

**MINUTES**  
**LINCOLN COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, JUNE 15, 2020**

The Lincoln County Board of County Commissioners met on June 15, 2020, at the Commissioners Room, Administration Building, 353 N. Generals Blvd, Lincolnton, the regular place of meeting at 6:30 PM.

**Commissioners Present:**

Carrol Mitchem, Chair  
Richard Permenter, Vice Chair  
Anita McCall  
Milton Sigmon  
Bud Cesena

**Others Present:**

Kelly G. Atkins, County Manager  
Wesley Deaton, County Attorney  
Josh Grant, Programs Manager  
Amy S. Atkins, Clerk to the Board

**Call to Order:** Chairman Mitchem called the June 15, 2020 meeting of the Lincoln County Board of Commissioners to order. He called for a moment of silence and led in the Pledge of Allegiance.

**Adoption of Agenda:** Chairman Mitchem presented the agenda for the Board's approval.

**AGENDA**  
**Lincoln County Board of Commissioners Meeting**  
**Monday, June 15, 2020**  
**6:30 PM**

**Lincoln County Administration Office**  
**353 N. Generals Blvd**  
**Lincolnton NC 28092**

- Call to Order - Chairman Mitchem
- Moment of Silence
- Pledge of Allegiance
- 1. Adoption of Agenda

2. Consent Agenda
  1. Approval of Minutes - June 1, 2020
  2. CPOA #5
  3. BOA #6
  4. BOA #7
  5. GPO #5
  6. GPOA #3
  7. Release of Performance Guarantee - Trilogy at Lake Norman (Phase 2 and Parcel D, Phase 3)
  8. Subdivision Performance Guarantee for Creek Park Phase 2
  9. VTS Refunds
  10. Tax Requests for Releases - More than \$100 - April 16 - May 15, 2020
  11. Acceptance of \$2500 COVID19 Response Mini-grant funds
  12. BOA #8
3. Adoption of Lincoln County Budget Ordinance FY 2020-21
4. Parks and Recreation Master Plan Award to McGill Associates with the County portion \$62,650 - John Henry
5. Adoption of Resolution Making Certain Findings and Determinations with respect to the Issuance of Enterprise System Revenue Bonds - Deanna Rios
6. Approval of Agreement with Lincolnton Fire Department to provide Fire Protection for Boger City Fire Department - Rodney Emmett
7. Request from Sheriff to Change Position #2369 Captain in Position Control to a Major and revised in the Budget Ordinance - Candy Burgin
8. Public Comments
9. Finance Officer's Report
10. County Manager's Report
11. County Commissioners' Report
12. County Attorney's Report
13. Vacancies/Appointments

14. Other Business

Information only - No action needed

- Register of Deeds Report
- Property Tax Collection Report

15. Closed Session Pursuant to NCGS § 143-318.11. Closed sessions.

(a) (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.

Adjourn

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to adopt the agenda adding Item 2a – Update on Covid-19 from Davin Madden.

**Consent Agenda:** **UPON MOTION** by Commissioner Sigmon, the Board voted unanimously to approve the Consent Agenda.

\*\*The following links can be clicked on to view the supporting documents\*\*

1. Approval of Minutes - June 1, 2020

2. [CPOA #5](#)

3. [BOA #6](#)

4. [BOA #7](#)

5. [GPO #5](#)

6. [GPOA #3](#)

7. [Release of Performance Guarantee - Trilogy at Lake Norman \(Phase 2 and Parcel D, Phase 3\)](#)

8. [Subdivision Performance Guarantee for Creek Park Phase 2](#)

9. [VTS Refunds](#)

10. [Tax Requests for Releases - More than \\$100 - April 16 - May 15, 2020](#)

11. [Acceptance of \\$2500 COVID19 Response Mini-grant funds](#)

12. BOA #8

**Item 2a – Update on Covid-19 from Davin Madden:** Davin Madden gave a brief overview on Covid-19, saying there are now 57 active cases and 92 recovered, with 9 PUI's. He said this increase is not unexpected.

**Adoption of Lincoln County Budget Ordinance FY 2020-21:** UPON MOTION by Commissioner McCall, the Board voted unanimously to adopt the Lincoln County Budget Ordinance for FY 2020-21 as presented.

Commissioner McCall said the Board never intended to leave out any individuals with the teacher supplement increase. She asked staff to examine all information provided by the School Administration within the next 30 days to include positions such as, but not limited to the Social Workers, Guidance Counselors, Psychologists, Speech and Language people. Staff will bring this back to the Commissioners and the budget will be amended at that time.

Commissioner Sigmon said the Commissioners have been working on the budget since December, so it has been a long and ongoing process for everyone. He said he sincerely appreciates everyone here tonight and everyone here at the budget public hearing.

**LINCOLN COUNTY  
BUDGET ORDINANCE  
FY 2020-21**

**BE IT ORDAINED** by the Board of County Commissioners of Lincoln County, North Carolina:

The following amounts are hereby appropriated in the General Fund for the operation  
Section 1. of  
the County government and its activities for the fiscal year beginning July 1, 2020 and ending June 30, 2021, in accordance with the chart of accounts heretofore established for Lincoln County.

<b>GENERAL GOVERNMENT</b>	<b>\$ 14,691,212</b>
Central Services	
Governing Body	
County Manager	
Human Resources	
Finance	
Information Technology	
Safety & Training	
Tax Department	

Legal  
Elections  
Register of Deeds  
Facilities Maintenance  
Special Appropriations

**PUBLIC SAFETY** **32,988,009**

Sheriff  
Communications  
Jail  
Jail Commissary  
Emergency Management  
Fire Marshal  
Volunteer Fire Department  
Planning  
Inspections Division  
Medical Examiner  
Emergency Medical  
Animal Services  
Special Appropriations

**TRANSPORTATION** **1,650,097**

Transportation TLC  
Special Appropriations

**ECONOMIC AND PHYSICAL DEVELOPMENT** **2,115,250**

Soil Conservation  
Cooperative Extension  
Special Appropriations

**HUMAN SERVICES** **19,669,234**

Health Department  
Mental Health  
Social Services  
Veterans Services  
Senior Services  
Special Appropriations

**CULTURAL AND RECREATION** **3,132,336**

Library  
Recreation  
Special Appropriations

<b>EDUCATION</b>	<b>22,236,922</b>
Lincoln Center Gaston College	
Schools Current Expense	
Schools Capital Outlay	
<b>DEBT SERVICE</b>	<b>15,212,350</b>
General County Debt	
School System Debt	
<b>OTHER FINANCING USES</b>	<b>1,153,035</b>
Transfers to Other Funds	
<b>TOTAL GENERAL FUND</b>	<b><u>\$ 112,848,445</u></b>

It is estimated that the following revenues will be available in the General Fund for  
Section 2. the  
fiscal year beginning July 1, 2020 and ending June 30, 2021:

**AD VALOREM TAXES**

Current Year's Property Taxes	\$ 66,573,000
Prior Year's Property Taxes	700,000
Tax Interest/Penalty/Misc.	365,420
	<b><u>67,638,420</u></b>

**STATE SHARED TAXES**

Medicaid Hold Harmless	500,000
Local Option 1 cent Sales Tax	7,300,000
Local Option 1st 1/2 cent Sales Tax	4,650,000
Local Option 2nd 1/2 cent Sales Tax	4,050,000
524 Redistribution Sales Tax	1,208,753
Article 46 1/4 cent Sales Tax	1,500,000
Utilities Franchise Tax	230,000
	<b><u>19,438,753</u></b>

**FEDERAL REVENUES**

8,230,500

**STATE REVENUES**

2,159,320

**INTERGOVERNMENTAL REVENUES**

923,000

**OTHER TAXES AND LICENSES**

800,000

<b>SALES AND SERVICES</b>	9,271,202
<b>INVESTMENT EARNINGS</b>	250,000
<b>MISCELLANEOUS</b>	861,688
<b>OTHER FINANCING SOURCES</b>	750,000
<b>FUND BALANCE APPROPRIATED</b>	2,525,562
<b>TOTAL REVENUES</b>	<b><u>\$ 112,848,445</u></b>

Thirty percent (30%) of the proceeds of the first local half-cent sales and use tax (article 40) and sixty percent (60%) of the proceeds of the second local half-cent sales and use tax (article 42) are hereby declared to be included in the appropriation for school capital projects and/or debt service. Any receipts in excess of capital projects and debt service shall be accumulated in the Capital Reserve Fund for Schools until such time as the funds are appropriated for specific projects or debt service.

