

A G E N D A

LINCOLN TON CITY COUNCIL

September 4, 2014

7:00 p.m.

Council Chambers

City Hall

FOR YOUR CONVENIENCE A COPY OF
TONIGHT'S AGENDA
IS AVAILABLE, LOCATED TO THE
RIGHT OF THE ENTRANCE TO THE
COUNCIL CHAMBERS

*ANYONE WISHING TO SPEAK
DURING THE PUBLIC COMMENT
PORTION OF THE AGENDA
PLEASE SEE THE CITY CLERK PRIOR
TO THE MEETING TO SIGN UP
NON-AGENDA ITEMS WILL BE
DISCUSSED AND SPEAKERS WILL BE
LIMITED TO THREE (3) MINUTES
A COPY OF THE RULES FOR PUBLIC COMMENT
ARE AVAILABLE AT THE CITY CLERK'S DESK*

THANK YOU FOR ATTENDING
OUR MEETING
AND FOR YOUR INTEREST
IN THE CITY OF LINCOLNTON

A G E N D A
LINCOLN TON CITY COUNCIL

September 4, 2014

7:00 p.m.

CALL TO ORDER – Mayor John O. Gilleland, Jr.

PLEDGE OF ALLEGIANCE

1. Approval of Regular Agenda

2. Approval of CONSENT AGENDA:

All items placed under the Consent Agenda are considered routine, to be enacted by one motion without discussion. If a member of the Governing Body requests discussion of an item, the item will be removed from the Consent Agenda and considered separately.

**3. Approval of Minutes of the Meetings –
August 7th , 2014 – Regular Meeting**

4. PROCLAMATIONS:
Constitution Week – September 17 – 23, 2014
Industry Appreciation Month – October 2014

5. Calls to Public Hearing for October 2nd meeting:
CUP-4-2014 – Application from First Federal Savings Bank requesting a conditional use permit to construct a parking lot on 0.60 acres of land in the Residential-Office (R-O) District. The subject property is located on the south side of East Water Street approximately 100 feet west of the intersection of the intersection of East Water Street and South Cedar Street. The physical address of the property is 324 Water Street (Parcel ID 00629).

REGULAR AGENDA

PUBLIC HEARINGS

(O-07-14)

6. To receive public comment on a request for a Certificate of Convenience and necessity to operate a taxi cab/vehicle for hire service within the corporate limits of Lincolnton.

Donna Flowers, City Clerk
Rodney Jordan, Chief of Police

(O-08-14)

7. To consider a proposed amendment to the City's Code of Ordinances to enact speed limits and be concurrent with NCDOT's code: Title VII. Traffic Code - # 74. Traffic Schedule VI. Speed Limits on State Maintained Streets; US 321 from SR 1405, northward to a point 0.16 mile south of SR 1463, the northern corporate limit of Lincolnton and between SR 1405 and a point 0.16 miles north of SR 1463.

Donna Flowers, City Clerk

PRESENTATIONS

8. Departmental Report from Lincolnton Public Works Division

Steve Peeler, Director PW&U

9. Presentation from Tarheel ChalleNGe Academy

Mr. Jim Bright,
Tarheel ChalleNGe Recruiter

CONTRACTS

(C-14-14)

10. Consideration of contract between the City and NCDOT for improvements to the intersection of East Main Street and Generals Blvd

Jeff Emory, City Manager

(C-15-14)

11. Consideration of lease/contract for Business & Community Development Office located at 114 East Main Street – *(Note: \$ 30 increase per month for an annual lease amount of \$ 6300 per year – effective through January 31st 2016)*

(C-16-14)

12. Consideration of contract for 2015 Hog Happening Event & beer Garden map

Brooke Sherrill, Chair
Downtown Development Association

(C-17-14)

13. Consideration of contract for 2014 Wine Festival for alcohol sales - map included

Brooke Sherrill, Chair
Downtown Development Association

OTHER BUSINESS

14. Request for Council to consider extension of beer garden at the Alive After Five Concert series for the September 2014 event

Brooke Sherrill, Chair
Downtown Development Association

15. Discussion of current Golf Cart Ordinance and request for possible revisions

Mayor Gilleland
Rodney Jordan, Police Chief

OTHER BUSINESS

16. Discussion of Strategic Planning Process

Jeff Emory, City Manager

17. Monthly financial report/overtime report

Jeff Emory, City Manager

PUBLIC COMMENT

*Speakers will be limited to three (3) minutes to address Mayor and City Council
Concerning Non-Agenda Items.*

You must sign in with the City Clerk prior to the meeting to be eligible to speak.

NEWS MEDIA

ADJOURNMENT

ITEM #

1

APPROVAL

OF

REGULAR

AGENDA

ITEM #

2

APPROVAL

OF

CONSENT

AGENDA

ITEM #

3

REGULAR MEETING - AUGUST 7, 2014

The Mayor and City Council met in regular session on Thursday, August 7th 2014 at 7:00 p.m. in the Council Chambers of City Hall, located at 114 West Sycamore Street Lincolnton North Carolina. The following Council members were in attendance:

RHYNE CLONINGER EADDY HOVIS

Mayor Gilleland called the meeting to order and led in the Pledge of Allegiance.

Councilman Cloninger made the motion unanimously approved the ***REGULAR AGENDA***.

Councilman Eaddy made the motion unanimously approved the ***CONSENT AGENDA*** as follows:

- Approved Minutes of the July 10th regular meeting

REGULAR AGENDA:

PRESENTATION TO GASTON COLLEGE IN HONOR AND RECOGNITION OF 50 YEARS OF SERVING LINCOLN AND GASTON COUNTY:

Mayor Gilleland presented the following proclamation to Dr. John McHugh, of Gaston College:

WHEREAS, In 2014, Gaston College is celebrating 50 years of excellence as an institution of higher education in Dallas, North Carolina; and

WHEREAS, after being granted a chapter in 1963 by the State of North Carolina, Gaston College opened with a single campus and has since expanded to three campuses, including the Lincoln Campus and one regional training center serving approximately 30,000 students each year through more than 100 programs leading to degrees, diplomas, and certificates; and

WHEREAS, Gaston College is part of the North Carolina Community College System and is the 9th largest of 58 institutions in the system; and Gaston College is accredited by the Southern Association of Colleges and Schools; and

REGULAR MEETING - AUGUST 7, 2014

WHEREAS, Gaston College continues to be an open-door public community college that promotes student success and lifelong learning through high caliber, affordable, and comprehensive educational programs and services responding to economic and workforce development needs; and

WHEREAS, Gaston College continually adapts to the needs of its students by offering courses in four curriculum areas: Arts & Sciences; Health Education; Business & Information Technology; and Engineering & Industrial Technology. The college also serves Economic and Workforce Development service in six areas: Corporate Education; BioEd; Small Business; Life Skills; Community Education; and Public Safety; and

WHEREAS, through five decades of growth, Gaston College's reputation for academic excellence and comprehensive educational programs and services has empowered people to set and achieve high standards of quality, creating skilled lifelong learners, and supporting active learner-centered environments offering real-life educational experiences.

NOW, THEREFORE, BE IT RESOLVED THAT THE Mayor and Council of the City of Lincolnton, North Carolina, congratulate Gaston College on its Golden Anniversary and its contributions to the community and the surrounding area by providing tools to ensure excellence in education.

IN WITNESS WHEREOF, I have hereunto set my hand and caused this seal to be affixed, this the 7th day of August, in the year of our Lord two thousand and fourteen.

Upon conclusion of the presentation, Dr. McHugh gave a brief history of the services provided by Gaston College. He thanked the City for working with the college and being a good neighbor in the community. Mayor Gilleland said he hopes to continue to partner with Gaston College in the future.

