

**MINUTES**  
**LINCOLN COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, JULY 20, 2009**

The Lincoln County Board of County Commissioners met on July 20, 2009 at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

Alex E. Patton, Chairman  
Bruce Carlton  
George Arena  
James A. Klein  
Carrol Mitchem

Others Present:

George A. Wood, County Manager  
Jeffrey A. Taylor, County Attorney  
Amy S. Atkins, Clerk to the Board  
Ron Rombs, Emergency Medical Services Director  
Burns Whittaker, Public Works Director  
Barry McKinnon, Sr. Utility Engineer  
Leon Harmon, Finance Director  
Kelly Atkins, Planning and Inspections Director  
Randy Hawkins, Zoning Administrator

**Call to Order:** Chairman Patton called the July 20, 2009 meeting of the Lincoln County Board of Commissioners to order.

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

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to adopt the agenda, deleting Item 11 – CCOG Request for Secondary Guarantee.

**AGENDA**

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

**July 20, 2009**

6:30 PM     Call to Order

Invocation - Rev. J.V. Allen, Boger City Wesleyan Church

- Pledge of Allegiance
1. 6:32 PM Adoption of Agenda
  2. 6:33 PM Consent Agenda
    - Approval of Minutes
      - June 1, 2009
      - June 15, 2009
    - Tax Requests for Refunds - Over \$100
      - May 19 - 31, 2009
      - June 1 - 14, 2009
      - June 29 - July 5, 2009
    - Tax Requests for Releases
      - May 16 - June 15, 2009
    - Sponsored Group Status
      - South Fork Baptist Association
      - Carolina Cross Connection
      - Iglesia Wesleyana Camilo al Cielo
    - Request for Surplus Vehicle - North Brook VFD
    - Lincoln County FY10 Funding Program
    - Request for Surplus Vehicles - East Lincoln VFD
  3. 6:35 PM Public Comments
  4. 6:50 PM Public Hearing - Industrial Incentive Grant for New Industry
    - Resolution #2009-19 - Resolution to Adopt Economic Incentive Grant Agreement
  5. 7:00 PM Public Hearing - Rural Operating Assistance Program (RAOP) Application
  6. 7:10 PM 2009 Customer Review Survey - Lincoln County Tax Assessor's Office
    - Bill Duston
  7. 7:30 PM Designation of Commissioner Klein as Voting Delegate to NCACC Annual Conference
  8. 7:35 PM Motion to Approve Changing the Collection of Water and Sewer Capacity Development Fees from the Building Permit Stage to Certificate of Occupancy Stage of a Building
  9. 7:45 PM Resolution #2009-20: Resolution to Approve Agreement with East Lincoln Rescue Squad, Inc. and Denver Lake Norman Rotary Club Foundation, Inc. and to Approve Lease of Real Property to Denver Lake Norman Rotary Club Foundation, Inc. for Park
  10. 7:55 PM Motion to Approve Interlocal Agreement with the City of Lincoln to Provide Sewer Service to the Highway 321 Investments, LLC Project
  11. 8:00 PM CCOG Request for Secondary Guarantee \*Cancelled
  12. 8:10 PM Capital Project Reports - Burns Whittaker
  13. 8:15 PM Finance Officer's Report

14. 8:20 PM County Manager's Report
  15. 8:25 PM County Commissioners' Report
  16. 8:30 PM County Attorney's Report
  17. 8:35 PM Vacancies/Appointments
  18. 8:40 PM Calendar
  19. 8:45 PM Other Business
- Adjourn

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

Consent Agenda

- Approval of Minutes
  - June 1, 2009
  - June 15, 2009
- Tax Requests for Refunds - Over \$100
  - May 19 - 31, 2009

LINCOLN COUNTY TAX DEPARTMENT  
MOTOR VEHICLES

**REQUEST FOR REFUNDS**

PERIOD COVERED (MAY 19, 2009-MAY 31, 2009)

G.S.#105-381(B) ALL REFUNDS MORE THAN \$100.00  
(and) #105-325 including (A) (6)

NAME	YEAR	DIST	A/C#	AMOUNT
Cochrane, Theo E. Jr.	2008	CITY	04914	121.41
TOTAL				\$121.41

- June 1 - 14, 2009  
LINCOLN COUNTY TAX DEPARTMENT **REQUEST FOR REFUNDS** MOTOR VEHICLES

PERIOD COVERED (JUNE 1, 2009-JUNE 14, 2009)

G.S.#105-381(B) ALL REFUNDS MORE THAN \$100.00 (and) #105-325 including (A) (6)

NAME	YEAR	DIST	A/C#	AMOUNT
Kirk, Stephen R.	2008	ELFD/ELSD	0173950	103.29
TOTAL				\$103.29

- June 29 - July 5, 2009  
LINCOLN COUNTY TAX DEPARTMENT **REQUEST FOR REFUNDS** MOTOR VEHICLES

PERIOD COVERED (June 29, 2009-July 5, 2009)

G.S.#105-381(B) ALL REFUNDS MORE THAN \$100.00 (and) #105-325 including (A) (6)

NAME	YEAR	DIST	A/C#	AMOUNT
General Electric Capital Lease	2008	DFD	0089245	1,165.65
TOTAL				\$1,165.65

- Tax Requests for Releases
- May 16 - June 15, 2009

NAME	YEAR	A/C NO	AMOUNT
Amos, Bethany Rhea	2008	0218013	\$239.00
Bess, David Allen	2008	0218323	\$130.40
Canipe, Daniel Jay	2008	0218242	\$104.75
Hancock, Mary Hancock	2008	0218167	\$116.84
Hardy, Jerome Lynal	2008	0216229	\$132.33
Hawkins, Jonathan Ray	2008	0162075	\$159.55
Kennedy, Linda Douglass	2008	0074301	\$110.72
Mosteller, Jeffrey Alan	2008	0086122	\$163.40
Reel, Brent Edward	2008	0072039	\$119.59
Spencer, Gary Preston	2008	0178796	\$105.01
Stevens, Eric James	2008	0219142	\$210.08
Watts, John James	2004	0179626	\$144.59
TOTAL			\$1,736.26

NAME	YEAR	A/C NO	AMOUNT
Baker Realty & Const.	2007-2008	0197600	\$686.80
Burch, Melvin Lane Heirs of	1999-2008	0076334	\$916.11
Highland Lawn & Landscape	2008	0144146	\$310.75
Phipps, Paul	2008	0213877	\$168.38
Quiznos #8723	2009	0199169	\$894.58
TOTAL			\$2,976.62

- Sponsored Group Status
  - South Fork Baptist Association
  - Carolina Cross Connection
  - Iglesia Wesleyana Camilo al Cielo
- Request for Surplus Vehicle - North Brook VFD
- Lincoln County FY10 Funding Program
- Request for Surplus Vehicles - East Lincoln VFD

**Public Comments:** Chairman Patton advised that this was the time the Board of Commissioners would receive comments from the citizens regarding any matter they desired to address.

Danny Watson, 4825 Reinhardt Circle, asked why it costs \$5000 to hook onto a water tap for Lincoln County. He asked for someone to get back with him on this. Chairman Patton informed Mr. Watson that a study is currently underway to determine these fees.

Joe Kiser, 2918 Cat Square Road, stated that he just found out there is going to be a hearing tomorrow night on the UDO. He said this is not enough notice for the people of West Lincoln.

