

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
MONDAY, MARCH 4, 2019

The Lincoln County Board of County Commissioners met on March 4, 2019, at the Citizens Center, Commissioners Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

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

Commissioner Absent: Anita McCall (NACo Conference in Washington DC)

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 March 4, 2019 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, March 4, 2019
6:30 PM

James W. Warren Citizens Center
115 West Main Street
Lincolnton, North Carolina

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

2. Consent Agenda
- Approval of Minutes
3. **PUBLIC HEARING**

Quasi-Judicial Case

CUP #399 Wanda Locklair, applicant (Parcel ID# 20094) A request for a conditional use permit to place a manufactured home in the R-S (Residential Suburban) district. The 0.96-acre parcel is located at 2927 Gates Road, on the east side of Gates Road about 750 feet south of Hestertown Road, in Lincolnton Township.

4. Public Hearing - Installment Financing of the West Lincoln Library, Senior Services Center, Optimist Club Convenience Site and new PSAP - Deanna Rios
5. Soil and Water Sixth Grade Essay Winners - Patty Dellinger
6. Airport Authority Discussion - Josh Grant
 - 1) Airport Authority Lease
 - 2) Operations & Management Agreement
 - 3) Revised Legislation
7. Public Comments (15 minutes allowed per Rules of Procedure – 3 minutes per person)
8. Other Business

Adjourn

UPON MOTION by Commissioner Sigmon, the Board voted unanimously to adopt the agenda as presented.

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

Approval of Minutes – 02/18/19

Zoning Public Hearings: Randy Hawkins presented the following:

New Business/Advertised Public Hearings: Wesley Deaton, gave information on the zoning cases and asked if any Board member has had ex parte communication on the Conditional Use Permits. He explained standing in quasi-judicial cases.

CUP #399 – Wanda Locklair, applicant:

Chairman Mitchem opened the public hearing for CUP #399 – Wanda Locklair,

applicant.

Wanda Locklair, applicant, said she prepared the findings of fact and would like to incorporate the findings into her testimony. She said she would like to put one mobile home on the property.

Johnny Graham, Coopertown Road, said he has no problem with Wanda putting her mobile home there, but he doesn't understand why he cannot put one on his own property. Mr. Deaton advised that Mr. Graham should speak during public comments since this is a Quasi Judicial hearing.

Being no additional speakers, Chairman Mitchem closed the public hearing.

Chairman Mitchem called for a brief recess while the Planning Board moved their meeting to the 1st floor commercial kitchen. Chairman Mitchem called the meeting back to order.

Public Hearing – Installment Financing of the West Lincoln Library, Senior Services Center, Optimist Club Convenience Site and new PSAP:

PUBLIC HEARING

The Chairman announced that this was the hour, day and place fixed for a public hearing held pursuant to Sections 160A-20(g) of the North Carolina General Statutes, as amended, for the purpose of considering whether the Board of Commissioners for the County (the "Board") should approve an installment financing contract under which the County would obtain financing pursuant to Section 160A-20 of the North Carolina General Statutes, as amended, in an amount not to exceed \$12,250,000 for the purpose of accomplishing the financing described in the Notice of Public Hearing and under which the County would secure the repayment by it of moneys advanced pursuant to such contract by granting a lien on a portion of property relating to the financing.

The Chairman announced that the notice of the public hearing was published in the *Lincoln Times-News* at least ten days before March 4, 2019.

It was requested that the Clerk to the Board inquire to determine whether there were any persons who wished to speak at the public hearing. The names, addresses and testimony of the persons who were present and who offered comments on the proposed installment financing contract, pursuant to or who responded in writing to the notice of public hearing, are as follows:

After the Board had heard all persons who had requested to be heard, Commissioner Cesena moved that the public hearing be closed. The motion was seconded by Commissioner Permenter and was unanimously adopted.

* * *

Commissioner Cesena introduced the following Resolution which was read by title, and moved it be adopted:

RESOLUTION (1) AUTHORIZING PURSUING AN INSTALLMENT FINANCING AND (2) MAKING CERTAIN FINDINGS AND APPOINTMENTS AND REQUESTING APPROVAL OF THE LOCAL GOVERNMENT COMMISSION

WHEREAS, Davenport & Company LLC (“Davenport”), on behalf of the County, has distributed a Request for Proposals to secure a bank commitment for the installment financing of certain capital projects for the County, and the County wants to accept the proposal of Regions Capital Advantage, Inc.; and

WHEREAS, in order to secure required approval of the financing by the Local Government Commission of North Carolina, the County must make certain findings and must hold a public hearing;