**CONSIDERATION OF RENEWAL OF CONTRACT FOR LEASE
OF PROPERTY AT 530 EAST MAIN STREET FOR LPD
DETECTIVES DIVISION** *(Note: Contract total of \$12,600 annually for a one
year period, reflects no increase for this year)*

(C-12-14)

Rodney Jordan, Chief of Police, recommended that Council consider renewing the lease between the City and Ann Davis Ford for property located at 530 East Main Street, Lincolnton to house the Lincolnton Police Department Detectives Division. He said this location has worked well for our detectives and allows them adequate space to handle investigations.

REGULAR MEETING - AUGUST 7, 2014

Chief Jordan said the lease if approved would be for a term on one year, \$ 12,600 annually, beginning September 1, 2014 through August 31, 2015.

Councilman Rhyne made the motion unanimously approved to enter into the lease as recommended for the above said amount.

CONSIDERATION OF AWARDING CONTRACT FOR INSTALLMENT FINANCING OF TEN (10) FULLY EQUIPPED POLICE VEHICLES 4 YEAR TERM NOT TO EXCEED \$ 350,000:

(C-13-14)

Finance Director Steve Zickefoose told Council that on June 11th the City sent out RFP for financing police vehicles. Three (3) bids were received for the installment financing of the above stated police vehicles.

Mr. Zickefoose said People Bank, BB&T and Carter Bank & Trust all submitted proposals and upon review, Carter Bank & Trust appears to be the lowest responsive bidder. Carter Bank & Trust bid was a \$1321 cost savings from the second lowest bidder, BB&T.

Dr. Eaddy noted from memory that the overall cost savings of installment financing would save the City over \$ 100,000 in the long term and he commended the a Police Chief for this proposal. "It improves response time and reduces maintenance cost on vehicles. It is a lot cheaper than the replacement cycle would have been on buying vehicles."

Mayor Gilleland concurred and felt this effort would also help the overall morale within the Police Department by having take home vehicles. He commended Mr. Zickefoose for asking all local financial institutions when seeking the request for proposals.

Councilman Eaddy made the motion unanimously approved to enter into the contract with Carter Bank & Trust for installment financing of the ten (10) Police vehicles. *(NOTE: A copy of the bid tabulation sheet will appear at the end of this document becoming a permanent part of these official minutes)*

REGULAR MEETING - AUGUST 7, 2014

**CONSIDERATION OF A BUDGET AMENDMENT INCLUDING
(1) POLICE CAPITAL FOR LEASE OF TEN VEHICLES (2)
OCCUPANCY TAX FUND TRANSFER; SEPARATING THE
OCCUPANCY TAX FUND FROM THE CITY BUDGET:**

(BA-03-14)

Jeff Emory, City Manager recommended approval of a budget amendment to first increase the Police Department Capital by \$ 350,000, adding the issuance of debt account for the financing of ten (10) police vehicles.

The second portion of the budget amendment if approved would eliminate the Occupancy Tax Fund from the City's budget, which decreases the City's overall budget by \$ 78,660.00. This change to the Occupancy Tax Fund stems from a recent letter the City received from the state, requiring that the City separate the Occupancy Tax Funds from the City's budget. The Occupancy Tax Fund will be managed by the Lincolnton Tourism Development Authority (LTDA). The City Finance Department will handle disbursement of funds from this account as appropriated by the LTDA. The total amount currently available in the Occupancy Tax Fund is \$ 383,387.00.

Councilman Rhyne questioned the process for agencies currently requesting funding to the City for Occupancy Tax Funds. The City Manager confirmed requests for funding would now be considered solely by the LTDA and the agency must meet the required criteria as described in the state statute to be eligible for funding.

After some discussion Councilman Cloninger made the motion unanimously approved to adopt the budget amendment as presented.

**CITIZENS FOR SMART SPENDING REQUEST ENDORSEMENT
FROM THE CITY THAT LINCOLN COUNTY OFFICES ARE
KEPT DOWNTOWN:**

Mr. Johnny Lineberger, representing "Citizens for Smart Spending", told Council a small group of citizens and business owners got together to discuss the potential impact of moving the County governmental offices out of downtown Lincolnton. The closer they looked at all variables, the timeframe and cost involved, the more excited we got because it is a very scary thought. He said, "Lincolnton is the County seat and we have forever had County government downtown and when you step back and look at County government and the footprint that they have you stop and look at the

REGULAR MEETING - AUGUST 7, 2014

economic impact they have on downtown. We really are concerned that this move may happen and it would be detrimental to our downtown.” Mr. Lineberger presented a petition with over 600 signatures, obtained in just in a one week’s time, requesting the City’s help with keeping the County offices in downtown. He said, “We understand the County has needs and we don’t have all the answers we don’t claim to, we are asking for your help to see if there are viable options to keep the County downtown.”

Mr. David Boyles, Chamber Chair, spoke to Council on behalf of the Lincolnton-Lincoln County Chamber of Commerce expressing concerns from the Chamber about losing county jobs and the county moving from downtown to the old hospital. He said, “Its future, the cost and the impact of this move on downtown businesses would be devastating. We would like for City Council to support any alternative plans for this move. We ask that you ask yourselves, How will this will affect our grandchildren and what impact will it have on us over the next twenty years?”

Brooke Sherrill, spoke to Council on behalf of Downtown Development Association, also encouraging City Council to support the efforts of the Citizens for Smart Spending. She provided information from other downtowns noting the affects that a county government moving out of town has had on other cities. She said, “Foot traffic in our downtown is critical many efforts have been put into downtown to recruit businesses, and restaurants and we must do everything we can to keep our county government located in or downtown.”

Jacob Rhodes, owner of Fausto Coffee located in downtown also, was named on the agenda to speak but was unable to attend due to a last minute conflict.

Osama Yousef, owner of Court Street Grille, also spoke in favor of “Citizens for Smart Spending” saying he was attracted to Lincolnton because of our beautiful downtown and he opposes the County offices moving. He asked the City to help and endorse keeping County offices in downtown to keep our City growing. He said he currently employs 20 to 30 people and if there is anything the City Council can do help retain Lincoln County, please do it.

Councilman Eaddy said he looks forward to the City Council having dialogue with the County to discuss initiatives that could make it feasible for them to stay downtown.

REGULAR MEETING - AUGUST 7, 2014

Mayor Gilleland said he has had discussions with Lincoln County Chair Alex Patton. Mayor Gilleland asked Chairman Patton in conversation if the City was too late in requesting that the County consider staying downtown. He used the phrase that "The train has left the station but it is not too late to stop the train."

Councilman Hovis thanked those who spoke saying, "You all are tax payers and you speak louder than we do, so I thank you all for being here tonight and giving your support, and for supporting us on the decisions we make."

Councilman Rhyne made the motion unanimously approved directing staff to send a letter to Lincoln County Commissioners and tell them we want to keep them here and we want to work with them to keep them here and that we need them here.

The City Manager said he would draft the letter, noting that City Council unanimously supports retaining the County office in downtown, for the Mayors review and signature.

UPDATE ON THE BOD STUDY RESULTS:

Mr. Don Garbrick, Pease and Associates, presented City Council results from a recent Biological Oxygen Demand (BOD) Study. He told Council that the study evaluated the existing plants ability to accommodate increases in biological loading as a result of growth in the water shed. He said the purpose of the report is to develop a maximum biological oxygen demand (BOD) loading for the plant, recommend modifications to increase BOD loading of the influent wastewater with a cost estimate, and possible improvements to the existing process that will improve removal efficiencies.