Being no additional speakers, Chairman Patton declared the public comments section closed.

**Public Hearing – Industrial Incentive Grant for New Industry:** Mitch Miller presented information concerning Ostec Industries, Corp. Ostec will locate in Denver and will begin construction in September if the grant is approved. Five new jobs will be created and the investment will be \$1,465,000, of which \$1,025,500 will qualify for incentives. The County will provide cash grants to Ostec of \$3,799.48 per year for a five-year period.

Chairman Patton opened the public hearing concerning the industrial incentive grant for Ostec Industries Corp.

Being no one wishing to speak, Chairman Patton declared the public hearing closed.

**UPON MOTION** by Commissioner Arena, the Board voted unanimously to approve the industrial incentive grant for Ostec Industries, Corp.

#### **RESOLUTION TO ADOPT ECONOMIC INCENTIVE GRANT AGREEMENT WITH OSTEC INDUSTRIES, CORP.**

WHEREAS, the Lincoln County Board of Commissioners verily believes that it is in the best interests of the citizens of Lincoln County to encourage and support economic development within Lincoln County through the recruitment of new industries to the County and the expansion of existing industries in the County; and

WHEREAS, Ostec Industries, Corp. has developed plans to purchase a facility and install manufacturing equipment in Lincoln County, North Carolina; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to aid in such efforts;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Lincoln County Board of Commissioners hereby approves the Lincoln

County Incentive Grant Agreement (attached hereto as Exhibit A and incorporated herein by reference) among Lincoln County, and Ostec Industries, Corp.

2. The Chairman of the Board of Commissioners and the Clerk to the Board are hereby authorized to sign all necessary documents on behalf of Lincoln County in order to effectuate this transaction.

3. This resolution shall become effective upon adoption.

This 20<sup>th</sup> day of July, 2009.

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Alex E. Patton, Chairman  
Lincoln County Board of Commissioners

ATTEST:

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Amy S. Atkins, Clerk to the Board

### **LINCOLN COUNTY INCENTIVE GRANT AGREEMENT**

NORTH CAROLINA  
LINCOLN COUNTY

THIS AGREEMENT is made and entered into as of the 20th day of July 2009, by and between LINCOLN COUNTY, a body corporate and politic (hereinafter referred to as “the County”), and Ostec Industries, Corp., a North Carolina corporation (hereinafter referred to as “Ostec”).

WITNESSETH:

WHEREAS, Ostec has developed plans to purchase a facility and install manufacturing equipment in Lincoln County, North Carolina; and

WHEREAS, the Board of Commissioners of Lincoln County verily believes that the location of new industries and the expansion of existing industries is vital to the economic health of Lincoln County and to the welfare of its citizens; and

WHEREAS, the Board of Commissioners wishes to encourage such development by means of offering incentives to recruit new industries and to aid in expansion of existing industries; and

WHEREAS, such incentives are predicated on the notion of expanding Lincoln County’s tax base and providing additional jobs for Lincoln County’s citizens that pay wages higher than the current prevailing average hourly wage in the particular industry; and

WHEREAS, the Board of Commissioners has determined that it is appropriate and in the best interests of Lincoln County and its citizens to offer incentives in the form of both cash grants and assistance with making public services available; and

WHEREAS, the Board of Commissioners believes that it is appropriate and reasonable to expect Ostec to bind itself to the County to produce certain results in conjunction with the project described herein as conditions of the incentives being offered by the County;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the parties hereby agree as follows:

1. On or before September 2009, Ostec shall purchase a facility and begin installation of manufacturing equipment in Lincoln County, North Carolina.
2. Within two years of the date of this agreement, Ostec shall make an investment upon such site in machinery and equipment of \$1,465,000, of which \$1,025,500 will qualify for incentives under the Lincoln County Industrial Incentive Grant Policy.
3. Within two years of the date of this agreement, Ostec shall provide at such site at least 5 new jobs paying average weekly wages of \$480.00.
4. In consideration of the performance of the aforesaid obligations by Ostec, the County will provide cash grants to Ostec of \$3,799.48 per year for a five-year period. Lincoln County will pay such grants beginning in the tax year after the project's completion. Grants will be paid to Ostec within 30 days after Ostec has made its tax payment for the then-current year and has notified Lincoln Economic Development Association of the payment. This amount represents a Level I grant under the Lincoln County Industrial Development Incentive Grant Policy for New and Existing Industries.
5. In the event that the value of the investment actually made by Ostec pursuant to this agreement is greater or less than the aforementioned contract amount, the incentive grants to be provided hereunder will be adjusted upward or downward on a pro-rata basis.
6. Ostec specifically agrees that in the event that all or any portion of this agreement or any incentive grant or payment to be made hereunder is declared to be unconstitutional, illegal, or otherwise enjoined by a court of competent jurisdiction, Ostec shall indemnify and hold harmless Lincoln County and its Board of Commissioners, individually and collectively, from any loss or liability and shall reimburse Lincoln County by the amount of any such grant or payment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

OSTEC INDUSTRIES, CORP.

By: \_\_\_\_\_

Richard A. Coste, President

ATTEST:

\_\_\_\_\_  
Secretary

LINCOLN COUNTY

By: \_\_\_\_\_

Alex E. Patton, Chairman

Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins

Clerk to the Board of Commissioners

**Public Hearing – Rural Operating Assistance Program (RAOP) Application:** Ron Rombs presented information concerning the ROAP application.

North Carolina Department of Transportation (NCDOT) administers all state and federal funds applicable to public transportation.

Mr. Rombs requested that the Board approve the ROAP application in the sum of \$217,312 with the following allocations:

<b>EDTAP</b>	<b>\$56,729</b>
<b>EMPL</b>	<b>9,260</b>
<b>RGP</b>	<b>57,123</b>
<b>Supp EDTAP</b>	<b>32,475</b>
<b>Supp EMPL</b>	<b>11,490</b>
<b>Supp RGP</b>	<b>50,235</b>
<b>Total</b>	<b>\$217,312</b>

There are no county matching funds for the Elderly and Disabled Transportation Assistance Program (EDTAP) or the Employment Transportation Assistance Program (Work First). There is however, a Lincoln County match of 10% from the Rural General Public Transportation Program (RGP) that has already been figured into the TLD budget for FY 2009-2010.

Chairman Patton opened the public hearing concerning the RAOP application.

Being no one wishing to speak, Chairman Patton declared the public hearing closed.

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to approve the RAOP application.

Chairman Patton read the following statement concerning the Sheriff's Department:

I want to take just a moment and address what is going on with the Sheriff's dept and how that relates to the Board of Commissioner's.

First in talking to the other Commissioner's this Board supports the decision made by the Sheriff to place Mr. Taylor on administrative leave pending the outcome of this investigation. However, I do say I was disappointed to see Mr. Taylor in uniform at his booking. Some folks think Mr. Taylor should have been suspended without pay. Let me remind you that an indictment from a grand jury is not a sentence of guilty. Both sides are not heard at a grand jury hearing only the accuser is heard. I do not know if Mr. Taylor is innocent or guilty. If Mr. Taylor is innocent the Sheriff would be doing him great financial harm by suspending him without pay. If he is convicted, his law enforcement career is over. Remember in this land you are innocent until proven guilty in a court of law. This case like all others should be reported but, not tried in the media. This case is for a judge and jury to decide and hopefully will be tried as soon as possible.