The remaining proceeds from the two half cent sales and use taxes are hereby appropriated for other general county needs which may include, but not be limited to, debt service, capital projects, capital outlay and operating expenses.

**Section 3.** The following amounts are hereby appropriated or reserved in the School Capital Reserve Fund for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Transfer to General Fund (Debt Service)	500,000
<b>Total School Capital Reserve Fund Appropriations</b>	<b><u>\$ 500,000</u></b>

It is estimated that the following revenues will be available in the Capital Reserve Fund for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Lottery Proceeds	500,000
<b>Total School Capital Reserve Fund Revenues</b>	<b><u>\$ 500,000</u></b>

**Section 4.** The following amounts are hereby appropriated in the Emergency Telephone Fund for

the  
fiscal year beginning July 1, 2020 and ending June 30, 2021:

Operating Expenses	327,500
<b>Total Emergency Telephone Fund</b>	<b>\$ 327,500</b>

It is estimated that the following revenues will be available in the Emergency Telephone Fund for the  
fiscal year beginning July 1, 2020 and ending June 30, 2021:

State Revenues	327,500
<b>Total Emergency Telephone Fund</b>	<b>\$ 327,500</b>

The following amounts are hereby appropriated in the Capital Reserve Fund for the  
**Section 5.** fiscal  
year beginning July 1, 2020 and ending June 30, 2021:

Other Financing Sources	1,103,000
<b>Total Capital Reserve Fund</b>	<b>\$ 1,103,000</b>

It is estimated that the following revenues will be available in the Capital Reserve Fund for the  
fiscal  
year beginning July 1, 2020 and ending June 30, 2021:

Other Financing Uses	1,103,000
<b>Total Capital Reserve</b>	<b>\$ 1,103,000</b>

The following amounts are hereby appropriated in the Water and Sewer Enterprise  
**Section 6.** Fund  
for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Environmental Protection	8,614,683
Other Financing Sources	4,911,765
<b>Total Water and Sewer Enterprise Fund Appropriation</b>	<b>\$ 13,526,448</b>

It is estimated that the following revenues will be available in the Water and Sewer Enterprise  
Fund

for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Sales & Services	13,440,759
Interest Revenue	75,000
Miscellaneous Revenue	10,689
<b>Total Water and Sewer Enterprise Fund Revenues</b>	<b>\$ 13,526,448</b>

**Section 7.** The following amounts are hereby appropriated in the Solid Waste Enterprise Fund for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Environmental Protection	4,076,801
Debt Service	886,169
<b>Total Solid Waste Enterprise Fund Appropriation</b>	<b>\$ 4,962,970</b>

It is estimated that the following revenues will be available in the Solid Waste Enterprise Fund for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Other Taxes	35,000
State Revenues	116,552
Sales & Services	4,746,000
Interest Revenue	65,418
<b>Total Solid Waste Enterprise Fund Revenues</b>	<b>\$ 4,962,970</b>

**Section 8.** The following amounts are hereby appropriated in the Health Insurance Fund for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Health and Consultant Fees	1,350,000
Health Insurance Claims	7,967,014
<b>Total Health Insurance Fund Appropriations</b>	<b>\$ 9,317,014</b>

It is estimated that the following revenues will be available in the Health Insurance Fund for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Health Premiums Employer	8,117,686
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Health Premiums Employee	1,169,328
Investment Income	30,000
<b>Total Health Insurance Fund Revenues</b>	<b>\$ 9,317,014</b>

**Section 9.** The following amounts are hereby appropriated in the Workers' Compensation Fund for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Professional Fees	135,000
Workers' Compensation Claims	710,500
<b>Total Workers' Compensation Fund Appropriations</b>	<b>\$ 845,500</b>

It is estimated that the following revenues will be available in the Workers' Compensation Fund for the fiscal year beginning July 1, 2020 and ending June 30, 2021:

Workers' Compensation Premiums	845,000
Interest Income	500
<b>Total Workers' Compensation Fund Revenues</b>	<b>\$ 845,500</b>

**Section**

**10.** There is hereby levied a tax at the rate shown below, per one hundred dollars (\$100) valuation of property listed for taxes as of January 1, 2020; located within the eleven (11) special fire districts for raising of revenue for said special fire districts. Estimated totals of valuation of property for the eleven special fire districts for the purpose of taxation are as follows:

<b>Fire District</b>	<b>Assessed</b>		<b>2020-21</b>		<b>2020-21</b>
	<b>Value</b>	<b>Rate</b>	<b>Tax Revenue</b>	<b>Appropriations</b>	
Alexis	386,800,000	0.1165	444,539		444,539
Boger City	785,700,000	0.1250	968,867		968,867
Crouse	200,500,000	0.0860	170,102		170,102
Denver		0.1150			2,919,345

	2,573,300,000		2,919,345	
East Lincoln	3,187,000,000	0.0980	3,081,096	3,081,096
Howard's Creek	299,300,000	0.1355	400,077	400,077
North 321	900,800,000	0.0700	622,047	622,047
North Brook	396,500,000	0.1000	391,147	391,147
Pumpkin Center	618,600,000	0.1200	732,288	732,288
South Fork	344,500,000	0.1250	424,812	424,812
Union	311,500,000	0.1250	384,118	384,118

There is appropriated to the special fire districts from the proceeds of this tax the amounts shown under the appropriation column, for use by the special fire districts in such manner and such expenditures as is permitted by law from the proceeds of this tax. In the event the actual net proceeds from the tax levies exceed or fall short of the appropriated amounts, the actual net proceeds from the tax shall constitute the appropriation from the tax levy.

**Section 11.** There is hereby levied a unified tax at the rate of 59.9 cents per one hundred dollars

valuation of property listed for taxes as of January 1, 2020, for the purpose of raising the revenue listed

as "Current Year's Property Taxes" in the General Fund in Section 2 of this Ordinance.

This rate of tax is based on an estimated total valuation of property for the purpose of taxation of \$11,300,000,000 and an estimated collection rate of 98.65 percent. The estimated rate of collection is

based on the fiscal 2018-19 collection rate of 98.65 percent.

**Section 12.** Lincoln County will continue to serve as collection agent for the City of Lincolnton for the

collection of property taxes, as long as this is mutually agreeable between Lincolnton and Lincoln County. Lincoln County shall receive a three percent (3%) collection fee (1-1/2% fee for motor vehicles) for this service, plus unusual expenses as agreed by both parties.

**Section**

**13.** On June 29, 2002, the Board of County Commissioners adopted "Ordinance for Availability and Use Fees for Solid Waste Disposal Facilities Lincoln County, North Carolina." As

stated in the ordinance the fees for availability shall remain in effect until amended. The Solid Waste

Availability Fee for fiscal year 2020 - 21 is \$99 per unit rate.

**Section 14.** On August 23, 1993, the Board of County Commissioners adopted "Resolution Concerning

Use of Room Occupancy and Tourism Tax" which became effective October 1, 1993. This resolution

levies a 3% room occupancy tax on the rental of a room, lodging, or accommodation furnished by a

hotel, motel, tourist camp, or similar place within the County. The purpose of this tax is to provide a

source of revenue to promote travel and tourism within Lincoln County. Included in this budget is estimated revenue of \$140,000 to be derived from this tax. Also included in this budget are allowable

expenditures which may be funded from this revenue source: Chamber of Commerce \$17,500 to advertise, print and distribute information on Lincoln County; Downtown Development Association

\$7,500; Historical Properties \$2,760; Historical Association \$41,000; Cultural Development Center

\$60,000; Arts Council \$10,000; Lake Norman Marine Commission \$31,000; for a total of \$169,760.