Mr. Garbrick said the plant is currently permitted to treat 6 MGD, and is designed for a wastewater BOD concentration of 250 ppm. The treatment process includes primary, secondary, and tertiary treatment. These processes include bar screens, filters, grit removal, an oxidation ditch, an aeration basin, secondary clarifiers, and disinfection. The plant currently allows flow and BOD loading to four significant industrial users (SIU), which use a majority of the plant's capacity. The report concentrates on modifications to the primary and secondary treatment as well as modifications to the SIU BOD allocation.

REGULAR MEETING - AUGUST 7, 2014

A wastewater treatment plant is evaluated on two criteria; the quantity of wastewater and the strength or BOD concentration of the wastewater. The former is referred to as hydraulic loading and the later is referred to as biological loading. The WWTP currently experiences hydraulic loading that is less than 50 percent of the plant's capacity, the report said. Based on historical data provided by the plant staff and a review of the current structures, modifications in two phases can be implemented to increase the design concentration from 250 ppm to 390 ppm.

Mr. Garbrick said, "In addition, an analysis of the SIU allocation determined that two of the SIU's allocations could be optimized to allow for an increase in the BOD allocation to existing or future users. Reallocating and increasing the plant's ability to treat higher concentrations of BOD, should be considered. A surcharge program could be enacted to seek to reduce the quantity of high concentration waste entering the plant. A surcharge program would establish a cost and reimbursement schedule associated with higher concentrations of BOD."

In conclusion, he suggested the City consider proceeding in a three step approach;

Step 1. Implement Phase I by modifying existing pretreatment permits to allocate wastewater discharges from industry based on actual usage. This process could recapture up to 6 percent of capacity from the existing permit and make it available to new or existing users. This process is estimated to take 3-4 months.

Step 2. Implement Phase 2 of the plant modifications. This would allow additional distribution of approximately 2,500 lb/day of BOD loading. The estimated cost of Phase I was \$ 568,682 and could be completed within 12 months.

Step 3. Implement Phase 3 of the plant modifications. This would allow additional distribution of approximately 2,160 lb/day of BOD loading. The estimated cost of Phase 3 is \$ 3,101,067.50 and could be completed within 16 months. The added advantage to constructing Phase 2 is additional treatment would be provided to remove fats, oils and grease. The City has an issue with this type of constituent and by constructing this system it would improve the removal efficiency.

Upon review of the report given there was some discussion by Council. Mayor Gilleland thanked Mr. Garbrick for the report and felt that Council should take

REGULAR MEETING - AUGUST 7, 2014

the report and study it. Dr. Eaddy was glad we now know the options available should the City need to take action.

UPDATE ON WATER SALE NEGOTIATIONS WITH LINCOLN COUNTY:

City Manager Jeff Emory told Council that he has talked with Lincoln County Manager Tracy Jackson regarding finalizing a proposed contract between the City and Lincoln for the sale of water. The proposed contract details include the sale of water at a \$1.15 per thousand gallons for a term of ten years (with a rolling five-year notice. The minimum purchase amount would be 0.3 mgd with the maximum being 2.5 mgd.

A finalized draft should be available and ready for consideration by City Council at their Wednesday August 27th special called meeting to discuss strategic planning.

MONTHLY FINANCIAL REPORT/OVERTIME REPORT:

The City Manager reviewed the following executive summary for the month ending June 30th 2014 (totals are prior to closing the fiscal year and prior to adjusting journal entries):

August 2014 Council Meeting					
Executive Summary					
June 2014 Year-To-Date					
Comparative for Budgetary Purposes - Prior to Closing 2014 Fiscal Year - Prior to Finance AJE's					
		% of			
		13-14	Budget	12-13	Difference
General Fund					
Fund 10	Revenues	8,819,276.85	84.71%	8,660,425.28	158,851.57
	Expenses	9,516,926.40	91.41%	9,692,026.03	(175,099.63)
	Difference	(697,649.55)		(1,031,600.75)	333,951.20
Water & Sewer Fund					
Fund 61	Revenues	9,935,064.02	94.15%	8,381,418.98	1,553,645.04
	Expenses	9,455,361.44	89.61%	7,599,867.21	1,855,494.23
	Difference	479,702.58		781,551.77	(301,849.19)
Electric Fund					
Fund 63	Revenues	7,720,070.17	98.62%	7,299,191.49	420,878.68
	Expenses	7,500,146.26	95.81%	7,239,325.02	260,821.24
	Difference	219,923.91		59,866.47	160,057.44
Overtime		304,770.48		298,416.29	6,354.19

REGULAR MEETING - AUGUST 7, 2014

PUBLIC COMMENT:

No one spoke under the public comment portion of the agenda.

NEWS MEDIA:

Lincoln Herald reporter Wayne Howard gave a personal opinion that the City should consider proceeding with Phase II of the BOD study presented by Mr. Don Garbrick of Pease and Associates at tonight's meeting. It was his feeling that this option would better position the City for future growth.

ADJOURNMENT:

Councilman Cloninger made the motion unanimously approved to ADJOURN the meeting.

DONNA C. FLOWERS, MMC
CITY CLERK

JOHN O. GILLELAND, JR.
MAYOR

Bid Tabulation Sheet													
Installment Financing Agreement 10 Police Vehicles													
Bids Due: July 7, 2014 2:00PM													
Bidder	Maximum Loan	Term	Payments	Interest Rate	Total Interest	Maximum Payments	Guarantee Period	Pre-Pay	Loan Fee	Collateral	Non-appropriation Clause	Notes	
Peoples Bank	\$350,000	4 YR	8	2.85%	\$ 22,443.76	\$ 372,443.76	60 days	Yes	None	Lien	Yes	Must maintain primary banking services	
	\$350,000	4 YR	4	2.85%	\$ 24,937.50	\$ 374,937.50	60 days	Yes	None	Lien	Yes	Must maintain primary banking services	
BB&T	\$350,000	4 YR	4	1.49%	\$ 13,133.92	\$ 363,133.92	45 days	Yes- 1%	None	Lien	Not Listed	Begin payments 7-3-2015	
												BB&T Requiring City Resolution	
Carter Bank & Trust	\$350,000	4 YR	4	1.50%	\$ 11,812.50	\$ 361,812.50	45 days	Yes	None	Lien	Yes	Interest payment 12-1-2014 (\$1,312.50)	
												Principal/Interest payment 6-1-2015	
	\$350,000	4 YR	4	1.50%	\$ 11,812.50	\$ 361,812.50	45 days	Yes	None	Lien	Yes	Begin payments 6-1-2015	
	\$350,000	4 YR	4	1.50%	\$ 13,222.70	\$ 363,222.70	45 days	Yes	None	Lien	Yes	Begin payments 8-1-2015	

ITEM #

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CITY OF LINCOLNTON

CITY COUNCIL

John O. Gilleland, Jr., Mayor
Larry Mac Hovis, Mayor Pro-Tem
Devin Rhyné
Martin A. Eaddy
John L. Cloninger



CITY MANAGER
JEFF EMORY

jeffemory@ci.lincolnton.nc.us

CITY CLERK

DONNA C. FLOWERS, CMC
donnaflowers@ci.lincolnton.nc.us

CITY ATTORNEY

THOMAS J. WILSON, JR.

PROCLAMATION *Constitution Week 2014*

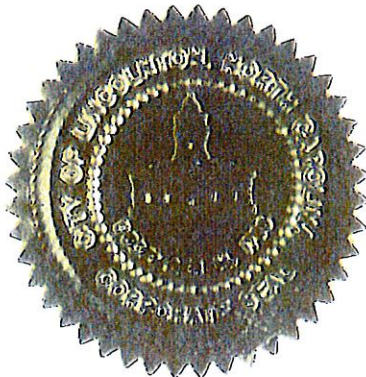
WHEREAS, September 17, 2014 marks the Two Hundred and Twenty-Seventh anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, the tradition of celebrating the Constitution was started many years ago by the Daughters of the American Revolution (DAR) to inform the people that the Constitution is the basis for America's great heritage and the foundation for our way of life; and

WHEREAS, it is fitting and proper to officially recognize this magnificent document and the anniversary of its creation through patriotic celebrations across the United States that will commemorate the occasion; and

NOW, THEREFORE, I, John O. Gilleland, Jr., Mayor of the City of Lincolnton, do hereby proclaim September 17 through 23, 2014 as **CONSTITUTION WEEK** in the City of Lincolnton, and ask our citizen's to reaffirm the ideas the Framers of the Constitution had in 1787.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the City of Lincolnton in the state of North Carolina on this thirteenth day of September in the year of our Lord two thousand fourteen.