Now let me dispel a few misconceptions that lots of folks have concerning the relationship between the Sheriff and the Commissioner's. The Board of Commissioner's does not have the authority to remove the Sheriff from office or mandate how he runs his office. Only the DA can do that in NC. It has been suggested that we form a county police force and strip the Sheriff of most of his duties. That must be approved by the General Assembly. The last time that was approved was for Mecklenburg and Gaston Counties and that was in the 1920's. They will not approve that anymore because the Sheriff's association comes out strong against it regardless of the situation. Next year is a short session so it would be 2011 before that could be brought up anyway.

The Sheriff's employee's serve solely at the pleasure of the Sheriff. They are not bound by the same employment policies as other county employees. As long as he does not go over the number of full time people he is budgeted for and does not go over his budget, this Board has no constitutional authority over his office.

The Sheriff serves at the pleasure of the people of Lincoln County.

I hope that clarifies the situation as it stands.

**2009 Customer Review Survey – Lincoln County Tax Assessor's Office – Bill**

**Duston:** Bill Duston with Centralina COG gave a power point presentation on the customer review survey done by Centralina concerning the Lincoln County Tax Assessor's Office.

**Designation of Commissioner Klein as Voting Delegate to NCACC: UPON**

**MOTION** by Commissioner Carlton, the Board voted unanimously to designate Commissioner Carlton as the voting delegate to the NCACC.

**Motion to Approve Changing the Collection of Water and Sewer Capacity Development Fees from the Building Permit Stage to Certificate of Occupancy Stage of a Building:**

George Wood presented information concerning changing the collection of water and sewer Capacity Development Fees from the Building Permit Stage to the Certificate of Occupancy stage of a building.

Mr. Wood stated that the county charges for water and sewer tap fees to tap into our existing systems. Those fees are paid before a building permit is issued for the construction. The taps are made so water is available for construction. In addition, the county charges water and sewer capacity development fees. Those fees are also paid before a building permit is issued for the construction.

Mr. Wood said he had some recent conversations with some builders and building suppliers about the state of the construction industry in Lincoln County, and the fact that having to pay capacity development fees on the front-end of a construction project ties up scarce capital that could be used to start another building. They have asked the county to consider not requiring the payment of the water and sewer capacity development fees until the specific building is completed and is ready for the Planning & Inspections Department to issue the Certificate of Occupancy (CO). The CO is the certification that the project meets the building, plumbing, mechanical, electrical, and fire codes, and is

ready for occupancy by the owner. No one can occupy a new building, or any addition to a building, until the Certificate of Occupancy is issued.

Mr. Wood stated that he has discussed this request with both the Planning & Inspections Department, since they do the inspections and issue the CO; and with the Public Works Department, since they calculate the water and sewer capacity development fees according to the adopted fee schedule, and collect the payments. The County used to collect the fees just before the CO was issued, but changed to collection at the building permit stage several years ago. They believe the County could change to collecting them at CO stage, and still be assured of payment. This would also help builder's cash flow anywhere from five months on a single-family residential job, to over a year on some commercial or industrial projects.

The key is to have a system in place that assures that the P&I Department does not issue any CO until it has a copy of the receipt from the Public Works Department showing that all the capacity development fees for that specific building have been paid in full. That means that no CO, even a temporary one, would be issued until the capacity development fees were paid in full. That system can be put in place. Given that, Mr. Wood recommended the Board changing to a policy of collecting the water and sewer capacity development fees just prior to a CO being issued, not at the building permit stage of the project.

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve changing the collection of water and sewer capacity development fees from the building permit stage to certificate of occupancy stage of a building.

**Resolution #2009-20:** Commissioner Arena stated that the East Lincoln Rescue Squad was disbanding and have significant equipment and land parcels. This is the result of discussions between himself, East Lincoln Rescue Squad and Lake Norman Rotary as to what to do with the equipment and what to do with the building and parcel of land. All of the equipment will stay in Lincoln County and will be used throughout the county and the Rotary Foundation will undertake a significant service project to develop county land into a public park once the rescue squad building and land is sold on Hwy. 16. Mr. Arena thanked everyone for coming up with this plan by focusing on the citizens and the needs of the community.

Chairman Patton thanked Commissioner Arena and the others for their hard work on this project.

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to Approve the Agreement with East Lincoln Rescue Squad, Inc. and Denver Lake Norman Rotary Club Foundation, Inc. and to Approve Lease of Real Property to Denver Lake Norman Rotary Club Foundation, Inc. for Park:

RESOLUTION #2009-\_\_\_\_\_

RESOLUTION TO APPROVE AGREEMENT WITH  
EAST LINCOLN RESCUE SQUAD, INC., AND  
DENVER LAKE NORMAN ROTARY CLUB FOUNDATION, INC.,  
AND TO APPROVE LEASE OF REAL PROPERTY TO  
DENVER LAKE NORMAN ROTARY CLUB FOUNDATION, INC., FOR PARK

WHEREAS, for many years East Lincoln Rescue Squad, Inc. (ELRS), has provided rescue services to the citizens of eastern Lincoln County pursuant to agreements between itself and the County; and

WHEREAS, the County did not renew the contract with ELRS for continued provision of such rescue services beyond June 30, 2009, and has transferred responsibility for such services to other entities; and

WHEREAS, as a result of the non-renewal of its contract with the County, ELRS has decided to formally disband as an organization in the near future; and

WHEREAS, ELRS has assets that are of value to east Lincoln County citizens and other Lincoln County rescue and fire organizations and is willing to transfer those assets to other entities for the continued benefit of the citizens as set forth herein; and

WHEREAS, the Denver Lake Norman Rotary Club Foundation, Inc., is a North Carolina nonprofit corporation affiliated with the Denver Lake Norman Rotary Club, a part of an international service organization whose function is to help mankind on a community, regional, national and worldwide basis; and

WHEREAS, Lincoln County owns approximately 31 acres of real property located on Galway Lane that it desires to be made into public recreation facilities but currently does not have the funds budgeted to develop the land into a park facility; and

WHEREAS, the parties hereto have agreed to enter into the contract attached hereto as Exhibit A and incorporated herein by reference to establish terms for distributing the assets of ELRS and creating a public park on the Galway Lane property owned by the County to be formally known as "Rescue Squad Park" in remembrance of the dedication and service provided by ELRS over the years; and

WHEREAS, one of the terms of the said contract is that the County enter into a long-term lease with the Foundation for the use of the said property as a park; and

WHEREAS, the County and the Foundation have agreed upon the terms of such a lease, a copy of which is attached hereto as Exhibit B and incorporated herein by reference;

WHEREAS, the Board of Commissioners believes that the County will not need the said real property for other uses during the 40-year initial term of the lease or the 40-year extension period;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED:

1. That the Board of Commissioners approves the terms of the contract among the County, East Lincoln Rescue Squad, Inc., and Denver Lake Norman Rotary Foundation, Inc., a copy of said contract being attached hereto as Exhibit A.
2. That the Board of Commissioners approves the terms of the lease between the County and Denver Lake Norman Rotary Club Foundation, Inc., for the real property owned by the County on Galway Lane, a copy of said lease being attached hereto as Exhibit B.
3. That the Board finds that the said real property will not be needed by the County for other uses during the initial 40-year term of the lease or the 40-year renewal term.
4. That the Board hereby authorizes its Chairman and Clerk to execute the contract, the lease, and any other documents that might be necessary to carry out the intent of this resolution.