**Section 15.** This Budget Ordinance, effective July 1, 2020 authorizes the mileage reimbursement rate

as the standard mileage rate set by the Internal Revenue Service, which may be revised during the fiscal year. Per Diem without receipts will be \$11.00 for breakfast; \$15.00 for lunch; and \$24.00 for

dinner for In State Travel, for out of State travel, GSA rates shall be used.

**Section**

**16.** The funds that are used in this Budget Ordinance to fund certain elements in the Solid Waste and Public Works operations are non-property tax funds.

**Section 17.** The County Manager, or designee, is hereby authorized to transfer appropriations within a

fund as contained herein under the following conditions:

- a. He may transfer amounts among objects of expenditure within a department.
- b. He may transfer amounts up to \$50,000 between departments of the same fund.
- c. He may not transfer any amounts between funds nor from the contingency or from any capital reserve appropriations.

**Section** The County Manager, or designee, is hereby authorized to execute contractual

**18.** documents

under the following conditions:

- a. He may execute contracts for construction, repair projects or design services requiring the estimated expenditure of less than \$50,000.
- b. He may execute contracts for: (1) purchases of apparatus, supplies and materials, or equipment which are within budgeted appropriations, (2) leases of personal property for a duration of one year or less and within budgeted appropriations, and (3) services which are within budgeted appropriations.
- c. He may execute grant agreements to or from public and non-profit organizations, which are within budgeted appropriations, unless a grantor organization requires execution by the Board of Commissioners.
- d. He may execute contracts, as the lessor or lessee of real property, which are of one-year duration or less, if funds therefore are within budgeted appropriations.

**Section 19.** It is the intent of the Board of Commissioners that all departments and divisions, including

those under the control of the Sheriff, are limited to the specific number of each position classification

agreed upon in the budgeting process, and that no changes in those numbers can be made without the

express approval of the Board of Commissioners after a recommendation from the County Manager.

The list of the specific numbers of each position classification for the Sheriff's Office is approved hereby as set out below:

<b>Position Title</b>	<b>Number of Full Time Positions</b>
Sheriff	1
Major	0
Captain	1
1st Sergeant	7
Sergeant	15
Court Security Officer (considered deputies)	0
Sr. Deputy Sheriff	15
Deputy Sheriff	50
Detectives	15
Lieutenant	5
Financial Manager	1
DCI Specialist	3
Records/Permit Specialist	0

Firearms Permit Specialist	1
Public Information Officer	1
Administrative Assistant	2
Systems Analyst Programmer 1	1
Systems Analyst Programmer 2	1
Logistics Specialist	1
Admin Support Specialist	0
Admin Support Supervisor	1
<b>TOTAL FOR SHERIFF</b>	<b>121</b>

<b>Position Title</b>	<b>Number of Full Time Positions</b>
Admin. Det. Lieutenant	1
Asst. Det. Admin.	1
Administrative Secretary	1
Classification Officer	1
Corporal Detention	4
Deputy Sheriff - Transport	4
Detention Officer	21
Sergeant - Detention	4
Sr. Detention Officer	5
Pre-Trial Release	0
<b>Total for DETENTION</b>	<b>42</b>

**Section 20.** The annual appropriations for all divisions of the Sheriff's Office shall be allocated by the

Finance Department on a quarterly basis, with each quarterly allocation being equal to twenty-five (25%)

percent of the annual appropriation in each line item. The County Manager is hereby authorized to exceed such a quarterly appropriation in the event an annual contract requires a pre-payment or earlier

payment schedule than quarterly. The intent of this section is to authorize expenditures equal to no more than 25% of the annual appropriations during each quarter of the fiscal year.

**Section 21.** It is the intent of the Board of Commissioners that Lincoln County Schools have adequate

funding to operate for Fiscal Year 2021. The Board of Commissioners has divided the Current Expense

amount that the County will remit to the Schools as follows:

Purpose Code		\$
5000	Instructional Services	6,120,690
6000	System-Wide Services	6,281,121
	Ancillary	
7000	Services	6,316,066
	Capital	
8000	Outlay	<u>3,229,091</u>
		\$
	Total	21,946,968

It is the intent of the Board of Commissioners of Lincoln County that Lincoln County Schools be able to transfer between purpose codes an amount not to exceed 10% of that purpose code. Any amount in excess of 10% must be brought before the Board of Commissioners prior to the transfer for approval. In addition, the Lincoln County Board of Commissioners will fund the following number of positions for Local Paid Employees:

Teachers (Cert 10 & Cert 11)	15
Administrators	11.05
Office and Clerical	78.42

**Section 22.** Copies of this Budget Ordinance shall be furnished to the County Manager, Clerk to the Board of Commissioners, Finance Director and the Tax Administrator for direction in carrying out their duties.

Adopted this 15th day of June, 2020.

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Carrol Mitchem, Chair  
Lincoln County  
Board of Commissioners

**ATTEST:**

Amy S. Atkins  
Clerk to the Board

**Parks and Recreation Master Plan Award to McGill Associates with the County portion**  
**\$62,650** - John Henry presented the following:

Purchasing issued a RFQ for a joint Master Plan with the City of Lincolnton. Five responses were received and two firms were selected for interviews. McGill Associates was selected by the City and County to create the Master Plan. The County's portion of the contract is \$62,650.00 and the City approved their contract last week.

**UPON MOTION** by Commissioner McCall, the Board voted unanimously to award the contract to McGill Associates with the County's portion of \$62,650.00.

**Adoption of Resolution Making Certain Findings and Determinations with respect to the Issuance of Enterprise System Revenue Bonds:** Commissioner Cesena introduced the following resolution, a copy of which had been made available to each Commissioner and which was read by its title:

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE ISSUANCE OF ENTERPRISE SYSTEM REVENUE BONDS OF THE COUNTY OF LINCOLN, NORTH CAROLINA, AUTHORIZING THE FILING OF AN APPLICATION WITH THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF SUCH BONDS AND REQUESTING THE LOCAL GOVERNMENT COMMISSION TO SELL SUCH BONDS

WHEREAS, the Board of Commissioner the County of Lincoln, North Carolina (the "County") has determined that it is necessary to issue revenue bonds of the County pursuant to Chapter 159I of the North Carolina General Statutes, as amended, for the purpose of (a) financing improvements to the County's existing water treatment facilities (b) paying certain costs and expenses incurred in connection with the issuance of such revenue bonds; and

WHEREAS, it is necessary to take certain related action at this time;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioner of the County, as follows:

Section 1. The County Manager, the Finance Director and the County Attorney of the County are each hereby designated as a representative of the County to file an application for approval of such revenue bonds with the Local Government Commission of North Carolina (the "Local Government Commission") and authorized to take such other actions as may be advisable in connection with the negotiation of such revenue bonds and the development of the related financing; and all actions heretofore taken by any of such officers or any other officer of the

County relating to such matter on behalf of the County are hereby approved, ratified and confirmed.

Section 2. The Board of Commissioner hereby requests the Local Government Commission to approve such revenue bonds under Article 5 of Chapter 159 of the General Statutes of North Carolina, as amended, and to sell such revenue bonds at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the Local Government Commission determines to be in the best interest of the County, subject to the approval of the County.

Section 3. The Board of Commissioner recommends the selection of the following professionals to be on the financing team for the issuance of such revenue bonds and that the Local Government Commission approve such professionals as members of such financing team:

Bond Counsel	Robinson, Bradshaw & Hinson, P.A.
Underwriter	Wells Fargo Bank, National Association
Counsel to the Underwriter	Womble Bond Dickinson (US) LLP
Financial Advisor	Davenport & Company LLC

Section 4. The Board of Commissioner hereby finds, determines and affirms that (i) the issuance of such revenue bonds is necessary for the County to finance improvements to its water treatment facilities, (ii) the amount of the proposed revenue bonds will be sufficient but not excessive for its purposes, (iii) the proposed financing is feasible, (iv) the County's debt management procedures and policies are good and are managed in strict compliance with law and (v) under current economic conditions, the proposed revenue bonds can be marketed at a reasonable interest cost to the County.

Section 5. This resolution shall take effect immediately upon its passage.

Upon motion of Commissioner Cesena, seconded by Commissioner Permenter, the foregoing resolution was passed by the following vote:

Ayes: Commissioners Chairman Carrol Mitchem, Commissioners Richard Permenter, Bud Cesena, Anita McCall, Milton Sigmon.