JOHN O. GILLELAND, JR.
MAYOR

CITY OF LINCOLNTON

CITY COUNCIL

John O. Gilleland, Jr., Mayor
Larry Mac Hovis, Mayor Pro-Tem
Devin Rhyne
Martin A. Eaddy
John L. Cloninger



CITY MANAGER

JEFF EMORY
jeffemory@ci.lincolnton.nc.us

CITY CLERK

DONNA C. FLOWERS, CMC
donnaflowers@ci.lincolnton.nc.us

CITY ATTORNEY

THOMAS J. WILSON, JR.

PROCLAMATION

Lincoln Economic Development Association Industry Appreciation Month October 2014

WHEREAS, the City of Lincolnton is pleased to have industry to support the local economy; and

WHEREAS, these industrial companies provide essential employment opportunities for the citizens of the City of Lincolnton; and

WHEREAS, these industrial companies provide local revenues from which the entire citizenry benefit; and

WHEREAS, industrial businesses make considerable contributions to our families and communities, often improving the overall quality of life; and

WHEREAS, we recognize and appreciate these industrial businesses;

NOW, THEREFORE, I John O. Gilleland, Jr., Mayor of the City of Lincolnton, do hereby recognize our existing international businesses and by virtue of this proclamation give notice to our citizens that the month of October 2014 is Industry Appreciation Month in the City of Lincolnton.

ADOPTED this the 4th day of September 2014.

ATTEST:

DONNA C. FLOWERS, MMC
CITY CLERK

JOHN O. GILLELAND, JR
MAYOR

ITEM #

5

MEMO TO: Jeff Emory
Donna Flowers

FROM: Laura Elam

SUBJECT: Agenda Packet for the September 4, 2014 City Council Meeting

DATE: August 26, 2014

CALLS TO PUBLIC HEARING

We have one item that needs to be called to public hearing at the September City Council meeting as follows:

CUP-4-2014- Application from First Federal Savings Bank requesting a conditional use permit to construct a parking lot on 0.60 acres of land in the Residential-Office (R-O) District. The subject property is located on the south side of East Water Street approximately 100 feet west of the intersection of East Water Street and South Cedar Street. The physical address of the property is 324 East Water Street (Parcel ID 00629).

ITEM #

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CITY OF LINCOLNTON

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CITY MANAGER

JEFF EMORY
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CITY CLERK

DONNA C. FLOWERS, CMC
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CITY ATTORNEY

THOMAS J. WILSON, JR.

NOTICE

The Mayor and City Council will hold a Public Hearing to consider a request submitted to operate a taxi cab/vehicle for hire service within the corporate limits of Lincolnton.

Parties in interest and citizens shall have the opportunity to be heard at the September 4th, 2014 City Council meeting at 7:00 p.m. in the Council Chambers of City Hall located at 114 West Sycamore Street.

Donna C. Flowers, MMC
City Clerk
City of Lincolnton

CITY OF LINCOLNTON

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CITY ATTORNEY

THOMAS J. WILSON, JR.

TO: Mayor & City Council

FROM: Donna C. Flowers, City Clerk

DATE: August 29, 2014

REF: Request for Certificate of Convenience and Necessity
from Mr. Byron Guillermo Porras-Lopez and Mrs. Erika Porras

Please find attached an application submitted to me by Mr. and Mrs. Porras for a Certificate of Convenience and Necessity to operate a Taxi Cab/limo Service within the corporate limits of Lincolnton.

It is my understanding that he currently operates a taxi service in New Jersey, for the past five years, and upon moving to Lincolnton has decided he would like to operate a similar service here. He and Mrs. Porras would use their cell phones as a call for hire service operating from their home located at 355 Colonial Village Drive, Lincolnton.

Mr. Porras-Lopez application appears to be in order, although as per our ordinance affidavits of two references have not been turned in to me as of today. I have forwarded a copy to Chief Jordan for his review and investigation. Should you have any questions, please feel free to contact Chief Jordan or me.

Returned partially
Completed 5/12/14
Returned original to
applicant

APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY

The undersigned does hereby make application to the City of Lincolnton for the issuance of a Certificate of Convenience and Necessity for the operation of a taxicab service in accordance with the provisions of 9-70 et seq. of the code of the City of Lincolnton, North Carolina.

1. **PUBLIC NEED.** That in support of this application, the undersigned shows that there is no existing taxicab, public or other mass transportation service in operation in Lincolnton or Lincoln County; that there are many persons residing in and around the City of Lincolnton who either are not licensed to operate a motor vehicle or do not own a motor vehicle who would be served by the availability of a taxicab or transportation service; and that the operation of this type of service would provide for the convenience of the citizens of Lincolnton and Lincoln County.

2. **EXPERIENCE.**

3. **FINANCIAL INFORMATION AND RETURN ON INVESTMENT.**

Applicant has the financial means to provide the vehicle, insurance and communication equipment necessary to operate a taxicab or transportation service. That the applicant has made a study of rates in surrounding cities, and would propose similar rates, which will be both competitive for persons using the proposed service and will provide a fair return on his investment.

4. **EQUIPMENT AND INSURANCE.** That the applicant does further show that he intends to operate one motor vehicle to be acquired upon granting of a certificate of Convenience and Necessity. The applicant will obtain automobile liability insurance on the vehicle in such amount as is required by the laws of the State of North Carolina.

5. METHOD OF OPERATION.

6. IMPACT ON TRAFFIC AND PARKING. The operation of one vehicle will not have an impact upon either traffic congestion or parking in the City of Lincolnton or in Lincoln County, and will not constitute a hazard to the public.

NAME OF APPLICANT:

Erika Marcela Porras

APPLICANT'S ADDRESS:

355 Colonial Village Dr
Lincolnton NC 28092

APPLICANT'S TELEPHONE:

704 308 4534

APPLICANT'S ADDRESS FOR LAST FIVE YEARS:

18 Spring St Budd Lake NJ 07828

APPLICANT'S DRIVER'S LICENSE NUMBER:

NC DL 38225797

APPLICANT'S SOCIAL SECURITY NUMBER:

135-17-3264

PROPOSED RATE SCHEDULE:

APPLICANT'S TELEPHONE: 704-308-4534

APPLICANT'S ADDRESS FOR LAST FIVE YEARS

15 Spring St Budd Lake NJ 07828

APPLICANT'S DRIVER'S LICENSE: 38225797 NC DL

APPLICANT'S SOCIAL SECURITY NUMBER: 135-17-3264

PROPOSED RATE SCHEDULE:

Erika M Porras

NORTH CAROLINA

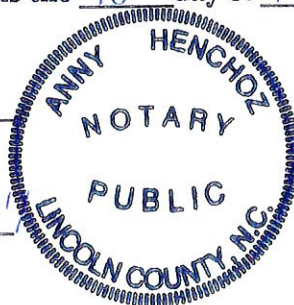
LINCOLN COUNTY

I, Anny Henchoz, a Notary Public of the aforesaid County or State,
do hereby certify that Erika Marcela Porras personally came before me
this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notorial seal, this the 10 day of May, 2014.