Adopted this 20<sup>th</sup> day of July, 2009.

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the  
Board of Commissioners

**NORTH CAROLINA**

**AGREEMENT**

**LINCOLN COUNTY**

THIS AGREEMENT made this \_\_\_\_\_ day of July, 2009, by and among LINCOLN COUNTY, a body corporate and politic (hereinafter, the "County"), EAST LINCOLN RESCUE SQUAD, INC. (hereinafter, "ELRS"), a North Carolina nonprofit corporation, and DENVER LAKE NORMAN ROTARY CLUB FOUNDATION, INC. (hereinafter, the "Foundation"), a North Carolina nonprofit corporation.

WITNESSETH:

WHEREAS, for many years prior to the date of this Agreement, ELRS has provided rescue services to the citizens of eastern Lincoln County pursuant to agreements between itself and the County; and

WHEREAS, the County did not renew the contract with ELRS for continued provision of such rescue services beyond June 30, 2009, and has transferred responsibility for such services to other entities; and

WHEREAS, as a result of the non-renewal of its contract with the County, ELRS has decided to formally disband as an organization in the near future; and

WHEREAS, ELRS has assets that are of value to east Lincoln County citizens and other Lincoln County rescue and fire organizations and is willing to transfer those assets to other entities for the continued benefit of the citizens as set forth herein; and

WHEREAS, the Foundation is affiliated with the Denver Lake Norman Rotary Club, a part of an international service organization whose function is to help mankind on a community, regional, national and worldwide basis; and

WHEREAS, Lincoln County has land assets on Galway Lane that it desires to be made into public recreation facilities but currently does not have the funds budgeted to develop the land into a park facility; and

WHEREAS, the parties hereto have agreed to the terms contained herein to create a public park in east Lincoln County to be formally known as "Rescue Squad Park" in remembrance of the dedication and service provided by ELRS over the years;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the County, ELRS, and the Foundation have hereby agreed as follows:

1. ELRS Responsibilities. ELRS hereby agrees that it will perform the following responsibilities pursuant to this Agreement:

- (a) Within 45 days of the effective date of this Agreement, ELRS will transfer title to two ambulances, one rescue truck, one center console boat, and two jet skis to the County and will donate its remaining rescue equipment to the County with the exception of the water recovery sonar, recovery boat, and associated equipment.
- (b) Within 45 days of the effective date of this Agreement, ELRS will transfer its sonar recovery assets to the Lincoln County Life Saving and First Aid Crew, Inc.
- (c) Within 45 days of the IRS approving the Foundation as a non-profit entity, ELRS will convey to the Foundation fee simple title to its real property and building located on Highway 16 and described in Deed Book 585 at Page 431, Lincoln County Public Registry.
- (d) Within 45 days of the effective date of this Agreement, ELRS will contribute \$30,000 of its current funds on hand to the County for refurbishment of the East Lincoln Lifesaving Crew Building or the construction of the pier at such location to facilitate expansion of water rescue services in Lincoln County. Within a reasonable time after completion, the County will dedicate the building or the pier, as the case may be, with a plaque honoring ELRS.
- (e) Contemporaneously with the fee simple title transferring as set forth in subparagraph (c) above, ELRS will transfer its remaining funds to the Foundation.

2. Foundation Responsibilities. The Foundation hereby agrees that it will perform the following responsibilities pursuant to this Agreement:

- (a) The Foundation will accept the funds to be transferred to it by ELRS pursuant to Section 1(e) above and will hold such funds for the development of "Rescue Squad Park" pending the receipt of the sale proceeds described below in Section 2(b).
- (b) Within 30 days of receiving the conveyance of the real property and building to be conveyed to it by ELRS pursuant to Section 1(c) above, the Foundation will place the property and building on the market and use its best efforts to sell it in a commercially reasonable fashion and will apply the proceeds of such sale to the development of "Rescue Squad Park."

- (c) Within 30 days after the closing on the sale of the real property referred to in Section 2(b) above, the Foundation will pay to the County an amount equal to five percent (5%) of the net sale proceeds, minus the \$30,000 paid by ELRS pursuant to Section 1(d) above, provided, however, that if the net sale proceeds are less than \$600,000, no such payment shall be due from the Foundation. The intent of this provision is that the County shall receive from the payments by ELRS and the Foundation a total amount equal to the higher of \$30,000 or five percent (5%) of the net sale proceeds.
- (d) The Foundation will reasonably cooperate with the County to develop facility plans, designs, and cost estimates for park facilities and will manage the final design and construction of the facilities and amenities at "Rescue Squad Park." The park will be developed generally in accordance with a schematic design for the park developed by County Planning staff prior to the execution of this Agreement with the final layout design approved by the Foundation.
- (e) The Foundation will maintain the real property and facilities constructed thereon during and after the construction of "Rescue Squad Park."

3. County Responsibilities. The County hereby agrees that it will perform the following responsibilities pursuant to this Agreement:

- (a) Pursuant to Section 1(a) above, the County will accept the vehicles and other equipment to be transferred to it by ELRS and will distribute such vehicles and other equipment to the most appropriate entities, as determined by the County in its sole discretion, providing rescue and/or fire services in Lincoln County.
- (b) Within 30 days of the IRS approving the Foundation as a non-profit entity, the County will enter into a long-term lease with the Foundation, attached as Exhibit A, for the parcel of real property owned by the County consisting of approximately 31 acres on Galway Lane in eastern Lincoln County on which the Foundation will construct "Rescue Squad Park" as provided in Section 2 above.
- (c) The County will provide the assistance of staff from its Recreation, Public Works, and Planning Departments as may be reasonably necessary to provide the Foundation with technical, management, and administrative support for the design and construction of the facilities at "Rescue Squad Park."
- (d) Upon the dissolution of ELRS as a corporate entity, the County will take possession of its physical records and will store them for as long as legally required for a dissolved nonprofit corporation in the State of North Carolina.

4. Miscellaneous.

- (a) By its signature hereon, each party warrants to the other parties to this Agreement that it has duly approved this Agreement in accordance with its respective bylaws and that the person signing on behalf of each party has full authority to enter into this Agreement on behalf of his entity and to bind such entity hereto.
- (b) The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs and permitted successors and assigns, as may be applicable.
- (c) TIME IS OF THE ESSENCE in this Agreement. In addition, if the final day of any period of time set out in any provision of this Agreement, falls on a Saturday, Sunday or holiday recognized by Lincoln County government, then in such case, such period shall be deemed extended to the next day which is not a Saturday, Sunday or holiday.
- (d) No presumption shall be created in favor of or against any party to this Agreement with respect to the interpretation of any term or provision of this Agreement due to the fact that this Agreement was prepared by or on behalf of one of said parties.
- (e) The captions used in connection with the paragraphs of this Agreement are for reference and convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement or be used in interpreting the terms and provisions of this Agreement.

- (f) This Agreement shall be deemed to have become effective on the date on which it is executed by the last party to execute it.
- (g) If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid or enforceable.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman  
Lincoln County Board of Commissioners  
Date Signed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

EAST LINCOLN RESCUE SQUAD, INC.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Corporate Secretary

DENVER LAKE NORMAN ROTARY CLUB  
FOUNDATION, INC.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Corporate Secretary



## EXHIBIT A

STATE OF NORTH CAROLINA

## LEASE AGREEMENT

COUNTY OF LINCOLN

THIS LEASE AGREEMENT is made and entered into as of this \_\_\_\_ day of July, 2009, by and between **LINCOLN COUNTY**, a body corporate and politic [hereinafter "Landlord"] and **DENVER LAKE NORMAN ROTARY CLUB FOUNDATION, INC.**, a North Carolina nonprofit corporation [hereinafter "Tenant"].