Noes: n/a

**Approval of Agreement with Lincolnton Fire Department to provide Fire Protection for Boger City Fire Department** - Rodney Emmett, Fire Marshal, presented an Agreement with the City of Lincolnton to provide fire protection for Boger City Fire Department. The current Boger City Board has decided not to renew their contract so the City of Lincolnton has agreed to pick that district up, covering out of Boger City's current building.

**UPON MOTION** by Commissioner Sigmon, the Board voted unanimously to approve the Agreement with the City of Lincolnton to provide fire protection for Boger City Fire Department as presented.

**STATE OF NORTH CAROLINA**

**FIRE AND RESCUE SERVICES AGREEMENT**

**LINCOLN COUNTY**

THIS FIRE AND RESCUE SERVICES AGREEMENT (the “Agreement”), is made and entered into this the 1<sup>st</sup> day of July, 2020, by and between LINCOLN COUNTY, hereinafter referred to as the “County,” and The City of Lincolnton, hereinafter referred to as the “City.” (collectively, the “Parties” and individually as a “Party”).

**WITNESSETH:**

**WHEREAS**, the City’s fire department (the “Department”) in Lincoln County has a recognized history of dedicated service, having provided essential fire protection and other related emergency services to the citizens of Lincoln County for all of the years of its existence; and

**WHEREAS**, the County and City desire to contract with each other for the mutually-agreed and mutually-recognized goal of attempting to achieve the highest levels of protection to the persons who live, work and/or are otherwise present in the County; and

**WHEREAS**, **North Carolina General Statutes §69-25.5** states that counties may provide for fire and rescue protection in a designated district by contracting with any incorporated nonprofit volunteer or municipal fire department; and

**WHEREAS**, this Agreement is authorized by **North Carolina General Statutes Sections 153A-11, 153A-13, N.C.G.S. Chapter 153A, Article 11, and N.C.G.S. Chapter 160A, Article 20**; and

**WHEREAS**, the fire districts of Lincoln County shall have boundaries defined by descriptions on file in the Lincoln County Fire Marshal’s Office; and

**WHEREAS**, the City has secured equipment, land and buildings for the operation of the Department; and

**WHEREAS**, the County is contracting with the City to allow the City’s Department to provide service within the area as further defined in Section 1(10) (the “District”).

**NOW, THEREFORE**, in consideration of the mutual benefits inuring to the parties hereto, and based upon the mutual covenants contained herein and the considerations stated therein, the parties do hereby covenant and agree as follows:

## SECTION 1 – DEFINITIONS

1. Agreed-Upon Procedure: Omitted.
2. Agreement: This Fire and Rescue Services Agreement, together with Exhibits “A,” “B” and “C,” each of which is incorporated herein by reference as an integral part of this Agreement.
3. Applicable Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
4. Board of Commissioners: The Lincoln County Board of Commissioners.
5. Omitted
6. Capital Expenditure: All expenditures for or purchases of buildings, building additions, alterations, repairs or improvements and all expenditures for or purchases of additional or replacement furniture, machinery, vehicles or equipment, hardware or software, where the cost of such expenditure or purchase is twenty thousand dollars (\$20,000.00) or more.
7. Capital Improvement Plan (CIP): A short-range plan, usually four (4) to ten (10) years, which identifies capital projects and equipment purchases, provides a planning schedule and identifies options for financing the plan.
8. Capital Item: The actual property which was purchased or otherwise received for the benefit of the Department as a Capital Expenditure.
9. CPA: Certified Public Accountant.
10. District: The designated area that the Department is contracted to serve, as further described on the Fire Districts Map, attached hereto as Exhibit “C,” and known as the Boger City Fire District.
11. Effective Date: The effective date is July 1, 2020.
12. EMS: Lincoln County Emergency Medical Services.
13. Existing Debt: Any legally enforceable secured or unsecured obligation to pay money existing prior to this Agreement.
14. Fire Chief: The Chief of the Department.
15. Fire Districts Map: The most current version of the Lincoln County Fire Insurance Districts Map on file in the office of the Fire Marshal.
16. Fire Marshal: The Lincoln County Fire Marshal.

17. Fiscal Year: July 1st through June 30th.
18. GAAP: Generally accepted accounting principles.
19. GAAS: Generally accepted auditing standards.
20. Incident Commander: Department employee with management responsibility of a fire
21. Services: Fire protection, emergency rescue, medical first responder, and associated emergency-related services, and those activities undertaken by the Department, including but not limited to those services included in Section 3 of the Agreement.

## **SECTION 2 - PURPOSE**

The purpose of this Agreement is to establish the terms and conditions under which the County will contract with the City, to establish the standards of the Department for providing the Services, including, firefighting and fire prevention services and other emergency services during emergencies and disasters, and to provide for efficient firefighting and emergency services to the persons who live, work and/or are otherwise present in the County.

## **SECTION 3 - SERVICES FURNISHED BY THE DEPARTMENT**

The City shall provide the Department's Services throughout the District and elsewhere in accordance with the standards and other requirements in a manner that complies with all Applicable Law, including by illustration, but not limited to, those applicable rules and regulations of the North Carolina Department of Insurance and the Insurance Services Office, Inc. The City further shall cause its Department to provide the Services to all persons and property present in its assigned District throughout the District in accordance with the standards and other requirements set forth in this Agreement in a professional, efficient, and workmanlike manner.

The City shall cause the Department provide the following services:

- (1) To furnish and provide continuing fire protection service and other emergency services to all residents of the Fire District, to all persons present in the Fire District, and to all real and personal property lying within the boundaries of the Fire District and other areas of the County on the basis of automatic/mutual aid agreements with other fire departments within the County for the benefit of the residents of Lincoln County and for the benefit of other persons present in Lincoln County;
- (2) To endeavor in good faith and with due diligence to dispatch upon the call of any person within the District the equipment necessary to answer the call and adequate personnel to operate such equipment in the judgment of the Chief of the Department or his/her designee;
- (3) To respond and function at the EMS level as franchised through Lincoln County Emergency Medical Services and Lincoln County;

- (4) To provide rescue services if the Department holds a certification through the North Carolina Association of Rescue and Emergency Medical Services. Such services shall be performed inside the scope of practice of the certification(s) to the County and within the District and other locations when called to provide those services by the County or other fire department(s) or rescue squad(s);
- (5) To provide lifesaving and property protection measures as necessary;
- (6) To provide search and rescue;
- (7) To perform evacuation;
- (8) To respond to motor vehicle accidents;
- (9) To provide clearance of roadways to ensure the passage of emergency service apparatus, but the Department does not have to meet any standards when opening roads to emergency service apparatus, except as provided by law;
- (10) To perform hydrant flow and operational testing on the hydrants in the District and the Department shall make notes of work that needs to be done and turn hydrant repair work orders into Lincoln County Public Works; and
- (11) To endeavor at all times and in good faith to respond to all emergency calls from the Communications Center, the Department Chief or his/her designee, or the County Fire Marshal when and where needed.

#### **SECTION 4 - SERVICES FURNISHED BY THE COUNTY**

In accordance with this Agreement, and at the County's sole expense above and beyond those funds allocated to the Department pursuant to this Agreement, the County shall furnish the following services to the Department:

- (1) 911 communications and dispatch;
- (2) Fire investigation services when requested by the Incident Commander;
- (3) Emergency scene assistance services in support of the Department's efforts;
- (4) Maintenance of the County radio system and the Department's radios and pagers;
- (5) Assist the Department with fire prevention and community awareness programs within the District;
- (6) Provide a staffed EMS ambulance and/or medical services rehab unit with certified Advance Life Support (ALS) personnel on all structure fires or other emergency scenes, when requested by the Department.
- (7) Provide a staffed EMS ambulance and medical services rehab unit as requested on scene of any live fire training within the District, with the Department giving thirty (30) days' notice to EMS of such live fire training;
- (8) Provide inspections of all public buildings within the District as set forth in the North Carolina Building Code and the North Carolina General Statutes as well as investigations of fires, arsons, fire deaths, and fire injuries within the District as requested by the Department;
- (9) Provide National Fire Protection Association resource materials on fire prevention, instructional or fire service standards that shall be available through the Fire Marshal's office;

- (10) Provide incident reporting software, and when applicable and necessary, software updates and annual software support, with the accompanying mutual understanding that any and all personal information and data entered into such software shall be the sole and exclusive property of the Department, except as may otherwise be required by law or by court order;
- (11) Assist with training the Department's staff in the National Incident Management System; and
- (12) Furnish the Department with such additional services and support as are reasonably needed and as are mutually agreed between the County and the City as circumstances may dictate from time to time.