Anny Henchoz
Notary Public

My commission expires: 02-22-2017



CHAPTER 112: TAXICABS

Section

General Provisions

- 112.01 Definition
- 112.02 Taxicab stands

Certificate of Convenience and Necessity

- 112.15 Required; limit of one; proof of necessity
- 112.16 Application; bond
- 112.17 Granting; posting
- 112.18 Cancellation for failure to begin operations
- 112.19 Transfer

License

- 112.30 Information required by city; insurance; display; driver identification; compliance with rates; cancellation for violation
- 112.31 Suspension
- 112.32 Revocation

Vehicles

- 112.45 Inspection subsequent to issuance of license
- 112.46 Substitution

Statutory reference:

Authority to regulate taxicabs, see G.S. § 160A-304

GENERAL PROVISIONS

§ 112.01 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

Lincolnton - Business Regulations

TAXICAB. Any motor vehicle seating nine or fewer passengers, operated upon any street or highway on call or on demand, accepting or soliciting passengers indiscriminately for hire between points along streets or highways as may be directed by the passengers so being transported, and shall not include motor vehicles or motor vehicle carriers as defined in G.S. § 62-3(17).
(Prior Code, § 9-70)

§ 112.02 TAXICAB STANDS.

(A) It shall be unlawful for any person to maintain and operate a taxicab stand for the parking of taxicabs without first obtaining a license to operate a taxicab from the city.

(B) It shall be unlawful to operate one or more taxicab stands within the corporate limits of the city without having the proper taxicab license from the city and without charging and collecting the rates as prescribed by the city.

(C) No person shall operate a motor vehicle as a taxicab until the vehicle has been registered in accordance with requirements in this state and all proper licenses have been obtained therefor from the city and state.

(Prior Code, § 9-79) Penalty, see § 10.99

Cross-reference:

Parking in loading zone, see § 72.16

Standing at taxicab stand, see § 72.15

CERTIFICATE OF CONVENIENCE AND NECESSITY

§ 112.15 REQUIRED; LIMIT OF ONE; PROOF OF NECESSITY.

(A) *Required.* It shall be unlawful for any person to operate a taxicab business upon and over the streets of the city without first having applied for and secured from City Council a certificate of convenience and necessity as hereinafter set forth.

(B) *Burden of proof.* The burden of proof shall be upon the applicant to establish the existence of public convenience and necessity for the operation of the taxicabs specified in the application, and all other facts required for the granting of a certificate.

(Prior Code, § 9-71) Penalty, see § 10.99

Taxicabs

§ 112.16 APPLICATION; BOND.

(A) *Application.* Every person desiring to operate a taxicab upon and over the streets of the city shall file on forms supplied by the City Clerk an application for certificate of convenience and necessity. The application for a certificate shall be filed with City Council with an affidavit attached signed by two citizens certifying to applicant's good character.

(B) *Bond.* The applicant shall be required, when application for certificate is approved, to obtain an indemnifying or surety bond in a sum of not less than \$1,000 to serve as security for possible damages claimed by persons who may suffer damages on account of the negligent operation of taxicabs operated under the certificate; provided, however, that if the applicant shall carry casualty insurance with some standard casualty and insurance company, which will indemnify any person for damages sustained on account of the negligent operation of applicant's taxicabs, and if the applicant shows a premium receipt on a policy covering a period of not less than the following six months, the casualty insurance policy will be accepted in lieu of an indemnifying or surety bond.
(Prior Code, § 9-72) Penalty, see § 10.99

§ 112.17 GRANTING; POSTING.

(A) *Conditions to granting.* No certificate shall be granted until City Council shall, after hearing, declare by resolution that public convenience and necessity require the proposed taxicab service. In determining whether public convenience and necessity require the operation of taxicabs for which application for a certificate is made, City Council shall consider and investigate whether the demand of the public requires additional taxicab service; the adequacy of existing mass transportation and taxicab service; the financial responsibility and experience of the applicant; ability of the applicant to earn a fair return on the capital invested; the number, kind and type of equipment and the color scheme to be used; the effect which the additional taxicab service may have upon traffic congestion and parking; whether the additional taxicab service will result in a greater hazard to the public; and other relevant facts as City Council may deem advisable or necessary. No certificate will be issued to any applicant unless the applicant be the holder in due course and for value of the title to the taxicab, and the holder of the certificate only shall be permitted to operate the taxicab and the applicant shall not be allowed to engage the services of any person to operate a taxicab for the person or in the person's stead at any time.

(B) *Hearing.* Each application for certificate of convenience and necessity shall be scheduled for a hearing not later than 30 days after the same is filed, and the applicant shall be notified by the City Clerk by mail to the business address set forth in the application of the date and time of the hearing, the notification to be sent at least ten days before the date set for the hearing. The City Clerk shall also, within the same time, notify all persons who, at the time, hold certificates of convenience and necessity for the operation of taxicabs within the municipality, of the date and time for the hearing and the name of the applicant. In addition, City Council shall have the power to have published at least once in a newspaper of general circulation at least ten days before the hearing a notice setting forth the name of the applicant and the date and time of hearing. The cost of the publication shall be paid by the applicant.

Lincolnton - Business Regulations

(C) *Posting.* Every operator of a taxi under permit, as provided herein, shall post conspicuously in the taxi the certificate of identification issued by the city.
(Prior Code, § 9-73) Penalty, see § 10.99

§ 112.18 CANCELLATION FOR FAILURE TO BEGIN OPERATIONS.

If a certificate is granted to an applicant, and the applicant shall fail, in accordance with the provisions of the certificate, to begin operations within 60 days after the date of the certificate, then the certificate shall become null and void, and no refund of any amount paid by the applicant will be made by the city.
(Prior Code, § 9-74) Penalty, see § 10.99

§ 112.19 TRANSFER.

A certificate is not transferable without the consent and approval of City Council. Application for a permit to transfer shall be filed in the same manner as an application for a certificate of convenience and necessity. The proceedings upon the application for transfer shall be the same as those prescribed for the issuance of a certificate, except that the question of public convenience and necessity need not be proved.
(Prior Code, § 9-75) Penalty, see § 10.99

LICENSE

§ 112.30 INFORMATION REQUIRED BY CITY; INSURANCE; DISPLAY; DRIVER IDENTIFICATION; COMPLIANCE WITH RATES; CANCELLATION FOR VIOLATION.

(A) Each licensee to operate one or more taxicabs within the city, after first obtaining a license to operate one or more taxicabs, shall submit the names of the operators of each taxicab licensed and each employee in his or her employ; their names must be submitted to the Chief of Police or the Chief's agent and it shall be the duty of the Chief of Police or agent to pass on the qualifications of the person to operate a taxicab giving an opinion of the operator's character, ability and police record.

(B) Each person licensed to operate taxicabs within the city must have on each taxicab, liability insurance and personal property insurance in at least the amounts required by state law before operating any of the taxicabs.

Taxicabs

(C) No taxicab shall be operated within the city unless duly authorized by City Council, without a valid license being publicly displayed and without first being inspected by the Chief of Police or the Chief's agent.

(D) Each taxicab driver shall have the driver's name and picture displayed and attached to the interior of the taxicab assigned to the driver plainly visible to every occupant or passenger of the taxicab, the picture to be replaced in the event the driver changes the driver's appearance in any way.

(E) The rates established by City Council must be strictly complied with, not overcharging or undercharging.

(F) Any violation of any of these conditions by the licensee will automatically cancel the license to operate taxicabs within the city, the license to be cancelled by the Chief of Police.
(Prior Code, § 9-76) Penalty, see § 10.99

§ 112.31 SUSPENSION.

When any vehicle licensed under the provisions of this chapter becomes unsafe or unfit for service hereunder, the Chief of Police shall suspend the license thereof until the vehicle is put in a safe and usable condition.