### WITNESSETH:

WHEREAS, Landlord is the owner of certain real estate located generally on Galway Lane, Denver, Lincoln County, North Carolina, which is described more fully in that certain deed recorded in Book 1203 at Page 7 of the Lincoln County Public Registry, hereinafter called "Premises"; and

WHEREAS, Landlord and Tenant, together with East Lincoln Rescue Squad, Inc. [hereinafter, "ELRS"], have identified the Premises as being a good site for a recreational park for the benefit of the citizens of Lincoln County; and

WHEREAS, Landlord and Tenant have entered into a three-way agreement with ELRS, pursuant to which each party has made certain commitments to the others, one being that Landlord and Tenant enter into this Lease for the Premises; and

WHEREAS, the said three-way agreement provides that ELRS will transfer certain funds to Tenant to be applied to the cost of developing the Premises as a park; and

WHEREAS, the parties have agreed that the park to be constructed on the Premises shall be known and designated as "Rescue Squad Park" in honor of the service provided to the community by ELRS over the years;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, Landlord and Tenant hereby agree as follows:

1. Premises. Landlord leases to Tenant and Tenant leases from Landlord the Premises as hereinbefore described.

2. Term. The initial term of this lease shall be for an initial period of forty (40) years commencing on October 1, 2009, and continuing until September 30, 2049, the expiration date. Upon the completion of the initial forty-year term, this lease may be renewed or extended for an additional term of forty years, provided that Tenant is not in breach of its obligations hereunder. Upon the completion of the second forty-year term, this lease may be renewed or extended for an additional term of forty years, provided that Tenant is not in breach of its obligations hereunder.

3. Rent and Other Sums Due. Tenant shall pay to Landlord as rent the sum of One Dollar (\$1.00) per year for a total rental sum of Forty Dollars (\$40.00) for the use of this property for the initial term set forth herein, a copy of the check paying the sum of Forty Dollars (\$40.00) being attached hereto and designated Exhibit A, in full and complete satisfaction of the rental sum due for the initial period of time set forth herein.

4. Acceptance by Tenant. Tenant represents to the Landlord that it has examined and inspected the Premises, find them to be as represented by the Landlord and satisfactory for Tenant's intended use and by their signatures on this instrument evidence their acceptance "as is." Tenant shall not make any alterations or repairs to the Premises without Landlord's prior written consent. Any alterations

made shall remain on and be surrendered with the Premises on expiration or earlier termination of this lease.

5. Use. Tenant will reasonably cooperate with Landlord to develop facility plans, designs, and cost estimates for park facilities to be constructed on the Premises and will manage the final design and construction of the facilities and amenities at the park. The park will be developed generally in accordance with a schematic design for the park developed by Lincoln County Planning staff prior to the execution of this lease with the final layout design approved by Tenant. Tenant shall operate the park facilities to be constructed on the Premises in a fashion that meets the standard of a "public purpose" pursuant to North Carolina law and will make the facilities generally open and available to the public. Tenant shall not use the Premises in any manner that will constitute waste, nuisance, unreasonable annoyance to owners or occupants of adjacent properties or in any manner in violation of any law, regulation or ordinance of any public authority. In addition, Tenant specifically agrees not to cause or permit any violation of this paragraph by any of their guests, agents, licensees, or invitees and that such conduct by any guest, agent, licensee, or invitee of Tenant shall be considered a breach of this paragraph by Tenant. The park to be constructed on the premises shall be known and designated as "Rescue Squad Park."

6. Private Events on the Premises. Tenant may from time to time make portions of the Premises and/or the facilities to be constructed thereon available to be used for private events such as receptions or similar occasions. Alcoholic beverages may be served at such private events in accordance with all applicable special event permits and rules and regulations of the North Carolina Alcoholic Beverage Control Commission. At all other times, however, the serving or consumption of alcoholic beverages on the Premises shall be prohibited.

7. Maintenance. Tenant will maintain the real property and facilities constructed thereon during and after the construction of the park.

8. Utilities and Services. Tenant shall make all arrangements for and pay for all utilities and services used by Tenant and for all charges for initiation and maintenance of said services.

9. Destruction. If during the term of this lease the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, the Tenant shall have the option to rebuild, repair or otherwise reconstruct the facilities within a reasonable time and should Tenant fail to rebuild, repair or otherwise reconstruct the facilities within a reasonable, this lease shall terminate.

10. Insurance; Waiver of Subrogation. Throughout the term of the lease, Tenant at its sole cost and expense shall be responsible for maintaining renters' insurance coverage on the contents of the Premises. Tenant may maintain such renters' insurance in its discretion, but under no circumstances shall Landlord be liable for insuring any of Tenant' property.

11. Memorandum of Lease. The parties hereto contemplate that this Lease should not and shall not be filed for record on the Lincoln County Public Registry; but in lieu thereof, at the request of either party, the parties agree that they shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease as required by law.

12. Indemnity. Tenant shall hold Landlord harmless from all liability arising out of any damage or injury to any person or property occurring in, on, or about the Premises during the term of this lease.

13. Assignment and Subletting. Tenant may not assign or encumber this lease and may not sublet any part or all of the demised Premises without the prior written consent of Landlord, which shall not be unreasonably withheld.

14. Default. The occurrence of any one of the following shall constitute a default by Tenant: (a) failure to pay rent when due; (b) abandonment or vacation of the Premises; (c) Tenant's failure to use or

cessation of use of the Premises for a public park as provided herein; (d) declaration of Tenant as bankrupt, or an assignment made voluntarily by Tenant for the benefit of its creditors, or the appointment of a receiver, guardian or trustee for Tenant's property; (e) dissolution of Tenant as a nonprofit corporation; or (f) failure to perform any other provision of this lease if the failure to perform is not cured within thirty (30) days after notice thereof has been given to Tenant.

15. Landlord's Remedies. Landlord shall have the following remedies if Tenant commit a default: (a) Landlord shall have the right to terminate this lease and Tenant's right to possession of the demised Premises at any time (without notice or demand to vacate the demised Premises, which notice or demand Tenant hereby waives), and reenter the demised Premises, and (b) upon termination, Landlord shall have the right to pursue its remedies at law or in equity to recover of Tenant all amounts of rent then due or thereafter accruing and such other damages as are caused by Tenant's default.

16. Property of Tenant. All property placed on the demised Premises by, at the direction of or with the consent of the Tenant, its guests, agents, licensees or invitees shall be at the risk of the Tenant or the owner thereof and Landlord shall not be liable for any loss of or damage to said property resulting from any cause whatsoever.

17. Surrender of Premises; Holdover. Tenant will deliver up the Premises at the end of the term or upon termination hereof in good order and condition, reasonable wear and tear excepted. If for any reason whatsoever Tenant does not vacate the Premises and holds over after the expiration or other termination of this lease, such holding over shall not be deemed to be a renewal of this lease but shall be deemed to create a tenancy-at-sufferance and by such holding over Tenant shall be deemed to have agreed to be bound by all of the terms and conditions of this lease except those as to the term hereof.

