ANNOUNCEMENTS:

Council Member Hampton noted The Boulevard's holiday party and two ribbon cuttings had been postponed. A prayer walk would be held December 30 on The Boulevard in response to issues like graffiti happening along the street. The Home of Refuge Homeless Shelter below the Draper Fire Department was officially open. They did have people staying there. She asked for prayer for the shelter, as well as volunteers and donors if anyone felt led to help.

Council Member Epps wanted to thank everyone who coordinated, patrolled and participated in, as well as those who cleaned up after, the two Christmas parades. It was an asset to the community to see the cooperation between individuals and agencies to get the parades done.

Mayor Pro Tem Carter wanted to wish all the families represented in the audience a Merry Christmas. He appreciated their attendance. On Dec. 21, Santa would be at 334 Sunset Drive from 6 until 8 p.m. and all small children who came to see Santa would get a toy.

Council Member Ellis wanted to thank Ms. Grogan and Mr. Burnette for serving on the Council and congratulated Council Members Nooe and Hunnicutt on the election. He looked forward to working with them. Draper Christian Church would have a community meal on Dec. 24.

Council Member Epps wanted to thank the individual who put an article in the paper about the City. He thought that person was trying to bring unity and harmony and the article was great.

Audience member Shawn Bradley wanted to make an announcement. He said it was time for a change. He loved Eden. He envisioned Eden being a beautiful place. He was not saying it was ugly, but it could be so much better. There was a lot of division, even between Council and the people. It was time for them to all come together. No one knew when their time would end or when the man upstairs would say he had enough. If they took the initiative to start loving one another, doing for each other and helping each other out, they could prolong that time. The Council and Mayor had the power. Mayor Hall's name was French and meant new town. It was time for them to make a new town of Eden. They needed to get to the nitty gritty and plant the seeds in the soil and tend to it. He was on a different type of journey that had been up and down and he would not change it for the world. His journey had brought him there for that exact reason. He was a visionary and knew the things he envisioned for the City could work, bringing money back to the City. He wanted that for the City more than life itself and he was willing to die for it. He told Mayor Hall they could make it a new town and that the Mayor was in that seat for a reason.

Mayor Hall said that reminded him of a Chinese proverb he had read that day, that one generation plants the tree and the next generation got the shade.

ADJOURNMENT:

As there was no further business to discuss, a motion was made by unanimous consent to adjourn.

Respectfully submitted,

Deanna Hunt
City Clerk

ATTEST:

Neville Hall
Mayor