(Prior Code, § 9-77) Penalty, see § 10.99

§ 112.32 REVOCATION.

The City Council, after a hearing, upon reasonable notice thereof to the licensee as City Council may direct, shall revoke any license issued under the provisions of this chapter when the licensee uses the licensed vehicle for immoral or illegal purposes, or when licensee has become an habitual violator of the provisions of this chapter, or of the traffic regulations or of the laws of city or state.
(Prior Code, § 9-78)

VEHICLES

§ 112.45 INSPECTION SUBSEQUENT TO ISSUANCE OF LICENSE.

At times as may be necessary, the Chief of Police shall cause inspection to be made for all vehicles licensed under the provisions of this chapter.
(Prior Code, § 9-80)

Lincolnton - Business Regulations

§ 112.46 SUBSTITUTION.

The person to whom a certificate has been issued may, by proper endorsement thereon by the City Clerk, substitute another vehicle or other vehicles, for the vehicle or vehicles for which the certificate was granted. In that instance, the liability insurance or bonds shall also be transferred to the substitute vehicles.

(Prior Code, § 9-81)

ITEM #

7

CITY OF LINCOLNTON

CITY COUNCIL

John O. Gilleland, Jr., Mayor
Larry Mac Hovis, Mayor Pro-Tem
Devin Rhyne
Martin A. Eaddy
John L. Cloninger



CITY MANAGER

JEFF EMORY
jeffemory@ci.lincolnton.nc.us

CITY CLERK

DONNA C. FLOWERS, CMC
donnaflowers@ci.lincolnton.nc.us

CITY ATTORNEY

THOMAS J. WILSON, JR.

NOTICE

The Mayor and City Council will hold a Public Hearing to consider amending the City's Code of Ordinances to enact speed limits and be concurrent with NCDOT amend Title VII. Traffic Code - # 74. Traffic Schedule VI. Speed Limits on State Maintained Streets; US 321 from SR 1405, northward to a point 0.16 mile south of SR 1463, the northern corporate limit of Lincolnton and between SR 1405 and a point 0.16 mile north of SR 1463.

Parties in interest and citizens shall have the opportunity to be heard at the September 4th, 2014 City Council meeting at 7:00 p.m. in the Council Chambers of City Hall located at 114 West Sycamore Street.

Donna C. Flowers, MMC
City Clerk
City of Lincolnton

CITY OF LINCOLNTON

CITY COUNCIL

John O. Gilleland, Jr., Mayor
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CITY MANAGER

JEFF EMORY
jeffemory@ci.lincolnton.nc.us

CITY CLERK

DONNA C. FLOWERS, CMC
donnaflowers@ci.lincolnton.nc.us

CITY ATTORNEY

THOMAS J. WILSON, JR.

TO: Mayor & City Council

FROM: Donna Flowers, City Clerk

DATE: August 29, 2014

SUBJECT: Agenda Item # 7 - Proposed Amendment to City's Code -
Traffic Schedules - Speed Limits on State Maintained
Streets

Mr. Jimmy Hamrick, of NCDOT, contacted me regarding the City's Code and its current language relating to state maintained streets inside the corporate limits. He said the NCDOT is updating their ordinance and in comparison to our code he sees no reference to the new US Hwy 321 or old US Hwy 321 (now Generals Blvd).

The change he has proposed is basically of a housekeeping nature, and if approved we would see no changes on the ground. I have included the proposed amendments needed by NCDOT that would make both the City and State ordinances concur. Once approved I will return executed copies back to him by September 5th to be approved by the state at an upcoming board meeting in Raleigh. Thank you.

Donna Flowers

From: Hamrick, James A [jahamrick@ncdot.gov]
Sent: Tuesday, July 22, 2014 4:34 PM
To: Donna Flowers
Subject: FW: [Image File] Jimmy,KMBT250, #516
Attachments: KMBT25020140722162034.pdf

Dear Ms. Flowers,

See attached ordinance certificates. Let me know if you have questions. Thanks!

-----Original Message-----

From: TrafficSafety-Shelby@ncdot.gov [<mailto:TrafficSafety-Shelby@ncdot.gov>]
Sent: Tuesday, July 22, 2014 4:21 PM
To: Hamrick, James A
Subject: [Image File] Jimmy,KMBT250, #516

FROM:NC DEPT TRANSPORTATION
Image data has been attached to
the E-Mail.

Email correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.

TITLE VII: TRAFFIC CODE

Chapter

- 70. GENERAL PROVISIONS**
- 71. TRAFFIC REGULATIONS**
- 72. PARKING REGULATIONS**
- 73. PEDESTRIANS' RIGHTS AND DUTIES**
- 74. TRAFFIC SCHEDULES**
- 75. PARKING SCHEDULES**

Traffic Schedules

SCHEDULE VI: SPEED LIMITS ON STATE MAINTAINED STREETS.

<i>Description</i>	<i>Speed Limit</i>
East Main Street from intersection of Cedar Street to Court Square	20 mph
West Main Street from Court Square to Grove Street completely around Court Square	20 mph
From West Main Street to Congress Street	20 mph
Congress Street from Cedar Street to Laurel Street	25 mph
North Aspen Street (SR 1405) from Cherry Street, a point 0.83 mile south of SR 1265, northward for 0.28 mile to a point 0.55 mile south of SR 1265 (Lincoln High School in effect from 30 minutes before to 30 minutes after school begins and ends on school days only)	25mph
Laboratory Road (SR 1238) from a point 9.22 mile south of SR 1427, the southern corporate limits, northward to Aspen Street (SR1406)	50 mph
Story Street (SR 1434), subdivision wide, from SR 1001 (Salem Church Road) northward to a point 0.06 mile northeast of SR 1001 (Salem Church Road)	25 mph

(Prior Code, §§ 13-42, 13-44, 13-54) (Ord. passed 6-9-1988; Ord. O-13-88, passed 9-8-1988; Ord. O-9-91, passed 12-12-1991; Ord. O-05-07, passed 10-4-2007) Penalty, see § 70.99

**Certification of Municipal Declaration
To Repeal Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1026894

Division: 12 County: LINCOLN

Municipality: LINCOLNTON

Type: Municipal Speed Zones

Road: US 321

Car: 45 MPH

Truck: 45 MPH

Description: From SR 1405, northward to a point 0.16 mile north of SR 1463, the northern corporate limit of Lincolnton.

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20_____, the repeal of speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance/Resolution Number: _____

In witness whereof, I have hereunto set my

hand and the municipal seal this _____ day

of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ Title: _____ Date: _____

Region: _____ Title: _____ Date: _____

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1068124

Division: 12 **County:** LINCOLN

Municipality: LINCOLNTON

Type: Municipal Speed Zones

Road: US 321BUS

Car: 45 MPH

Truck: 45 MPH

Description: Between SR 1405 and a point 0.16 mile north of SR 1463.

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ **Page:** _____ **Ordinance/Resolution Number:** _____

In witness whereof, I have hereunto set my

hand and the municipal seal this _____ day

of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ **Title:** _____ **Date:** _____

Region: _____ **Title:** _____ **Date:** _____

ITEM #

8

**NOTE: THE DIRECTOR OF
PUBLIC WORKS & UTILITIES
PLANS TO HAVE AN OUTLINE
OF HIS DEPARTMENTAL
PRESENTATION THE NIGHT OF
THE MEETING**

Donna Flowers

From: Donna Flowers
Sent: Friday, August 22, 2014 9:47 AM
To: 'Jimmy Bright'
Subject: RE: Town Council Meeting
Attachments: AgendaRequestForm.pdf

Thank you Mr. Bright. I have attached an agenda request form that you would need to complete and return to me at your earliest convenience. Our next regular City Council meeting is Thursday, September 4th at 7:00 p.m. in the Council Chambers of City Hall. Once I receive the request form back I will place you on the agenda and send you a copy once the meeting agenda is finalized.