18. Waiver. The waiver by Landlord of any breach of any covenant or agreement herein contained shall not be a waiver of any other default concerning the same or any other covenant or agreement herein contained. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default but shall constitute only a waiver of timely payment for the particular rent payment involved.

19. Notices. All notices provided for in this lease agreement shall be in writing and shall be deemed to be given when sent by first class mail, return receipt requested, addressed: (a) to Landlord at the Office of the County Manager, 115 West Main Street, Lincolnton, North Carolina, and (b) to Tenant at PO Box 861, Denver, North Carolina. Either party hereto may from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

20. Applicable Law. Landlord and Tenant enter into this lease pursuant to the authority contained in Sections 160A-272 and 160A-279 of the North Carolina General Statutes. This lease shall be governed by the laws of the State of North Carolina.

21. Miscellaneous. Headings of paragraphs are for convenience only and shall not be considered in construing the meanings of the contents of such paragraph. The invalidity of any portion of this lease shall not have any effect on the balance hereof. This agreement supersedes and cancels all prior negotiations between the parties, and changes shall be in writing signed by the party affected by such change. This agreement shall be binding upon the respective parties hereto and upon their successors and assigns. This lease may not be recorded without Landlord's prior written consent, but either party agrees on request of the other to execute a memorandum hereof for recording purposes, such recording to be done at the sole expense of the party requesting it. The singular shall include the plural, and the masculine, feminine or neuter includes the other. Unless expressly provided in this lease that consent or approval may be made in a party's sole discretion, any consent or approval of a party required under this lease shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LANDLORD:  
LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman  
Lincoln County Board of Commissioners

Attest:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

TENANT:  
DENVER LAKE NORMAN ROTARY CLUB  
FOUNDATION, INC.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Corporate Secretary

**STATE OF NORTH CAROLINA**  
**COUNTY OF LINCOLN**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT is made and entered into as of this \_\_\_\_ day of July, 2009, by and between **LINCOLN COUNTY**, a body corporate and politic [hereinafter "Landlord"] and **DENVER LAKE NORMAN ROTARY CLUB FOUNDATION, INC.**, a North Carolina nonprofit corporation [hereinafter "Tenant"].

**WITNESSETH:**

WHEREAS, Landlord is the owner of certain real estate located generally on Galway Lane, Denver, Lincoln County, North Carolina, which is described more fully in that certain deed recorded in Book 1203 at Page 7 of the Lincoln County Public Registry, hereinafter called "Premises"; and

WHEREAS, Landlord and Tenant, together with East Lincoln Rescue Squad, Inc. [hereinafter, "ELRS"], have identified the Premises as being a good site for a recreational park for the benefit of the citizens of Lincoln County; and

WHEREAS, Landlord and Tenant have entered into a three-way agreement with ELRS, pursuant to which each party has made certain commitments to the others, one being that Landlord and Tenant enter into this Lease for the Premises; and

WHEREAS, the said three-way agreement provides that ELRS will transfer certain funds to Tenant to be applied to the cost of developing the Premises as a park; and

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3. Rent and Other Sums Due. Tenant shall pay to Landlord as rent the sum of One Dollar (\$1.00) per year for a total rental sum of Forty Dollars (\$40.00) for the use of this property for the initial term set forth herein, a copy of the check paying the sum of Forty Dollars (\$40.00) being attached hereto and designated Exhibit A, in full and complete satisfaction of the rental sum due for the initial period of time set forth herein.

4. Acceptance by Tenant. Tenant represents to the Landlord that it has examined and inspected the Premises, find them to be as represented by the Landlord and satisfactory for Tenant's intended use and by their signatures on this instrument evidence their acceptance "as is." Tenant shall not make any alterations or repairs to the Premises without Landlord's prior written consent. Any alterations made shall remain on and be surrendered with the Premises on expiration or earlier termination of this lease.

5. Use. Tenant will reasonably cooperate with Landlord to develop facility plans, designs, and cost estimates for park facilities to be constructed on the Premises and will manage the final design and construction of the facilities and amenities at the park. The park will be developed generally in accordance with a schematic design for the park developed by Lincoln County Planning staff prior to the execution of this lease with the final layout design approved by Tenant. Tenant shall operate the park facilities to be constructed on the Premises in a fashion that meets the standard of a "public purpose" pursuant to North Carolina law and will make the facilities generally open and available to the public. Tenant shall not use the Premises in any manner that will constitute waste, nuisance, unreasonable annoyance to owners or occupants of adjacent properties or in any manner in violation of any law, regulation or ordinance of any public authority. In addition, Tenant specifically agrees not to cause or permit any violation of this paragraph by any of their guests, agents, licensees, or invitees and that such conduct by any guest, agent, licensee, or invitee of Tenant shall be considered a breach of this paragraph by Tenant. The park to be constructed on the premises shall be known and designated as "Rescue Squad Park."

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8. Utilities and Services. Tenant shall make all arrangements for and pay for all utilities and services used by Tenant and for all charges for initiation and maintenance of said services.

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11. Memorandum of Lease. The parties hereto contemplate that this Lease should not and shall not be filed for record on the Lincoln County Public Registry; but in lieu thereof, at the request of either party, the parties agree that they shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease as required by law.

12. Indemnity. Tenant shall hold Landlord harmless from all liability arising out of any damage or injury to any person or property occurring in, on, or about the Premises during the term of this lease.

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16. Property of Tenant. All property placed on the demised Premises by, at the direction of or with the consent of the Tenant, its guests, agents, licensees or invitees shall be at the risk of the Tenant or the owner thereof and Landlord shall not be liable for any loss of or damage to said property resulting from any cause whatsoever.

17. Surrender of Premises; Holdover. Tenant will deliver up the Premises at the end of the term or upon termination hereof in good order and condition, reasonable wear and tear excepted. If for any reason whatsoever Tenant does not vacate the Premises and holds over after the expiration or other termination of this lease, such holding over shall not be deemed to be a renewal of this lease but shall be deemed to create a tenancy-at-sufferance and by such holding over Tenant shall be deemed to have agreed to be bound by all of the terms and conditions of this lease except those as to the term hereof.

18. Waiver. The waiver by Landlord of any breach of any covenant or agreement herein contained shall not be a waiver of any other default concerning the same or any other covenant or agreement herein contained. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default but shall constitute only a waiver of timely payment for the particular rent payment involved.

19. Notices. All notices provided for in this lease agreement shall be in writing and shall be deemed to be given when sent by first class mail, return receipt requested, addressed: (a) to Landlord at the Office of the County Manager, 115 West Main Street, Lincolnton, North Carolina, and (b) to Tenant at PO Box 861, Denver, North Carolina. Either party hereto may from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

20. Applicable Law. Landlord and Tenant enter into this lease pursuant to the authority contained in Sections 160A-272 and 160A-279 of the North Carolina General Statutes. This lease shall be governed by the laws of the State of North Carolina.

21. Miscellaneous. Headings of paragraphs are for convenience only and shall not be considered in construing the meanings of the contents of such paragraph. The invalidity of any portion of this lease shall not have any effect on the balance hereof. This agreement supersedes and cancels all prior negotiations between the parties, and changes shall be in writing signed by the party affected by such change. This agreement shall be binding upon the respective parties hereto and upon their successors and assigns. This lease may not be recorded without Landlord's prior written consent, but either party agrees on request of the other to execute a memorandum hereof for recording purposes, such recording to be done at the sole expense of the party requesting it. The singular shall include the plural, and the masculine, feminine or neuter includes the other. Unless expressly provided in this lease that consent or approval may be made in a party's sole discretion, any consent or approval of a party required under this lease shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the day and year first above written.