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

1. The Board hereby finds and determines in connection with the proposed installment financing contract that (a) such proposed contract is necessary or expedient to the County, (b) such proposed contract, under current circumstances, is preferable to a general obligation bond issue of the County for the same purpose, (c) the sums estimated to fall due under such proposed contract are adequate and not excessive for their proposed purpose, (d) the County’s debt management procedures and policies are good and its debt will continue to be managed in strict compliance with the law, (e) no increase in taxes will be necessary due to the proposed contract and (f) the County is not in default regarding any of its debt service obligations.
2. The Board hereby requests the Local Government Commission of North Carolina to approve such proposed contract under Article 8 of Chapter 159 of the General Statutes of North Carolina. The Board appoints Davenport as financial advisor and Robinson Bradshaw & Hinson P.A. as special counsel for the transaction.
3. The Board hereby accepts the proposal of Regions Capital Advantage, Inc. and authorizes County staff to work and negotiate with that organization regarding that proposed contract.

4. This Resolution shall become effective immediately upon its adoption.

Commissioner Sigmon seconded the motion and the motion was adopted by the following vote:

AYES: Carrol Mitchem, Chair, Richard Permenter, Vice Chair, Milton Sigmon, Bud Cesena

NAYS: None

Soil & Water Sixth Grade Essay Winners: Patty Dellinger introduced the following Sixth Grade Essay Winners, who read their essays.

1st Place Winner: Daniel Overbay (East Lincoln Middle)

2nd Place Winner: Lander (Lulu) King (Lincolnton Middle)

3rd Place Winner: Isabel Nishek (North Lincoln Middle)

Honorable Mention: Rell McNeill (Lincoln Charter School, Denver)

Patty Dellinger said that Emma Willis (West Lincoln Middle), Honorable Mention, was not able to attend the meeting.

Chairman Mitchem thanked the students for having the courage to come and read their essays to the Commissioners, saying they all did a great job.

Airport Authority Discussion: Josh Grant, Program Operations Manager, presented the following:

As a restructuring of the Airport Authority's relationship with the County and City, there are a few items to be addressed including 1) Airport Authority Lease; 2) Operations & Management Agreement & 3)Revised Legislation.

In order to be able to apply for, receive and administer state and federal grants as has been done in the past, the Airport Authority would propose to act as agent of the City and County. This would result in the City and County giving the Authority to act on their behalves with certain limitations. Also, there are certain employment benefits that will be amended with the proposal.

Mr. Deaton outlined the Lease, Agreement and Revised Legislation.

UPON MOTION by Commissioner Sigmon, the Board voted unanimously to approve the Lease with the numbers as presented of \$50,000 and \$100,000 in Item 5.

NORTH CAROLINA

LEASE

LINCOLN COUNTY

THIS AGREEMENT, made this _____ day of _____, 2019, by and between the **CITY OF LINCOLNTON**, (hereinafter referred to as "City"), a municipality created pursuant to the laws of the State of North Carolina and the **COUNTY OF LINCOLN**, a political subdivision and body politic of the State of North Carolina, (hereinafter referred to as "County" and together with the City as the "Lessors"), and the **LINCOLNTON-LINCOLN COUNTY AIRPORT AUTHORITY** created by an act of the General Assembly, (hereinafter called the Lessee).

WITNESSETH:

That Whereas, the Lessors own and operate the airport in Ironton Township, Lincoln County, North Carolina (herein referred to as "Airport"), and

Whereas, by Act of the General Assembly of North Carolina, an authority was created to acquire, establish, construct, own, lease and operate Airport and such authority is known as the Lincolnton-Lincoln County Airport Authority, and

Whereas, Lessors and Lessee had previously entered into an Amendment to Lease dated April 4, 2005 (the "Amended Lease"), and

Whereas, Lessee desires to amend and restate the Amended Lease with respect to said land and improvements upon the terms and conditions hereinafter stated.

NOW, THEREFORE, the Lessors do hereby demise and lease unto the Lessee, and the Lessee does hereby hire and take from the Lessors for the term and upon the rentals hereinafter specified, the premises situate in the County of Lincoln, State of North Carolina, and described as follows:

BEING all those lands and improvements set out on **EXHIBIT A** hereto attached and by reference thereto incorporated herein as fully as if copied herein in full.

It is agreed that any other lands acquired by the Lessors during the term of this demise for airport purposes shall be included and added to and held by the Lessee under the terms of this Lease.

upon the following terms and none other:

1. **TERM.** The term of this demise shall be for 20 years beginning on the _____ day of _____, 2019, and ending on the _____ day of _____, 2039.

2. **RENTAL.** The rent for the demised premises, which Lessee hereby agrees to pay shall be \$2.00 per year, payable in advance, \$1.00 of which shall be paid to the City of Lincolnton, and \$1.00 of which shall be paid to the County of Lincoln.