Donna C. Flowers, MMC, NCCMC
Assistant to City Manager/City Clerk
City of Lincolnton
P.O Box 617
Lincolnton, NC 28093-0617
(704)736-8980
(704)736-8995 (fax)
donnaflowers@ci.lincolnton.nc.us

-----Original Message-----

From: Jimmy Bright [<mailto:Jimmy.Bright@ncdps.gov>]
Sent: Wednesday, August 20, 2014 2:44 PM
To: Donna Flowers
Subject: Town Council Meeting

Donna, I dropped by the office today to check and see exactly what was the correct process to use to try and get on the agenda for the Lincolnton Town Council meeting to share some information pertaining to the Tarheel Challenge Program. This is a program for at risk kids and the age group is 16, 17 & 18 years of age. I have attached a Fact Sheet pertaining to the program. Please give me a call at the cell number listed below ma'am if you have any questions.

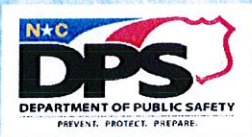
Thanks in advance.

Jim Bright

Tarheel Challenge

Recruiter Western N.C.

Cell: 336-247-3197



Tarheel ChalleNGe Academy Youth Program Information Sheet



The Tarheel ChalleNGe Academy is a quasi-military style program for at-risk high school dropouts, and is sponsored by the North Carolina National Guard. The mission of the Academy is to redirect the efforts of young adults who have had trouble succeeding in the normal high school environment, and give them the skills and attitude to become productive citizens in their communities. The Academy is located in Sampson County in Salemburg, North Carolina. It is a 17 month program divided into two distinct phases: a 5 month in-residence phase at the Academy, and a 12 month post-residential phase immediately following graduation from the in-residence phase. The prospective cadet must volunteer for the training, and must be motivated and committed to turning his/her life around.

Even though the North Carolina National Guard sponsors the Tarheel ChalleNGe Academy, there are no military obligations for attending. Cadets are free to choose the military service as one of their options. There is no cost to the cadet, parents or family for attending this program other than the cadet's personal items (e.g., underclothes, tennis shoes, and toilet articles).

During the in-residence phase, cadets are supervised by cadre members 24 hours a day, 7 days a week. They wear uniforms, do physical training, attend classes, and learn to work within a structured and disciplined environment. During this phase, emphasis is placed on life skills, self-discipline, teamwork, leadership and followership, team building, work ethics, community service, physical fitness, respect for others, self esteem, loyalty and integrity. A major part of the Academy curriculum provides for General Educational Development (GED) schooling and testing, and possible adult education training. During this phase, cadets receive a weekly allowance of \$15 to offset personal care items and to develop and practice financial responsibility.

During the post-residential phase, graduates are assigned a trained, volunteer mentor. The primary role of this adult mentor is to assist the graduate in continuing on the path to success that was started during the in-residence phase. The mentor provides friendship, advice and companionship, and assists the graduate in seeking employment and/or enrolling in college or vocational school or training.

Qualifications for entry into the Tarheel ChalleNGe Academy:

- a. At least 16 years old, but less than 19 years old at time of entry**
- b. A high school dropout or expellee without a GED certificate**
- c. A U.S. citizen and North Carolina resident**
- d. Free from illegal drugs/substances and any serious involvement with the criminal justice system**
- e. Physically and mentally capable of completing the program**
- f. Unemployed or underemployed**
- g. Successfully pass a medical screening exam**
- h. Be a volunteer.**

Although very important, obtaining the GED is not the primary thrust of the Academy. The focus is on learning and developing the necessary life coping skills to succeed after the cadet completes the in-residence phase. The Academy teaches and enforces what society expects from its young adults; i.e. civil behavior, hard work, responsibility, and giving back to the community, state and nation.

Tarheel ChalleNGe works! Three thousand nine hundred and thirty-eight (3,938) proud young men and women have graduated from the program. Of these, 2,687 obtained their GED while in the residential phase. These young men and women seized their "Second Chance" and made it work. Because of the training they receive, approximately 90% of TCA graduates remain gainfully placed (i.e., in school, working or in the military) 12 months after graduation.

14 June 2014

ITEM #

10

MEMO TO: Mayor and City Council Members
FROM: Laura Elam, Planning Director
THROUGH: Jeff Emory, City Manager
SUBJECT: Preliminary Cost Estimate and Project Agreement for Federal Aid for Improvements to Intersection of East Main Street and Generals Boulevard
DATE: September 4, 2014

BACKGROUND

The City has previously requested and received two CMAQ (Congestion Mitigation / Air Quality) grants for improvement of the intersection of East Main Street and Generals Boulevard. The total amount of approved CMAQ funding for the project is \$581,250 including \$465,000 in federal funds and \$116,250 in local match. The project involves improvements to the intersection including completion of the sidewalk system, high visibility crosswalks, pedestrian refuge islands, countdown timers and replacement of the existing wood traffic signal poles and span wire with steel poles and mast arms.

PRELIMINARY ENGINEERING PLAN AND COST ESTIMATE

The preliminary engineering plan and preliminary cost estimate prepared by TGS Engineers are enclosed. The cost estimate prepared by TGS indicates a total project cost of \$710,000. NCDOT has agreed to pay the portion of the project costs related to milling and repaving of the intersection. TGS estimates the milling and repaving will be approximately \$100,000 leaving a net estimated project cost of roughly \$610,000.

The City may use Powell Bill funds to cover the local match and any cost overruns beyond the \$581,250 in CMAQ funding if desired.

NCDOT/CITY OF LINCOLNTON PROJECT AGREEMENT

Also enclosed is a copy of the project agreement prepared by NCDOT that the City must execute in order to officially accept the grant funding and initiate the project. The agreement would allow the City to seek reimbursement of up to \$465,000 of the project cost.

In order to proceed with the project, City Council will need to take formal action on the agreement in time for staff to return it to NCDOT no later than the October 27 deadline. Once we have returned the executed agreement to NCDOT, they will further process the agreement and then send the fully executed agreement back to us. Once we have received the fully executed agreement, we can get authorization to proceed and officially start the project.

NOTE: I will not be able to attend the September 4 City Council meeting due to scheduled surgery on August 27. In the event that City Council needs additional time beyond the September 4 meeting to consider and/or further discuss the project agreement, the item could be tabled to the October 2 meeting which I will attend. Should Council have questions or concerns necessitating a delay until the October 2 meeting, I can work on a follow up memo that addresses any outstanding issues and have that to Council well in advance of the October 2 meeting.

ACTION REQUESTED

Consideration of approval of project agreement for improvements to the intersection of East Main Street and Generals Boulevard.



804-C North Lafayette Street
Shelby, North Carolina 28150
(704) 476-0003 Phone
(704) 476-0024 Fax
www.tgsengineers.com

July 24, 2014

Mr. Jeff Emory
City Manager
City of Lincolnton
114 West Sycamore Street
Post Office Box 617
Lincolnton, North Carolina 28093-0617

VIA EMAIL

jeffemory@ci.lincolnton.nc.us

Re: Generals Boulevard Intersection Improvements

Mr. Emory:

As requested, we have re-estimated the subject project to exclude turn lanes and extra paving and grading work that has been requested by NCDOT.

The cost for re-paving, signalization of the intersection and cross walk lights is estimated to be \$580,000. Of this, NCDOT has agreed to pay for the milling and paving work, and we estimate their portion to be approximately \$100,000. We assume that they will be willing to inspect the paving and signal work. Costs for design and construction inspection are expected to be approximately \$100,000. This does not include NCDOT inspection costs for paving and signals. My conversations with the Division indicate that since they are paying for paving and feel like they have to do signals, they will probably pay for the inspection. Of course, this is an ongoing discussion with the new Division Engineer. We will try to solidify these costs before construction begins.