LANDLORD:  
LINCOLN COUNTY

By: \_\_\_\_\_  
Alex E. Patton, Chairman  
Lincoln County Board of Commissioners

Attest:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the Board

TENANT:  
DENVER LAKE NORMAN ROTARY CLUB  
FOUNDATION, INC.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Corporate Secretary

**Motion to Approve Interlocal Agreement with the City of Lincolnton to Provide Sewer Service to the Highway 321 Investments, LLC Project, Attachment:** Mr.

Wood stated that he has been working with the City of Lincolnton and LEDA on a way to provide sewer service to a new development project at the corner of US 321 Business (Maiden Highway) and Car Farm Road, which is across the street from the Lincoln County Industrial Park (LCIP). The County would be the water provider. The sewer would need to run down the Maiden Highway to connect with our sewer system that services the LCIP. All of the sewage from the LCIP flows to a pump station within the park that then pumps it to the City of Lincolnton's wastewater treatment plant. The County owns the lines and the pump station within the park, but sends the wastewater to the City for treatment. The City charges the LCIP customers its inside-City sewer rate.

This new development is outside the LCIP, but could be served by that pump station. After discussion with LEDA, they believe that the remaining properties in the park will not need the capacity (70,000 gpd capacity usage). The City is willing to take the sewage on the same basis, as they have annexed the property into the City. Therefore the developer would pay the inside-City rate. The County would read the water meters, charge its water rates; and in addition, bill for the City at the City's inside-City rate for sewer, and remit payment to the City.

Mr. Wood said he believes this is a good solution to providing sewer to the area and will spur development on one of the major interchanges on US 321 and US 321 Business (Maiden Highway).

**Agreement Concerning Wastewater Treatment – City of Lincolnton, Lincoln County and Highway 321 Investments, LLC**

THIS AGREEMENT, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, and existing under the laws of the State of North Carolina, hereinafter referred to as "City", and the County of Lincoln, a body corporate and a political subdivision of the



State of North Carolina, hereinafter referred to as "County"; and Hwy. 321 Investments, LLC hereinafter referred to as "Property Owner"

WHEREAS, the City currently owns and operates a Wastewater Treatment Plant which has a treatment capacity of six million (6,000,000) gallons per day, and the County has a need to treat wastewater produced by the Hwy. 321 Investments, LLC located in northern Lincoln County; and

WHEREAS, the aforesaid Wastewater Treatment Plant of the City is currently operating well below its flow capacity on a daily basis; and

WHEREAS, the 'Property Owner' is defined as Hwy 321 Investments, LLC (the boundaries of which are shown on the map, hereto attached and marked Exhibit A, and made part of this Agreement as fully as if copied herein full)

WHEREAS, the Property Owner's intend to construct, at its expense, the necessary lines and all other necessary infrastructure to transport the wastewater from the subject property to a connection point near the Lincoln County Industrial Park within the County system which subsequently transports all wastewater to the existing wastewater system of the City of Lincolnton.

WHEREAS, the City is agreeable, upon the terms and conditions hereinafter set forth, to provide treatment for the wastewater produced by the Hwy 321 Investments, LLC Development to the aforesaid connection point with the existing system of the City.

NOW, THEREFORE, the parties hereto agree for themselves, their successors, and assigns as follows:

1. **CONNECTION TO CITY SYSTEM.** The subject Property Owner will construct and will bear all of the costs and expenses of the design, right of way acquisition and construction of all of the lines and other infrastructure necessary for the proper flow of wastewater from the Hwy 321 Investments, LLC development to the connection point with the County's existing gravity sewer located on Finger Mill Road. This connection point is then transferred to the City system on Maiden Highway near the West Interchange of Hwy 321 via existing wastewater (sewer) gravity systems, force mains, and lift stations as defined in Exhibit A. All such infrastructure designed and built by the Property Owner must be built in accordance and fully comply with the Sewer Use Ordinance of the City and County, whichever is more restrictive, and with all existing federal, state, and municipal pretreatment regulations and requirements.

All Costs for any necessary upgrades to the wastewater system to City downstream of the said connection point will be the responsibility of and will be paid for by the City.

2. AMOUNT OF WASTEWATER TO BE TREATED. Based upon the amount of development at the time of execution of this Agreement, the City Hereby agrees to treat wastewater flowing from the Hwy 321 Investments, LLC development in an amount not to exceed 70,000 gallons of wastewater from the development per day.

All wastewater treatment (sewer) customers must comply with the Sewer Use Ordinance of the City and County, whichever is more restrictive, and with all federal, state, and municipal pretreatment requirements and regulations for industrial discharge. All wastewater treatment (sewer) customers must apply for, and connect to, the County potable water system.

3. RATES. Customers within the Hwy 321 Investments, LLC boundary, as defined in Exhibit A, will pay the applicable wastewater treatment (sewer) rate per the City rate schedule.

The County will bill all wastewater treatment (sewer) customers serviced by the said infrastructure (inside the Hwy 321 Investments, LLC development) on a monthly basis and will remit all collections to the City within fifteen days after receipt. The County agrees to disconnect water service, with proper notice, for any sewer customer who fails to pay the sewer bill in accordance with the City's delinquent account procedures.

The City reserves the right to change its wastewater (sewer) rates at any time, and all customers serviced by the aforesaid infrastructure will be bound by said changes.

4. OWNERSHIP AND MAINTENANCE OF INFRASTRUCTURE. Upon completion of the wastewater lines, lift station, and other necessary infrastructure from the Hwy 321 Investments, LLC development to the connection point with the system of the County at Finger Mill Road, the Property Owner will transfer the ownership of the gravity fed and force main portions of the lines to the County, and the County will thereafter be responsible for the proper repair and maintenance of the gravity portion of the said infrastructure. Any future infrastructure connected from the site in question per Exhibit A to the aforesaid gravity fed facilities owned and maintained by the County will be dedicated to the County for ownership and maintenance, regardless of who installs and/or pays for said future infrastructure.

As to the private gravity or force main connections located on private property connecting to the aforesaid gravity portion inside public right-of-way, the Property Owner will retain the ownership and the responsibility for proper maintenance and repair.

**IN WITNESS WHEREOF**, the City of Lincolnton and the County of Lincoln have caused this Agreement to be executed by their Mayor and Chairman of the Board of Commissioners, respectively, their corporate seals to be affixed and attested by their clerks, all by the authority of the respective governing bodies of each party to this Agreement, as of the day and year first above written.

**CITY OF LINCOLNTON**

**COUNTY OF LINCOLN**

---

**David M. Black, Mayor**

---

**Alex Patton, Chairman  
Lincoln County Board of**

**Commissioners**

**Attest:**

---

**City Clerk**

---

**Clerk to the Lincoln County  
Board of Commissioners**

**Property Owner  
Hwy. 321 Investments, LLC**

---

**Manager/Member**

**UPON MOTION** by Commissioner Mitchem, the Board voted unanimously to approve the Interlocal Agreement with the City of Lincolnton to provide sewer service to the Highway 321 Investments, LLC.