## **SECTION 5**

Omitted.

## **SECTION 6 - INSURANCE SERVICES OFFICE RATING**

The City shall cause the Department to engage at all times in such efforts as to maintain, or improve, its rating as of the Effective Date of this Agreement with the North Carolina Department of Insurance and the Insurance Services Office, Inc., ("ISO") throughout the term of this Agreement. The City agrees that in no event shall the Department have an ISO rating worse than a 9S within five (5) road miles of the main station or substation(s), and 9E outside five (5) road miles but within six (6) miles of the main station or substation(s). If the Department has any district that lies further than six (6) road miles from their main station or substation and is classified as a Class 10 rated area, the City shall cause the Department to endeavor in good faith and with due diligence to work with the County to eliminate such areas. In the event that the Department's ISO rating is lost solely by the Department's inability to meet the required ISO standards or the Department is placed on probation by the North Carolina Department of Insurance, the City shall cause the Department immediately to undertake and to implement such reasonable actions as are necessary to attempt in good faith to improve and/or increase its ISO rating to a level reasonably achievable under the circumstances as they exist at that time and to prepare and submit a plan to the County which sets forth how it plans to obtain its previous ISO rating again within a one (1) year period. This plan should include specific steps to be taken to attain the previous ISO rating, including, without limitation, a project timeline and costs associated, if any, and will accept other recommendations from the County for corrective action. The City shall implement this plan, subject to availability of funds appropriated by the County under this Agreement.

The City shall also allow periodic inspections of the Department by the Lincoln County Fire Marshal's Office for the purpose of determining that the Department is meeting the standards set forth by the North Carolina Department of Insurance for its rating class and the inspection is at the County's discretion and may be without notice. The County Fire Marshal shall file a written report with the County Manager verifying that the Department meets or does not meet the minimum requirements of the North Carolina Department of Insurance for their rating class. In the event that the Department does not meet minimum requirements as specified, the procedure set forth in Section 11 shall be followed.

In the event the County is found to be at fault either in whole or in part for the Department's loss of its ISO rating, the County shall devise a mutually agreed upon plan with the Department to restore the rating as soon as possible. For example: If the County's communication center or the County's water system receives a reduction of points from the ISO inspection, the County shall work with the Department to quickly improve its possible score related to the ISO rating.

Under this Section 6, the County shall not withhold funding if it is found to be at fault either in whole or in part for the Department's loss of its ISO rating.

## **SECTION 7 – RESPONSE TIMES**

The City and the County acknowledge that response times are an essential component to providing an acceptable level of service to the community. The County and the City shall collaboratively monitor the Department's response times and develop strategies to address any response time concerns. Response time will be measured beginning with dispatch time as reported in the Computer Aided Dispatch ("CAD") Event Report and ending with the On Scene Time as reported in the CAD Event Report. Emergency Incident on scene times will be measured when the first Department apparatus arrives on scene. If the Department does not meet a goal(s) response time mutually agreed upon by the County and City, it will not be considered a breach of this Agreement or the performance standards required hereunder; however, the County and the City shall work jointly to develop strategies to assist the Department in attempting to meet its response time goals.

## **SECTION 8 - PROCESS FOR FIRE DEPARTMENT FUNDING**

In order to establish the amount of the County's annual appropriation to the Department for the provision of Services, the City shall cause the Department to conform to the County's budget calendar and to cause the Department to participate in the County's budget process for adoption of the Fiscal Year budget. The City understands and agrees that this includes the Department's submittal of a budget request to the County Manager based on the Department's estimated costs for provision of the Services in the District for the upcoming Fiscal Year. The City shall cause the Department to provide in its budget submittal sufficient information, in a form specified by the County and agreed upon by the City, for the County to determine the source(s) and estimated amounts of all revenues anticipated by the Department for the coming Fiscal Year.

The County shall provide the Department with a budget package on or before November 1<sup>st</sup> each year and the City shall cause the Department to submit its budget request broken down into three (3) groups of expenditure categories: (i) personnel, (ii) operating, and (iii) capital to the Fire Marshal's Office by February 1<sup>st</sup> of each year. Funds appropriated to the Department in these expenditure categories may only be spent within the designated expenditure category, provided, the Department may internally and in conformity with its fiduciary responsibilities as imposed by law, reallocate its funds from one category to another. Provided, that no such internal reallocation undertaken by the Department in a given Fiscal Year shall affect any

budgetary allocation request in the next Fiscal Year. Also, as part of the budget process set forth herein, the City shall cause the Department to submit to the County a Capital Improvement Plan, which shall include a projected replacement schedule for Capital Items, for example a Department apparatus.

The County Manager, or his/her designee, shall make a budget recommendation to the Board of Commissioners. Pursuant to the budgetary authority set forth in N.C.G.S. § 159-13, the amount appropriated to the Department for Fiscal Year 2020-2021, and for any Fiscal Year thereafter that this Agreement remains in effect, is ultimately determined and adopted by the Board of Commissioners as deemed in the Board of Commissioners' discretion as sufficient and proper.

## **SECTION 9 - COLLECTION OF FIRE TAX**

It is understood and agreed by the parties that the amount of the Fire Tax imposed by and through the Board of Commissioners must by necessity be an estimate of that required to generate anticipated revenues. The total amount of revenue generated will necessarily depend upon the collection rate in a given Fiscal Year. If the amount of revenue generated by a Fire Tax, when imposed, is greater than anticipated, the amount in excess of the approved total appropriations to the Department for provision of the Services will be delivered by the County to the Department for the sole benefit of the Department. Any such excess funds must be used by the Department only as so-called capital funds and not otherwise used in a fashion that would inadvertently but nonetheless artificially inflate future budget requests. The use of such 'excess funds' will be denoted in the following year's budget package.

## **SECTION 10 - PAYMENT OF FUNDS TO THE FIRE DEPARTMENT**

The County shall pay for the benefit of the Department the amount appropriated by the Board of Commissioners for the Fiscal Year. The County shall remit payments to the Department no later than the 15th day of each month. Payments will be made in 11 (eleven) equal monthly deposits, each equal to 1/11<sup>th</sup> of the annual appropriation. If applicable, a 12<sup>th</sup> (twelfth) payment including any excess funds will be deposited in to the Department's account following collection of said funds. Lincoln County shall pay the City, for the benefit of the Department, all taxes which are levied and collected by Lincoln County for the District. The County shall disburse all appropriations by direct deposit into an account designated by the City for the Department.

## **SECTION 11 - SUSPENSION OF FUNDING**

In the event the Department does not meet the minimum standards as set forth in Sections 6 and 16 in this Agreement that provide for the receipt of financial assistance, the monthly payments may be suspended by the County. In the event of such suspension, the parties understand and agree that the Department's provision of fire protection and other emergency services is critical to the health, safety, and welfare of the citizens of Lincoln County. Therefore, upon the imminent withholding of financial assistance by the County for any reason, the parties

shall cooperate and work together in good faith to facilitate the non-disruption of such services in such a manner that the health, safety, and welfare of the citizens are not compromised.

In the event deficiencies are found at the time of any inspection herein provided for under Section 6 or Section 17, the appropriate representative of the County shall notify the Chief of the Fire Department in writing of said deficiencies and shall state with specificity all items to be changed, improved, or stopped. The receipt of said notification by its Fire Chief shall constitute notice to the Department. After obtaining the written notification from the County detailing the deficiencies to the Department, the City shall have thirty (30) days to cure any such deficiencies.