3. **DELIVERY AT END OF LEASE.** The said Lessee agrees to deliver up to the said Lessors the said premises at the expiration of this lease in good order and condition, and to make good all damages to said premises, usual wear and tear and damage by the elements excepted, and also to remain liable for rent until all the premises, with keys to the same, are returned to said Lessor in like good order and no demand or notice of such delivery shall be necessary.

4. DEFAULT BY LESSEE: Lessor shall have the right, at the option of Lessor, to annul this lease, upon ten days written notice to the Lessee, and to thereupon re-enter and take possession of the said premises, upon the happening of any one or more of the following events:

(a) In the event the Lessee should fail to pay any annual installments of rent, as and when the same become due and such default should continue for 30 days after written demand for the payment thereof is made by the Lessor upon Lessee.

(b) In the event a petition in bankruptcy is filed by or against the Lessee and such petition is not dismissed within thirty days from the filing thereof, or the Lessee is adjudged a bankrupt.

(c) In the event the Lessee, before the expiration of said term, and without the written consent of the Lessor, vacates said premises or abandons the possession thereof or uses the same for purposes other than the purposes for which the same are hereby let, or ceases to use said premises for the purposes herein expressed.

(d) In the event an execution or other legal process is levied upon the goods, furniture, effects or other property of the Lessee brought on said premises, or upon the interest of Lessee in this lease, and the same is not satisfied or dismissed within ten days from such levy.

(e) In the event the Lessee violates any other terms, conditions or covenants on the part of the Lessee herein contained and fails to commence and to proceed with diligence and dispatch to remedy the same within ten days after written notice thereof is given by Lessor to Lessee.

(f) In the event the premises ceased to be used as a public airport or for aeronautical purposes.

5. AUTHORITY TO ACT AS AGENT. Pursuant to 14 CFR 151.33, the County and City each, jointly and severally, authorize the Airport Authority apply for federal grants and to accept, on behalf of the County and the City, offers made pursuant to 14 CFR 151.29 et seq. The Airport Authority may unilaterally accept, on behalf of the County and the City, any grant that requires no more than a \$50,000.00 contribution from the Sponsors. Notwithstanding the foregoing grant of agency, the Airport Authority may not bind the Sponsors to pay more than \$100,000.00 in total contributions in any one fiscal year. Both limitations above may be increased upon the approval of the County's Board of Commissioners and the City's Council.

6. PROTECTION FROM VIOLATIONS. The Lessee agrees to save and hold the Lessors harmless from violations of the laws of the United States and the laws and ordinances of the State, County and City wherein the premises is located. Lessee also will comply at all times and in all respects with all the laws relating to operation of an airport and particularly those laws which apply to nondiscrimination.

Lessee agrees for itself, its successors and assigns, as a part of the consideration hereof, no person shall be excluded from participating in, denied the benefit of or be otherwise subjected to discrimination in the use of the airport's facilities because of his or her race, color, sex or natural origin.

7. REPAIRS BY LESSORS. The demised premises are being leased "WHERE IS AND AS IS," and the Lessors shall have no further responsibility of any kind, sort or nature to make any repairs to the demised premises during the term of this Lease. It is agreed the

Lessors have made no warranties, either expressed or implied, in connection with the condition of the property.

8. REPAIRS, MAINTENANCE, ETC. BY LESSEE. Lessee covenants and agrees to keep and maintain the leased premises in good condition and repair during the lease term.

9. INSPECTION BY LESSOR. Lessor reserves the right to visit and inspect the leased premises at all reasonable times during the term of this lease.

10. FIRE CLAUSE. In the event of damage or casualty of any part of the leased premises, it shall be replaced or repaired by the Lessee in an amount equal to Lessee's insurance. All insurance proceeds received by reason of any such damage or destruction shall be applied to such replacement or repair. Lessee shall be responsible for restoring the leased premises to the condition prior to such damage or destruction. The Lessors shall have no responsibility or liability to restore or repair the damaged premises during the term of this lease.

11. INDEMNIFICATION OF LESSORS. It is an expressed condition of this Agreement that except where caused solely by its negligence, the Lessors, City or County, its officials, officers, agents and employees shall be free from any and all claims, debts, demands, liabilities or causes of action of every kind or character, whether in law or in equity, by reason of any death, injury, or damage to any person or persons or damage or destruction of any property of Lessee, its agents or employees, or of any third persons, from any cause or causes whatsoever arising from any event or occurrence in or upon the Leased premises or any part thereof, or otherwise arising from Lessee's operations under and during the term of this agreement; and Lessee shall indemnify and save harmless the Lessors, their officials and officers, agents and employees against and from any and all such claims, demands, debts, liabilities and causes of action (including attorneys' fees, investigation and other costs). Lessee will indemnify and save harmless the Lessors of and from any and all suits, claims, demands and actions of any kind or nature, by reason of any breach, violation or nonperformance of any condition hereof by the Lessee. The Lessee will indemnify, protect and save harmless the Lessor from and against any and all loss, cost, damage or expense by or resulting from injuries to persons or property while in, on or about the leased premises. Any and all property of the Lessee which may be located or stored in the leased premises shall be at the sole risk of the Lessee. In that connection, Lessee agrees to obtain and keep in force during the term of this lease liability insurance in amounts, and issued by such insurance companies, reasonably satisfactory to Lessor naming both the Lessor and the Lessee as insured parties. Lessee will furnish Lessor evidence that such insurance is in force before occupying the leased premises.