**Capital Project Reports – Burns Whittaker:** Burns Whittaker presented the Public Works Capital Project Report.

**Finance Officer's Report – Leon Harmon:** Leon Harmon, Finance Officer, presented the Budget Performance Report for June 2009. He said the general fund revenues were 97% of budget, or \$91 million, expenses at 92% of budget, or \$86 million. Revenues were over expenses by a little over \$5 million. He said there were a number of things that affected the general fund, which include revaluation, DSS savings, 2% across the Board cut, EMS savings, and furloughs for employees.

Commissioner Mitchem asked if money will be taken out of fund balance. Mr. Harmon stated that the fund balance increased.

Mr. Wood stated that the year ended better than expected. He suggested after the State's budget and accruals, that the county try and assist the schools and prevent some of the layoffs in the school system.

Commissioner Arena suggested a work session with the BOC, then a work session with the Board of Education.

Commissioner Klein stated that he would like to see all the numbers.

Mr. Wood said he will talk to Dr. Martin and tell him that the Board would like to talk with the Board of Education before any cuts are made.

Commissioner Mitchem asked about consideration of reimbursement of furloughs taken by county employees. Mr. Wood said one option may be a 2% across the board increase.

**County Manager's Report:** George Wood presented the Duke Energy press release for a 12.6% rate increase, a Lake Norman Marine Commission Report, a letter from DENR approving the county taking over soil and erosion control for the city, and a foreclosure report from the Tax Department.

Mr. Wood presented information concerning the Homeland Security Buffer Zone Protection Program Grant.

On December 12, 2008, Lincoln County entered into a Homeland Security Buffer Zone Protection Program and Vulnerability Reduction Purchasing Plan Memorandum of Agreement that provided a grant of \$181,981.77 from the NC Department of Crime Control and Public Safety, Division of Emergency Management (NCDCCPS). This grant specified a list of equipment to be purchased by the local Emergency Management Agency, which would then file paid invoices for reimbursement.

The NCDCCPS, as part of the administrative oversight of this grant, conducted a field audit recently to verify that the invoices submitted to them by the former EMA Director for reimbursement matched the invoices actually paid by the County's Finance Department; and that the equipment purchased was received and in use. This field audit resulted in several findings dealing with two requests for reimbursements received by the state:

1. On a \$62,072.77 reimbursement request, they have documented that \$23,863.77 of equipment was purchased before the grant Memorandum of Agreement was executed, and therefore it ineligible for reimbursement. The former EMA Director had been told in a 10/20/2008 email from the state that no purchases under this grant could be made prior to the MOA being executed.

On the same \$62,072.77 reimbursement request, the state has documented that \$16,879.19 of the equipment purchased was not on the list of eligible equipment, and therefore is ineligible for reimbursement.

On the same \$62,072.77 reimbursement request, it appears that in some instances the invoices submitted for reimbursement to the NCDCCPS by the former EMA Director do not match the invoices paid by the Lincoln County Finance Director. The Finance Director paid the original invoices received from the vendors. After discussing this matter in a meeting with the field auditor and her supervisor, and the Finance Director, Mr. Wood notified the Chairman that he thought this should be investigated further and he agreed. Because the Sheriff's Department is supposed to receive \$90,725.38 of the equipment under this grant, it would not be appropriate for them to conduct this investigation. Consequently, he turned this information over to the District Attorney's Office and requested an investigation of each instance where the invoices submitted to the state do not match the invoices paid by the County.

Given the findings above, the NCDCCPS has requested that the County repay the State the combined total of \$40,742.96 for ineligible expenses. Since the equipment was to be paid solely from the grant proceeds, this money is not budgeted elsewhere. Mr. Wood requested authorization to pay this amount, but plans to appeal, if possible, the decision to not allow any expenses that may have been for approved equipment purchased before the execution of the MOA. However, there is no basis for an appeal for the equipment purchased that was not eligible for reimbursement under the grant.

2. In reviewing the \$26,000 reimbursement request, the NCDCCPS field audit determined that only \$9,588 of the equipment purchased was eligible under the grant terms, and therefore \$16,412 must be reimbursed to the state. Mr. Wood said that we intend to appeal some of this on the basis that some of the equipment purchased would have been allowable under this program, if the former EM Director had submitted a request to amend the list of eligible equipment under the grant. However, under the terms of the grant, this equipment was not approved, and has not been approved, for purchase by Lincoln County EMA.

In reviewing this \$26,000 reimbursement request, the NCDCCPS field audit determined that the invoice submitted by the former EMA Director to the state for reimbursement did not match the invoices for equipment actually paid by the Lincoln County Finance Director. Mr. Wood has turned this over to the District Attorney's Office and requested an investigation of it as well.

The third reimbursement request, for \$20,660.29, has not been processed or paid by the state. Mr. Wood has instructed the EM staff to review those invoices with the NCDCCPS, and the state will conduct the same field auditing on it as well. Once that review is completed, it will be known if any of those expenses are ineligible.

Both the Finance Department and the EMA have been instructed that any further requests for reimbursement prepared by the EMA must be reviewed and approved by the Finance Director to assure that the invoices to be submitted match the invoices he has paid.

Mr. Wood asked for the following authorization:

1. Appeal the state's disapproval of any expense that would have been eligible under the grant had the equipment been purchased on or after December 12, 2008. Appeal the state's disapproval of any expense that would have been eligible had the EMA asked for an amendment to the grant terms.
2. Repay the state for any and all expenses under this grant that NCDCCPS finally determines is due the state, and prepare a budget adjustment to cover those expenses from the General Fund's fund balance.
3. Work with the local public safety agencies involved, the EMA, and the NCDCCPS to amend the terms of this grant to acquire other needed

equipment that is eligible under the grant, so that Lincoln County utilizes as much of the \$181,981.77 originally awarded by the state as possible.

**UPON MOTION** by Commissioner Carlton, the Board voted unanimously to move forward and let Mr. Wood take care of the three items mentioned.

Commissioner Arena asked the County Manager to look at the processes and procedures concerning grants to make sure this does not happen again.

**Vacancies/Appointments:**

**Library Board:** **UPON MOTION** by Commissioner Carlton, the Board voted unanimously to reappoint Kathryn Yarbrow and Annette Heavner to the Library Board.

**Planning Board:** **UPON MOTION** by Commissioner Carlton, the Board voted unanimously to appoint Cathy Davis to the Planning Board – Howard’s Creek Township.

**UPON MOTION** by Commissioner Carlton, the Board voted 4 – 1 (Mitchem against) to appoint Shelly Johnston to the Planning Board – North Brook Township.

**Nursing Home Advisory:** **UPON MOTION** by Commissioner Carlton, the Board voted unanimously to appoint Margaret Tomberlin to the Nursing and Adult Care Home Advisory Committee.

**Hospital Board:** **UPON MOTION** by Commissioner Carlton, the Board voted unanimously to appoint Danny Richard, Jerry Cochrane, and Bill Kaplan to the Hospital Board.

**Calendar:** Chairman Patton presented the August 2009 calendar.

**Other Business:** Chairman Patton asked Commissioner Klein to serve as a committee of one Commissioner along with George Wood and Leon Harmon to look at the fund balance and an appropriate level of where it needs to be.

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

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Amy S. Atkins, Clerk  
Board of Commissioners

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Alex E. Patton, Chairman  
Board of Commissioners