At the expiration of the 30-day cure period as provided above, a second inspection shall be made to determine if the deficiencies have been cured. In the event that the deficiency or deficiencies have not been cured, and if in the reasoned opinion of the Fire Marshal, sufficient efforts to cure the deficiency or deficiencies have not been undertaken, the Fire Marshal shall notify the County Manager, the City Manager, and the Chief of the Fire Department in writing. The receipt of said notification by the City Manager or the Department's Fire Chief shall constitute notice to the Department. Upon receipt, the County Manager may suspend payments by the County to the Department until such time as the Department shall meet the minimum requirements as set forth herein.

In the event that the County, due to deficiencies within the Department, shall suspend any monthly payment, and such deficiencies are subsequently and timely corrected to meet minimum prescribed standards as set forth in Sections 6, and 17, the Fire Marshal shall review the suspension of payments and recommend to the County Manager whether the previously withheld payments should be reinstated and forwarded to the Department. The Fire Marshal shall report his/her recommendations in writing to the County Manager setting forth the reasons for recommending reinstatement or non-reinstatement of the previously suspended payments.

In the event that the City disagrees with the findings of the Fire Marshal's second inspection, the City may appeal the findings directly to the County Manager in writing within fifteen (15) days of the receipt of the Fire Marshal's report. If the City disagrees with the County Manager's decision regarding reinstatement of funding, it may appeal to the Board of Commissioners by filing written notice with the Clerk to the County Board of Commissioners within fifteen (15) days of the County Manager's decision.

If at any time in the above appeals process, the County or City reasonably believes that the Fire Marshal may be incorrect in the evaluation of the Department related to Section 6, the City or the County can request an external North Carolina Response Rating Schedule (NCRRS) subject matter expert to be hired to perform an evaluation of the Department and compare such evaluation to the Fire Marshal's findings to ensure accuracy. The hiring of the external subject matter expert shall be mutually agreed upon by both parties. Upon completion of the evaluation, the external subject matter expert shall supply both the City and the County Manager with a copy of the findings in a formal report. The report shall not be binding on the parties; however, the County shall consider such findings as a part of its decision regarding the potential suspension of funding under Section 11. The non-prevailing party shall bear the cost of the external subject matter expert evaluation.

## **SECTION 12 - BOOKS AND RECORDS**

The City shall cause the Department to generate and maintain all required records and data and shall maintain such records and data in accordance with Generally Accepted Accounting Principles (GAAP). The County shall have reasonable access to all books, records and audit reports. The City shall provide adequate documentation of all of the Department's receipts and disbursements, including without limitation, those related to the expenditure of any funds appropriated and disbursed to the Department under this Agreement.

The County, or its authorized agent, at the County's sole expense may inspect and examine all records described above on a date and at a time mutually agreed upon between the County and the City, but in no event shall any such inspection and examination be undertaken on a date beyond thirty (30) days of the County's written request for such an inspection. All records, data, receipts and other documents examined by the County pursuant to this Section are and shall remain in the sole possession and ownership of the City. No such records, data, receipts and other documents, or any copy or duplication or summation thereof shall be removed from the premises of the Department.

## **SECTION 13 - LINCOLN COUNTY FIRE & RESCUE ASSOCIATION**

The City shall cause the Department to participate, through membership, in the Lincoln County Fire & Rescue Association, Inc., and to meet the following objectives of the Lincoln County Fire & Rescue Association:

- i. To coordinate the efforts of the Fire Departments and the Rescue Squad of Lincoln County.
  - 1) To promote the exchange of information among all fire department and rescue squad;
  - 2) To assist in the training of all firefighters within Lincoln County;
  - 3) To keep all fire departments informed of the quality and quantity of equipment being used among the fire departments in Lincoln County; and
  - 4) To keep all fire departments informed about new or existing equipment, standard operating guidelines (SOG's) and compliances that other organizations are using.
- ii. To maintain a liaison with Lincoln County, the Fire Marshal's Office, Lincoln County Law Enforcement Agencies, the Board of County Commissioners of Lincoln County, and all other governmental agencies, which may be willing or able to assist in the promotion of fire protection; and
- iii. To keep all fire departments within Lincoln County abreast of the benefits (local, state and federal) available for the benefit of the firefighters and their families in all Lincoln County Fire Departments.

## **SECTION 14 - INSURANCE REQUIREMENTS**

The Department shall maintain insurance coverage as specified in Exhibit "B." The Department may purchase such other coverages as it may deem appropriate for the protection of The Department, its employees, members or personnel.

## **SECTION 15 - INDEPENDENT CONTRACTOR**

The City, including any board member, officer, employee, or agent of the City or the Department, is an independent contractor of the County and none shall be considered employees of the County. The relationship between the parties shall be limited to the performance of this Agreement in accordance with its terms. The City shall cause the Department to operate and act as an independent contractor in accordance with the standards set forth herein, and the County shall not be responsible for any of the City's or the Department's acts or omissions. No liability for benefits, including, without limitations, such benefits as pension rights, or other provisions shall arise out of or accrue to any party, its officers, agents, or employees as a result of this Agreement or performance thereof.

## **SECTION 16 - INDEMNIFICATION**

The City shall protect, defend, indemnify and hold the County, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of any kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action arising solely and singularly out of any act or act of omission giving rise to any of the above and attributable to the Department, up to the limits of insurance as detailed herein.

## **SECTION 17 – FIRE, RESCUE AND MEDICAL REPORTS**

The City shall cause the Department to complete an incident report immediately following all fires, or as soon thereafter as reasonably practicable. The City shall cause the Department to forward a copy of all incident reports to the Fire Marshal's Office in accordance with N.C.G.S. § 58-79-45.

The City shall cause the Department to make medical reports available to the County's EMS provider. The disclosure of medical reports or other data pertaining to personally identifiable health information shall be made to the EMS provider in accordance with all Applicable Law.

The above records can be inspected at any time by the Lincoln County Fire Marshal's Office and failure to complete the above may result in the suspension of monthly payments in accordance with Section 11 until such time as the reports are properly filed.

## **SECTION 18 - ANNUAL FINANCIAL AUDIT AND FINANCIAL INFORMATION**

The City shall cause the Department to perform and prepare an audit with an accompanying management letter by and through a CPA firm.

The City shall cause the Department to provide the auditor with access to all records needed to prepare the audit and its accompanying management letter in accordance with the Agreed-Upon Procedure stipulated to by both the City and the County. The audit will be complete by December 31st of the then-current Fiscal Year, and the City shall provide the County a copy of such audit and accompanying management letter within thirty (30) days of completion.

In the event that the auditor identifies any deficiencies during the course of the audit, the City shall provide to the County an explanation for any such deficiencies as well as a plan of corrective action including timeframes for correction as is mutually-agreed upon in writing by both the City and County. Should the City be unwilling or unable to correct the deficiencies identified within the required timeframes, the County may terminate this contract in accordance with Section 29.

## **SECTION 19 - PUBLIC MEETINGS, RECORDS AND INPUT**

Omitted.

## **SECTION 20 - DEPARTMENT TRAINING**

The City shall cause the Department to adopt guidelines, no later than ninety (90) days from the Effective Date of this Agreement, which address appropriate initial training and continuing education of firefighters of the Department. These guidelines will ensure that such initial training and continuing education will strive in good faith to meet or exceed all requirements of the State of North Carolina, including, without limitation, a minimum standard of thirty-six (36) hours of fire training per Department member annually.

The City shall also cause the Department to maintain training records for each volunteer or employee on its roster. Training records shall indicate the following, including but not limited to the following: courses that have been completed, time spent in training for each course, the course dates, instructors, and the place course was held.

Appropriate information shall be entered into the Emergency Reporting Data Base on all training held by the Department or attended by its volunteers and employees.

Emergency Medical Education shall coordinate with the Lincoln County EMS Training Coordinator, in accordance with the Lincoln County System plan.

## **SECTION 21 - NEW FIRE STATIONS AND SUB-STATIONS**

The City shall coordinate all construction of new facilities with the Fire Marshal and the Lincoln County Manager.

The County may, but is not required to, waive all fees related to building new stations or sub-stations.

Additionally, the County may, but is not required to, grant variances to the Unified Development Ordinance (UDO) to save public funds.

The City shall retain all control and decision-making authority regarding the bid process and/or the design-build process.