12. UTILITIES. All heat, water, electric current, gas or other utilities used on the leased premises shall be paid for by Lessee.

13. KIND OF BUSINESS. The business to be conducted in the within leased premises is as follows: Public airport, related aeronautical activities and associated businesses.

14. GOING BUSINESS. Lessee agrees that a public airport shall be conducted in the within leased premises throughout the full term of this lease.

15. NOTICE. Any notice provided for herein will be deemed to have been given Lessee when deposited in Registered or Certified mail addressed to Lessee, or any lessee if more than one are included under the designation "Lessee" herein, at 716 Airport Drive, Iron Station, North Carolina, 28080, and to the Lessors by mailing a copy to the County

Manager, County of Lincoln, 115 West Main Street, Lincolnton, North Carolina, 28092, and also to the office of the City Manager, City of Lincolnton, 114 West Sycamore Street, Lincolnton, North Carolina, 28092, here again by registered or certified mail, postage prepaid.

16. **WAIVER OF BREACH.** The failure of the Lessor to insist, in any one or more instances upon a strict performance of any of the covenants of this lease, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option, but the same shall continue and remain in full force and effect. Receipt by the Lessor of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Lessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Lessor.

17. **QUIET POSSESSION.** The Lessor covenants to keep the Lessee in possession of the leased premises during said term, provided, however, that the Lessor shall not be liable for the failure or inability of the Lessee to obtain possession. Nothing herein contained shall be construed as a warranty that the leased premises are in good condition or are fit or suitable for the use or purpose for which they are let.

18. **INSURANCE.** The Lessee agrees to pay the premium on a fire and casualty insurance policy with extended coverage, covering the demised premises with a reputable company in an amount to be determined by the Lessors, but not to exceed the value of the improvements on the demised premises.

19. **LEASEHOLD IMPROVEMENTS OR REPAIRS.** The Lessee agrees at its own expense to pay for any other leasehold improvements or repairs which may be required to keep the premises in their present condition, or which the Lessee, in its discretion, wants to make for its own benefit, all at the expense of the Lessee, but subject to any other terms of this lease that may be inconsistent with this paragraph.

20. The Lessee acknowledges that it is fully aware that the Lessors have heretofore entered into certain contracts for the purpose of receiving grants for airport purposes and that said contracts and agreements require the Lessors to do and perform certain contractual obligations and to abide by certain rules, regulations and laws relating to said grants, and the Lessee agrees to abide by and perform said contracts in the same manner and to the same extent as if the Lessee had entered into the contracts initially and to do every act or thing necessary and appropriate to keep said contracts from becoming in default.

21. The parties agree that they will enter into a Short Form Lease, capable of being recorded in the LINCOLN County Public Registry.

22. When reference is made to the Lessee or Lessor, the singular shall include the plural and the masculine shall include the feminine or the neuter.

IN WITNESS WHEREOF, the parties have hereunto caused the due execution of this Lease following the due approval thereof by the City Council on behalf of the City and the Board of County Commissioners on behalf of the County and the Lincolnton-Lincoln County Airport authority members on behalf of the Lincolnton-Lincoln County Airport Authority.

LINCOLN COUNTY

By: _____, Chairman of the
_____, Board of County Commissioners

ATTEST:

Amy S. Atkins
Clerk to the Board
Lincoln County Board of Commissioners

NORTH CAROLINA
LINCOLN COUNTY

I, _____, a Notary Public in and for the aforesaid County and State, do hereby that AMY ATKINS personally appeared before me this day and duly acknowledged that she is the duly appointed and acting Clerk to the Lincoln County Board of Commissioners; that _____ is the Chairman of said Board and that by authority duly given in resolution duly adopted and recorded upon the official minutes, the foregoing instrument was duly signed in the name of Lincoln County by the Chairman of the Board of Commissioners; that its corporate seal was duly affixed and the execution of the instrument as the act and deed of the County was attested by herself as Clerk.

Witness my hand and Notarial Seal, this the _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

CITY OF LINCOLNTON

By: _____
_____, Mayor

ATTEST:

City Clerk

NORTH CAROLINA
LINCOLN COUNTY

I, _____, a Notary Public in and for said County and State, certify that _____ personally came before me this day and acknowledged that she is the City clerk of the City of Lincolnton, a municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, _____, sealed with its corporate seal, and attested by herself as its City Clerk.

Witness my hand and Notarial Seal, this _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

LINCOLNTON-LINCOLN COUNTY
AIRPORT AUTHORITY

By: _____
, Chairman

NORTH CAROLINA
LINCOLN COUNTY

I, _____, a Notary Public in and for said County and State, certify that _____ personally came before me this day and acknowledged that he is the Chairman of the LINCOLNTON-LINCOLN COUNTY AIRPORT AUTHORITY, and that by authority duly given and as the act of the Authority, the foregoing instrument was signed by him as Chairman and sealed with its seal, all by authority duly granted by the members of the Lincoln-Lincoln County Airport Authority.

Witness my hand and Notarial Seal, this _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

There was a discussion and the Board agreed on 7/1/2020 as the date for employee benefits for Airport employees to

UPON MOTION by Commissioner Cesena, the Board voted unanimously to approve the Airport Operating Agreement with the wording that any employee previously receiving benefits from the County or City shall stop receiving such benefits by July 1, 2020.

STATE OF NORTH CAROLINA
COUNTY OF LINCOLN

AIRPORT OPERATING AGREEMENT

THIS AGREEMENT, made effective the _____ day of _____, 2019, is by and between the CITY OF LINCOLNTON, NORTH CAROLINA, (hereinafter referred to as "City"), the COUNTY OF LINCOLN, NORTH CAROLINA, (hereinafter referred to as "County" and together with the City as the "Sponsors"); and the LINCOLNTON-LINCOLN COUNTY AIRPORT AUTHORITY, (hereinafter referred to as "Airport Authority").

WITNESSETH:

WHEREAS, both the City and the County have previously determined that it is in the best interest of the citizens of the City and the County for the Lincolnton-Lincoln County Airport (hereafter, the "Airport") to be maintained, operated, regulated and improved by a semi-autonomous board composed of citizens and residents of both the City and County, created pursuant to Article 20 of Chapter 160A of the General Statutes of North Carolina;

NOW, THEREFORE, the City and the County do contract and agree as follows:

1. TERM. The Term of this Agreement shall be for a period of twenty (20) years, commencing on the ____ day of _____, 2019, and continuing until midnight on the ____ day of _____, 2039. The City and County shall have the right and option to renew this Agreement for an additional period of twenty (20) years under the same terms and conditions as herein set forth upon the mutual agreement of said parties.
2. ORGANIZATION OF THE AIRPORT AUTHORITY. The Organization of the Authority shall be as set out in S.L. 1996-10es2, as amended by local legislation contained in 2017 Session Law 2017-104 and in 2019 Session Law _____ copies of which are attached hereto as Exhibit "A" (collectively referred to, as may be further amended from time to time, as the "Local Legislation").
3. PERSONNEL. The Airport Authority may employ persons as necessary for the operation of the airport, and such persons shall be deemed employees of the Airport Authority and shall work at the direction of and under the supervision of the Airport Manager as hereinafter provided. Eligible employees may be included in the North Carolina Local Government Employees Retirement System as provided in Article 3 of Chapter 128 of the General Statutes of North Carolina. The Airport Authority shall adopt personnel rules and procedures which shall be in accordance with applicable local, state and federal statutes and relevant case law.
4. POWERS AND DUTIES OF AIRPORT AUTHORITY. The Airport Authority shall have those powers and duties ascribed to it by the Local Legislation.
5. POWERS AND DUTIES OF AIRPORT MANAGER. The Airport Manager shall be the administrative head of the Airport Authority personnel. The Manager shall serve at the pleasure of the Airport Authority. The Manager shall, with the approval of the Airport Authority, employ personnel to fill positions allocated by the Airport Authority. The Manager shall implement the personnel rules and regulations adopted by the Airport Authority. The Manager shall have the responsibility of enforcing said personnel rules and regulations by disciplinary action against and/or discharge of employees found by said Manager to be in violation of said rules and regulations. The Manager may make recommendations to the Airport Authority from time to time concerning position allocations. The Manager shall make reports to the Airport Authority from time to time as required by the Airport Authority. The Manager shall be responsible for the daily operation of the Lincolnton-Lincoln County Airport, under the supervision of the Airport Authority. The Manager shall be empowered to enforce the rules and regulations of the airport and to take actions as necessary to secure payment of monies due the airport from rentals, sales, fees or other sources.
6. AUTHORITY TO ACT AS AGENT. Pursuant to 14 CFR 151.33, the County and City each, jointly and severally, authorize the Airport Authority apply for federal grants and to accept, on behalf of the County and the City, offers made pursuant to 14 CFR 151.29 et seq. The Airport Authority may unilaterally accept, on behalf of the County and the City, any grant that requires no more than a \$50,000.00 contribution from the Sponsors.