The City shall comply with all applicable laws related to the construction process of building a new station or sub-station.

## **SECTION 22 - DISASTER PLANNING**

The County and the City shall cooperate in establishing disaster plans and in conducting exercises pursuant to disaster plans administered by the Lincoln County Department of Emergency Management.

## **SECTION 23 - FIRE INVESTIGATIONS**

The City shall ensure that the Department officer in charge at all fire scenes attempts to determine the origin and cause of every fire. Further, the City shall ensure that when such officer in charge cannot effectively determine the origin and cause of a fire within the District, or if the cause is suspected to be incendiary in nature, such Department officer in charge shall request a representative from the Fire Marshal's Office and law enforcement to conduct an investigation and provide scene security. The Department may also request a response from the Fire Marshal's Office for all situations that include injuries or deaths involving fires, explosions, or burns within the District.

All suspicious or incendiary wood, grass, or brush fires shall be reported immediately to the Lincoln County Forest Ranger and the fire scene shall be secured until the arrival of the Forest Ranger.

The City shall provide whatever reasonable assistance is needed by the Fire Marshal's Office staff and/or Lincoln County Forest Ranger at the fire scene.

The County shall, at the conclusion of the fire origin and cause determination, complete the investigation module of the incident report in the County's records management system and provide the Department with a copy of the County's incident report, in a timely manner for the Department's required entry into its fire reporting software.

## **SECTION 24 - NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)**

The National Incident Management System (NIMS) is a presidential directive that is a systematic, proactive approach to guide departments and agencies at all levels of government, nongovernmental organizations, and the private sector to work together seamlessly and manage

incidents involving all threats and hazards—regardless of cause, size, location, or complexity—in order to reduce loss of life, property and harm to the environment. The City shall cause the Department to use NIMS on all incidents.

## **SECTION 25 - FIRE DISTRICT**

The City shall cause the Department to endeavor at all times and in good faith to respond to all emergency calls in the District from the Communications Center, the Department Fire Chief or his/her designee, or the County Fire Marshal when and where needed.

## **SECTION 26 -MUTUAL AID AGREEMENTS**

N.C.G.S. § 58-83-1, authorizes mutual aid assistance between fire departments whereby full authority may be exercised for fire departments to send firefighters and apparatus beyond the territorial limits which they normally serve.

The County by and through its Fire Marshal Office shall, if acceptable to the County, approve all Automatic/Mutual Aid Agreements that the City wishes to enact within the District. The agreed-upon standard for approval by the County shall be that the Department is not overextending its resources to the point that the Department's primary fire district would be unprotected at any time.

## **SECTION 27 - GOVERNING LAW AND VENUE; MEDIATION**

This Agreement shall be governed by and in accordance with the laws of the State of North Carolina without regard to its conflict of laws rules. All actions relating in any way to this Agreement shall be brought in the General Courts of Justice in Lincoln County, North Carolina.

The Parties, prior to initiating any court action, shall first engage in good faith negotiations through mediation, which, unless the parties mutually agree otherwise, shall be in accordance with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the North Carolina Supreme Court and currently in effect. A request for mediation shall be filed in writing with the other party to this Agreement. The mediator must be certified by, and in good standing with, the North Carolina Dispute Resolution Commission. The parties agree to split the mediator's fee and any filing fees equally. The mediation shall be held in Lincoln County, North Carolina, unless another location is mutually agreed upon.

## **SECTION 28 - SEVERABILITY**

The provisions herein are severable, and should any provision be determined to be invalid, unlawful or otherwise null and void by any court of competent jurisdiction, the other provisions shall remain in full force and effect and shall not thereby be affected unless such ruling shall make further performance hereunder impossible or impose an unconscionable burden upon one of the parties. The parties shall endeavor in good faith to replace any invalid, illegal,

or unenforceable provisions with a valid provision, the rights and obligations of which come as close as practicable to that of the invalid, illegal, or unenforceable provision.

## **SECTION 29 - TERM AND TERMINATION**

- 29.1 Term: This Agreement shall commence on the Effective Date and shall remain in full force and effect for an initial one (1) year period ("Initial Term") unless earlier terminated as provided herein. Upon the expiration of the Initial Term and each subsequent renewal term, this Agreement shall automatically renew for additional terms of one (1) year periods thereafter, based on the County's fiscal year period from July 1st thru June 30th of each year; unless modified by mutual Agreement or terminated by either party as provided herein.
- 29.2 Termination: This Agreement may be terminated as follows:
  - 29.2.1 For Cause: By either party hereto in the event the other party breaches any of its material obligations hereunder; provided, however, that the defaulting party shall have thirty (30) days to correct such breach after written notice is given by such non-breaching party specifying the alleged breach;
  - 29.2.2 Non-renewal: The parties hereto may terminate this Agreement upon written notice to the other party no later than sixty (60) days prior to (a) the expiration of the initial one (1) year term, or (b) the expiration of any one (1) year renewal period thereafter; and
  - 29.2.3 Insolvency: By either party hereto in the event the other party (i) is adjudicated insolvent, under state and/or federal regulation, or makes an assignment for the benefit of creditors; (ii) files or has filed against it, or has an entry of an order for relief against it, in any voluntary or involuntary proceeding under any bankruptcy, insolvency, reorganization or receivership law, or seeks relief as therein allowed, which filing or order shall not have been vacated within sixty (60) calendar days from the entry thereof; (iii) has a receiver appointed for all or a substantial portion of its property and such appointment shall not be discharged or vacated within sixty (60) calendar days of the date thereof; (iv) is subject to custody, attachment or sequestration by a court of competent jurisdiction that has assumed of all or a significant portion of its property; or (v) ceases to do business or otherwise terminates its business operations, is declared insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement or similar proceeding;
- 29.3 Notices: All notices required in this Section 29 shall be reasonably specific concerning the cause for termination and shall specify the effective date and time of termination.
- 29.4 Effect of Termination: Termination of this Agreement for any reason shall not release any party hereto from obligations incurred under this Agreement prior to the date of termination. All services required to be performed under the terms of this Agreement shall be provided through the effective date of termination.

## **SECTION 30 - NOTICES**

All notices, reports, records, or other communications which are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects and deemed received if given in writing and delivered in person; by overnight courier; or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following addresses:

IF TO LINCOLN COUNTY:

County Manager  
353 N. Generals Blvd  
Lincolnton, NC 28092

IF TO THE CITY:

City Manager  
114 W. Sycamore St.  
Lincolnton, NC 28092

## **SECTION 31 – AMENDMENT/ASSIGNMENT**

This Agreement may not be amended, transferred or assigned by either party without the written consent of the other party to this Agreement.

## **SECTION 32 - DISPOSITION OF ASSETS IN EVENT OF COMPLETE DISSOLUTION**

OMITTED.

## **SECTION 33 - DISPOSITION OF ASSETS IN EVENT OF A MERGER**

OMITTED.

## **SECTION 34 - SALE OF FIRE DEPARTMENT PROPERTY**

OMITTED.

## **SECTION 35 - E-VERIFY**

Pursuant to N.C.G.S. § 143-133.3, the County is required to ensure entities with which it contracts, and the contractor's subcontractors, comply with Article 2 of Chapter 64 of the North Carolina General Statutes. These are requirements related to the use of E-Verify. E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. The City shall ensure that the Department and any subcontractor performing work under this Agreement: (i) uses E-Verify if required to do so

by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

## **SECTION 36 - IRAN DIVESTMENT ACT**

Pursuant to Article 6A of Chapter 143C of the North Carolina General Statutes, the County must require most entities with which it contracts, which would include the City under this Agreement, to certify that the entity is not identified on a list created by the State Treasurer pursuant to N.C.G.S. § 143C-6A-4 (the “Final Divestment List”). This requirement is related to ensuring that entities with which local governments contract are not involved in investment activities in Iran. The City certifies that: (i) it is not listed on the Final Divestment List, and (ii) it will not utilize any subcontractor performing work under this Agreement which is listed on the Final Divestment List.