Notwithstanding the foregoing grant of agency, the Airport Authority may not bind the Sponsors to pay more than \$100,000.00 in total contributions in any one fiscal year. Both limitations above may be increased upon the approval of the County's Board of Commissioners and the City's Council.

7. EXISTING CONTRACTS. As provided elsewhere in the Agreement, existing contracts and/or agreements to which the City or County is a party at the time of the effective date of this Agreement and which concern use of the Lincolnton-Lincoln County Airport shall be assumed by the Airport Authority after the effective date of this Agreement until the expiration of said contracts and/or agreements, or until the Airport Authority as assignee of the City and County would no longer be required by law to perform thereunder, whichever occurs sooner. The Airport Authority is hereby expressly made the assignee of the City and County of all such contracts and/or agreements and as such is vested with all rights and responsibilities that the City and County has thereunder as of the effective date of this Agreement, subject to the approval of any party or parties to said contracts and/or agreements whose approval may be required.

8. LEASE OF AIRPORT PROPERTY. The City and the County by the ratification of this Agreement do as lessors hereby agree to lease to the Airport Authority as lessee those tracts of land which comprise the Airport property, pursuant to that Lease Agreement attached hereto as Exhibit "B" (the "Lease Agreement").

Said Lease Agreement shall be duly executed, and a memorandum of said Lease Agreement may be recorded in the records of the Lincoln County Register of Deeds.

9. BUDGET PROCESS. The Airport Authority shall instruct the Airport Manager to prepare an annual budget in accordance with the City and County budgetary policies and procedures. Said budget shall be presented to the Airport Authority on or before February 15 of each year. The Airport Authority shall review and approve the proposed budget and submit it to the City and County Finance Directors on or before March 30 of each year for inclusion in the City's and County's annual budget process. The City and County may exercise budgetary discipline by declining to fund expenditures which cannot be funded by operating revenues from the Airport Authority budget. The Airport Authority shall operate in accordance with the Local Government Budget and Fiscal Control Act, found in Article 3 of Chapter 159 of the General Statutes of North Carolina, subject to such limitations as may be set forth herein. The Airport Authority shall comply with the terms of this Agreement; provided that wherever a conflict may exist between the terms of this Agreement and any provisions of said Act which are mandatory and not directory, such mandatory provisions of said Act shall control. The Airport Authority shall notify the City Council and the County Commission prior to entering into indebtedness as required by and in accordance with said Budget and Fiscal Control Act.

10. ASSUMPTION OF INDEBTEDNESS; DISTRIBUTION OF PROCEEDS. In the event that the Lincolnton-Lincoln County Airport shall cease to be used for aeronautical purposes or if this Agreement shall be terminated as herein provided, or rendered null and void by a court decree, statutory law or otherwise, the County shall assume any

indebtedness of the Airport Authority which may have arisen by virtue of the assumption by the Airport Authority of indebtedness of the County, or which indebtedness may have arisen after the execution of this Agreement under the terms of this Agreement. In the event that the Lincolnton-Lincoln County Airport shall cease to be used for aeronautical purposes, or if this Agreement shall be terminated as herein provided, or rendered null and void by a Court decree, statutory law otherwise, all funds and revenues in the possession of and owned by the Airport Authority or owing to the Airport Authority in the form of accounts receivables or otherwise shall be conveyed, transferred and assigned to the County.

11. **AVIATION ENTERPRISE FUND.** All revenues from and expenditures for the operation of the Lincolnton-Lincoln County Airport shall be accounted for in accordance with the provisions of Chapter 159 of the North Carolina General Statutes and within the constraints of the City's and the County's annual budget ordinance. Said Aviation Enterprise Fund shall be permitted to accrue fund balances from year to year in accordance with the long-range fiscal plans of the Airport Authority. Provided also, that funds appropriated by the City and County for aeronautical use by the Airport Authority shall become part of the Aviation Enterprise Fund and thereby any unspent funds for any fiscal year would remain in the Fund for future use by the Airport Authority as part of its long-range fiscal plans.

12. **REPORTS.** The Airport Authority shall maintain and promptly transmit to the governing bodies of the City and County such reports, records and minutes and/or other information or data as may be requested by either of said governing bodies, or both. The County and the City shall have the right at reasonable times, during normal business hours, to examine and inspect the records required under this paragraph, and to make copies thereof.

13. **AIRPORT AUTHORITY EMPLOYEE BENEFITS.** The Airport Authority shall be responsible for all employee benefits, including but not limited to, health insurance, workers compensation, and any retirement benefits, for all Airport Authority employees. Any employee previously receiving benefits from the County or City shall stop receiving such benefits by July 1, 2020.

14. **INDEMNIFICATION.** The Airport Authority and Airport Manager shall indemnify, defend and hold the County and City Harmless from and against all claims, liabilities, costs and expenses, including attorney fees, arising out of or in any manner related to the Airport Authority or Airport Manager's activities at the Airport or performance under this Agreement.

15. **TAXES.** In the event that the Airport Authority may now or at any time in the future be liable for the payment of any ad valorem taxes on property leased by it from the City and County, the Airport Authority shall pay said taxes as levied to the governing body levying same.

16. **AMENDMENT.** This Agreement may be amended at any time by a document in writing executed by all parties hereto; provided, however, that such change does not conflict

with the terms of that legislation attached hereto as Exhibit "A," as may subsequently be amended.

17. TERMINATION. This Agreement may be terminated at any time by mutual agreement of the City and County or by either of them by giving 365 days' notice to the other, and to the Airport Authority. In the event this Agreement is not terminated on or before _____, 2039 the term of this Agreement shall continue thereafter on a year-to-year basis, subject to the right of either the City or the County during any such year term to terminate the same, by giving the other party and the Airport Authority prior written notice prior to the end of the then current year term.

IN WITNESS WHEREOF, the parties hereto have caused the due execution of this Agreement following due approval thereof by the City Council and behalf of the City and by the Board of the County Commissioners on behalf of the County.

ATTEST:

CITY OF LINCOLNTON

City Clerk

By: _____
Mayor

(SEAL)

ATTEST:

COUNTY OF LINCOLN

Clerk of the Board

By: _____
Chairman, Board of Commissioners

(SEAL)

ATTEST:

AIRPORT AUTHORITY

Notary Public

By: _____
Chairman

(SEAL)

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

Date: _____

Airport Authority Director of Finance

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

Date: _____

City of Lincolnton Director of Finance

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

Date: _____

Lincoln County Director of Finance

Approved as to form and legality this _____ day of _____, _____

CITY OF LINCOLNTON

COUNTY OF LINCOLN

By: _____

City Attorney

County Attorney

EXHIBIT "A"
(Legislation)

EXHIBIT "B"
(Lease)

UPON MOTION by Commissioner Sigmon, the Board voted unanimously to approve the House Bill with the amounts of \$50,000 and \$100,000 as in the previous documents.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 1996
RATIFIED BILL**

**CHAPTER 10
HOUSE BILL XX**

AN AMENDMENT TO AN ACT TO ENABLE THE ~~COUNTRY~~ COUNTY OF LINCOLN AND THE CITY OF LINCOLNTON TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE AND OPERATION OF AIRPORT FACILITIES IN THE COUNTY.

RECITALS

- 1) WHEREAS, House Bill 36, as established in 1996, created the Lincolnton-Lincoln County Airport Authority; and
- 2) WHEREAS, Part IV of Senate Bill 8, as established in 2017, amended House Bill 36; and
- 3) WHEREAS, Session Law 1996-10-es2 and Part IV of Senate Bill 8 are now deleted and in lieu thereof is inserted the following.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the "Lincolnton-Lincoln County ~~Regional~~ Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and addition powers as shall be conferred upon it by general law and future acts of the General Assembly.

Sec. 2. The Airport Authority shall consist of five members, four of whom shall be appointed to staggered three-year terms by the Lincoln County Board of Commissioners and one of whom shall be appointed to a staggered three-year term by the Lincolnton City Council. The member appointed by the Lincolnton City Council shall be a qualified voter of the City of Lincolnton. At least one member appointed by the Lincoln County Board of Commissioners shall be a qualified voter of the City of Lincolnton. All four members appointed by the Lincoln County Board of Commissioners shall be qualified voters of the

County of Lincoln. Each member shall take and subscribe before the Clerk of Superior Court of Lincoln County an oath of office and file the same with the Lincoln County Board of Commissioners and the Lincolnton City Council. No member of the **Airport Authority Board** shall serve more than two consecutive term limits. The Chairman of the **Board** **Airport Authority** shall be annually designated by Lincoln County.

Sec. 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority shall receive compensation, per diem, or otherwise as the Lincolnton City Council or the Lincoln County Board of Commissioners from time to time determines and be paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority.