## **SECTION 37 - NO WAIVER**

Failure of a party to enforce any of the provisions of this Agreement at any time, or to request performance by the other party pursuant to any provision of this Agreement shall in no way be construed as a waiver of any such provision, nor in any way affect the validity of this Agreement, or any part thereof, or the right of the non-enforcing party to enforce each and every provision of this Agreement.

## **SECTION 38 - MUTUALLY-DRAFTED AGREEMENT**

The City and the County hereby acknowledge that each participated in the negotiation and drafting of this Agreement. Accordingly, the City and the County agree that any rule of construction of contracts allowing for the interpretation of this Agreement to be construed against the drafting party is inapplicable to this Agreement.

## **SECTION 39 - HEADINGS**

The Section headings used herein are for reference and convenience only and shall not enter into or affect the interpretation and enforcement of this Agreement by either party.

## **SECTION 40 - ENTIRE AGREEMENT; MERGER**

The terms and provisions herein contained constitute the entire agreement by and between the County and the Department and shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof; except, that this Agreement shall not be construed to supersede any existing and applicable Mutual Aid Agreements.

## **SECTION 41 - COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which shall constitute one agreement binding on all parties hereto, notwithstanding that all parties have not signed the same counterpart.

## **SECTION 42 - AUTHORIZATION**

Each party warrants that it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement. Each party further warrants that the execution, delivery and performance by it of the Agreement has been duly authorized and approved by all requisite action of the party's management and appropriate governing body.

**IN WITNESS WHEREOF** the City, pursuant to a resolution duly adopted by its City Council, has caused this instrument to be duly executed in its name by the \_\_\_\_\_, and the County has caused this instrument to be duly executed in its name by the County Manager, pursuant to a resolution duly adopted by the County Board of Commissioners, and attested by its Clerk.

This \_\_\_\_ day of \_\_\_\_\_, 2020.

## LINCOLN COUNTY

ATTEST:

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Clerk to the County Board of Commissioners \_\_\_\_\_ by: \_\_\_\_\_  
County Manager

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

## Finance Director, Lincoln County

## CITY OF LINCOLNTON

ATTEST:

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Clerk to the City Council \_\_\_\_\_ by: \_\_\_\_\_  
City Manager

**OMITTED**

**EXHIBIT “A”**

**EXHIBIT “B”**  
**INSURANCE REQUIREMENTS**

The City shall procure and maintain, during the life of this Agreement, contract, and the following insurance coverage:

1. Comprehensive Automobile Liability Insurance with combined single limits of at least \$1,000,000.00 per occurrence. Coverage shall be provided under a symbol “1”. Coverage shall apply, on an excess basis for hired, borrowed and non-owned vehicles. Coverage shall apply, on a primary basis, for commandeered vehicles. Volunteers or employees shall be considered Insured and volunteers and employees shall have coverage excess of their personal auto liability limits when they are using their vehicles on behalf of their insured department. Fellow members’ liability shall be provided. Auto pollution liability shall be included in the coverage.

Automobile collision and comprehensive coverage for emergency vehicles, other than private passenger vehicles, shall be provided on agreed value basis. Coverage shall apply to owned and/or leased vehicles. The Department should attempt to set the agreed value at an amount that will replace the vehicle with a new vehicle, built to similar specifications and brought up to current NFPA, DOT or other national specifications. Coverage shall apply, on a primary basis, to hired, borrowed and commandeered vehicles. Coverage will be on an actual cash value basis for the hired, borrowed and commandeered vehicles.

2. Comprehensive General Liability Insurance with limits of at least \$1,000,000.00 per occurrence and \$3,000,000.00 aggregate. The aggregate shall apply per named insured and per insured location. The policy shall include the following coverage: Volunteers or Employees as Insured, Medical Malpractice, Good Samaritan Liability Coverage, Intentional Acts Coverage for both Bodily Injury or Property Damage, fellow Member Liability, Non-owned Watercraft, Fire Damage Legal Liability with Limits of \$1,000,000.00, Pollution Liability arising out of Emergency Operations away from the Department’s Premises, Training Activities or Equipment Wash downs.
3. Umbrella Liability Insurance with Limits of at least \$ 1,000,000.00 per occurrence and \$2,000,000.00 aggregate. The umbrella policy shall provide excess coverage over the Auto Liability Policy, General Liability Policy and the Employer’s Liability Section of the Workers Compensation Policy. Volunteers and employees shall be included as Insured.

4. Property Insurance protecting against the risk of direct physical loss or damage. The policy covering the building shall be written on a Guaranteed Replacement Cost Basis with coverage included for Building Ordinance, Flood and Earthquake. Coverage shall include the replacement cost of Commandeered Property including coverage for Loss of Use. The radios furnished by the County for base units shall be covered. Contents coverage shall be provided on a replacement cost basis. Coinsurance penalties shall not apply.
5. Portable Equipment Coverage protecting against the risk of direct physical loss or damage, including electrical surges. The radios provided by the County for use as mobile units shall be covered. Coverage shall be provided on a Guaranteed Replacement Cost Basis.
6. Provide, for the benefit of the Department and its staff, workers compensation insurance coverage. The County shall refund to the City the cost of the workers compensation insurance coverage required by this Agreement within 30 days of the City providing said cost to the County.
7. All policies related to this Agreement shall name the County of Lincoln as an additional insured. The City shall furnish the County with certificates of insurance showing the type of policy, limits of liability, name of insurance companies, policy numbers, effective dates and expiration dates of policies. In the alternative, if the City is self-insured it shall provide the County satisfactory proof that it has self-insured for the coverages and amounts required above.

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**EXHIBIT "C"**  
**FIRE DISTRICT**

**Request from Sheriff to Change Position #2369 Captain in Position Control to a Major and revised in the Budget Ordinance** - Candy Burgin presented the following:

The Sheriff's Department is requesting that Position #2369 Captain be changed in Position Control to a Major and revised in the Budget Ordinance at a later date.

The request is to reclassify position #2369 currently vacant (Captain). The justification for this request is due to the importance of our organizational structure to have a mid-level position between the Captain and the Chief Deputy in order to have a consistent chain of command.

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to approve the request as presented.

**Public Comments:** Chairman Mitchem opened Public Comments. Being no speakers, Chairman Mitchem closed Public Comments

**Finance Officers Report:** Deanna Rios presented the Finance Officer's Report.

**County Manager's Report:** Kelly Atkins said he continues to meet with department managers concerning impacts of Covid-19 and how to best protect employees and citizens, utilizing Covid Cares dollars.

He said he has been meeting virtually with Rafetelis and Davenport over the past couple months concerning financing for the Wastewater Treatment Plant.

He announced that there will only be one meeting in July, on July 20 and that the August 3 meeting will be held in the James Warren Citizens Center. This meeting will begin at 3:30 PM due to the large number of zoning cases on that agenda.

**County Commissioners Report:** Commissioner Sigmon said he would like to make some comments for the record concerning the Lincoln County School's budget. He said at the June 1 meeting, there were concerns about the fact that their funding would not be as great as it had been. He said the budget that was just passed includes funding for the Lincoln County Schools. There are federal dollars from the Cares Act, \$1,826,493, over \$565,000 in federal nutrition funds, and \$418,000 in another program, plus additional funds included in the school's budget.

He said the amount Lincoln County Schools will receive and have at their disposal will be greater than it was in 2019-20. He said the Commissioners care greatly about education and look forward to working with the school system in the future.

**Vacancies/Appointments:** **UPON MOTION** by Commissioner Cesena, the Board voted unanimously to re-appoint Panica Peres to the Centralina Workforce Development Board.-

**Other Business:** Commissioner McCall said she has received emails asking when the County will reopen the parks. Josh Grant and John Davis spoke concerning the expected reopening dates of the parks, saying the process of reopening is based on the Governor's decisions concerning Phase 3.

**Closed Session:** **UPON MOTION** by Commissioner Sigmon, the Board voted unanimously to enter Closed Session Pursuant to NCGS § 143-318.11(a) (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.

Chairman Mitchem announced that no action was taken in Closed Session.

**Adjourn:** **UPON MOTION** by Commissioner McCall, the Board voted unanimously to adjourn.

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Amy S. Atkins, Clerk  
Board of Commissioners

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Carrol Mitchem, Chairman  
Board of Commissioners