Sec. 4. (a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

- (1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property.
- (2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the County.
- (3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.
- (4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the City of Lincolnton or the County of Lincoln.
- (5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.
- (6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of the Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Lincoln County Board of Commissioners and the Lincolnton City Council.
- (7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.
- (8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.
- (9) To purchase any of its outstanding bonds or notes.
- (10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed **25 50** years, the right to operate on any airport premises

restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

- (11) To contract with persons, firms, or corporations for terms not to exceed ~~25-50~~ years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.
- (12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed ~~25-50~~ years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.
- (13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.
- (14) To have a corporate seal, which may be altered at will.
 - (b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Sec. 5. The Airport Authority may apply for federal ~~and state~~ grants and accept, on behalf of the County and the City, offers made pursuant to 14 CFR 151.29 et seq. The Airport Authority may unilaterally accept, on behalf of the County and the City, any grant that requires no more than a \$50,000.00 contribution from the County and the City. Notwithstanding the foregoing grant of agency, the Airport Authority may not bind the County and the City to pay more than \$100,000.00 in total contributions in any one fiscal year. Both limitations above may be increased upon the approval of the County's Board of Commissioners and the City's ~~Counsel~~ Council.

Sec. 6. The Airport Authority may acquire from the City and the County, by agreement with the City and County, and the City and County may grant and convey, either by gift or for such consideration as the City and County may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the County.

Sec. 7. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be acquired, owned, controlled, and occupied for a public purpose.

Sec. 8. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field may be acquired by gift or devise, or may

be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes.

Sec. 9. The Airport Authority shall make an annual report to the Lincoln County Board of Commissioners and the Lincolnton City Council setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Lincoln County or the City of Lincolnton, or any subdivision thereof, or to impose any obligation on Lincoln County or the City of Lincolnton, or any of their subdivisions, except for the limited purposes of acting as an agent of the City and County as provided herein pursuant to 14 CFR 151.29 et seq.

Sec. 10. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect or enacted in the future relating to the development, regulation, and control of municipal airports and the regulation of aircraft are vested in the Airport Authority. The Lincoln County Board of Commissioners or the Lincolnton City Council may delegate their powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Lincoln County and the City of Lincolnton to control, regulate, and provide for the development of aviation in Lincoln County.

Sec. 11. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Sec. 12. The Airport Authority may employ any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 11 of this act.

Sec. 13. The Lincoln County Board of Commissioners or the Lincolnton City Council may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Lincoln County Board of Commissioners or the Lincolnton City Council.

Sec. 14. The Airport Authority may expend the funds that are appropriated by the County and City for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Sec. 15. The Airport Authority and Chairman shall elect from among its members, officers at its initial meeting and then annually thereafter. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Sec. 16. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Sec. 17. The airport operated by the Lincolnton-Lincoln County Airport **Regional** Authority shall be hereafter known as the "Lincolnton-Lincoln County **Regional** Airport.

Sec. 18. The airfield of the Lincolnton-Lincoln County **Regional** Airport shall be hereafter known as the "David E. Lowe Airfield.

Sec. 19. This act continues the existence of the Airport Authority as first established in 1996 via Session Law 1996-10-es2.

Sec. 20. This act is effective upon ratification.

In the General Assembly read three times and ratified this the ____ day of _____, 2019.

President of the Senate

Speaker of the House of Representatives

Public Comments: Chairman Mitchem opened Public Comments.

Johnny Graham, Coopertown Road, asked for help in subdividing his property. Mr. Atkins said staff will follow up with Mr. Graham tomorrow concerning this issue.

Being no additional speakers, Chairman Mitchem closed Public Comments.

Mr. Atkins reminded the Board of their meetings with the Board of Education members concerning the school's budget.

Other Business:

There was a discussion concerning ongoing issue with septic tank inspections. Mr. Atkins said 3 part time employees have been hired and another is in the process of being hired. He said with an existing part time employee, that is no longer doing water testing, this will be 5 part time employees working on the backlog of septic tank permits. One additional employee, starting in July, has been budgeted.

Commissioner Cesena said the Board needs to encourage the Director to spend more time in Lincoln County handling issues instead of the extensive travel that is done.

Mr. Atkins spoke concerning reimbursements to citizens who hire Soil Scientists (with a little risk involved since there is not explicit authority to do so) and the possibility of suspending permit fees, which the Board does have the authority to do. There was a discussion among the Board members about the different options for reimbursement and suspending fees.

UPON MOTION by Commissioner Cesena, the Board voted unanimously to reimburse up to \$500 from September 1, 2018 to February 1, 2019 for those individuals who have received outside service from Soil Engineers, with proof provided, with a total expenditure of up to \$100,000.

Commissioner Cesena informed the Board of the 3rd Annual Safe Kids Day at the Lincoln County YMCA on May 4, 2019 from 10:00 AM to 2:00 PM.

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

Amy S. Atkins, Clerk
Board of Commissioners

Carrol Mitchem, Chairman
Board of Commissioners