If you have any questions or need any additional information, please feel free to contact me at (704) 476-0003.

Thank you.

Sincerely,
TGS ENGINEERS

Leonard G. Fletcher, PE, PLS

LGF:ask

cc: Ms. Laura Simmons
Mr. Steve Peeler

MR. JEFF EMORY
JULY 24, 2014
ADDENDUM

Generals Boulevard Estimate Breakdown

Actual Proposed Construction Costs:	\$580,000
Project Design Fee:	48,000
Projected Inspection Fee:	<u>52,000</u>
Total Project Cost:	\$680,000

Reimbursement for Paving Cost (by NCDOT):	(100,000)
*Possible Charges to Project by NCDOT $\pm$ 5%:	<u>30,000</u>
(for QA of signals & computer charges)	
Net Probable Cost:	<u>\$610,000</u>

** According to J. McSwain at NCDOT on 8/7/14*

Generals Blvd Estimate Breakdown

Actual Proposed Construction Costs:	\$ 580,000
Projected Design Fee:	48,000
Projected Inspection Fee:	<u>52,000</u>
Total Projected Cost:	\$ 680,000

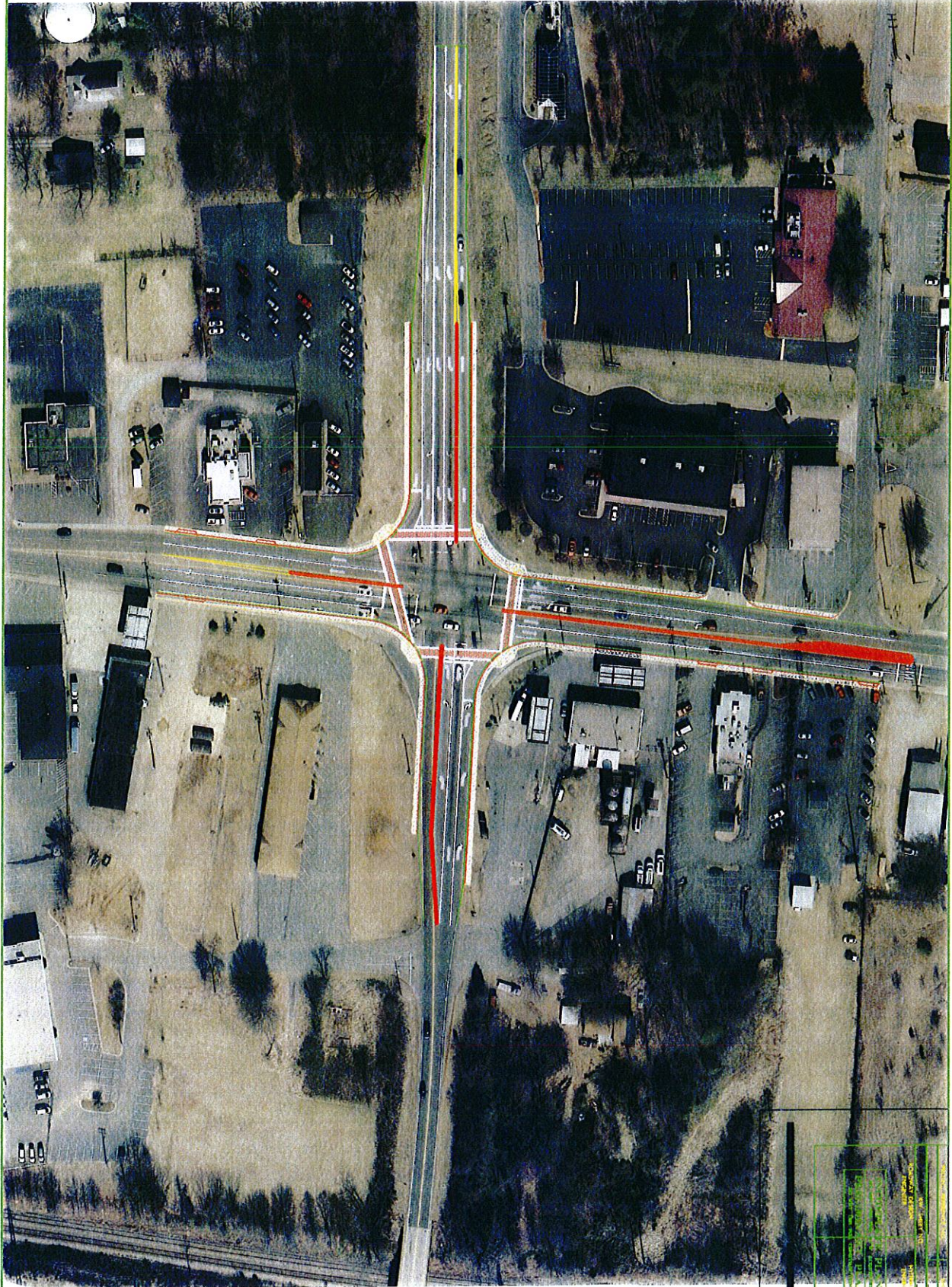
Reimbursement for Paving Cost (by NCDOT):	(100,000)
*Possible Charges to Project by NCDOT $\pm$ 5%:	<u>30,000</u>
(for QA of signals & computer charges)	<u>\$ 610,000</u>

**According to Jackie McSwain at NCDOT on 8/7/14*

Proposed Funding

NCDOT Grant	\$ 465,000
*City Powell Bill	<u>145,000</u>
	\$ 610,000

*The Powell Bill contribution is in the FY 2014-15 budget. If the project exceeds \$ 610,000, the City may use additional Powell Bill Funds. As of June 30th 2014, Powell Bill Fund Balance was \$ 833,000. There will be no expenses from the General Fund.

[illegible]



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

July 29, 2014

Ms. Laura Simmons
Planning Director
City of Lincolnton
PO Box 617
Lincolnton, NC 28093

SUBJECT: Locally Administered Project Agreement
City of Lincolnton, Lincoln County
Project C-5532; WBS Element: 45507.1.F1; 45507.2.F1; 45507.3.F1
Federal-Aid No: CMS-1221(17)
Generals Boulevard/East Main Street Pedestrian Improvements

Dear Ms. Simmons:

Please find enclosed duplicate originals of the above-referenced Project Agreement for the City of Lincolnton.

The Project Agreement reflects the scope of work, funding and schedule that has been programmed into the State Transportation Improvement Program (STIP) by the Transportation Planning Branch and the Lake Norman RPO. If you have any questions concerning the content of the agreement, please contact me.

After the City has reviewed and executed both originals, please return them to my attention, within ninety (90) days. The Department of Transportation will execute the agreements and send one fully executed agreement back to the City.

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
TRANSPORTATION PROGRAM MANAGEMENT
1595 MAIL SERVICE CENTER
RALEIGH NC 27699-1595

TELEPHONE: 919-707-6600
FAX: 919-212-5711

WEBSITE:
WWW.NCDOT.GOV

LOCATION:
CENTURY CENTER COMPLEX
ENTRANCE B-1
1020 BIRCH RIDGE DRIVE
RALEIGH NC 27610

If you have any questions, please contact me at (919) 707-6626 or by e-mail at mtmatthews@ncdot.gov. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Marta Matthews". The script is cursive and fluid.

Marta Matthews
Program Consultant
Local Programs Management Office

Enclosure

ec: Ms. Jackie McSwain, PE, Division Project Manager
Mr. Van Argabright, PE, TIP Representative
Mr. Derry Schmidt, PE, TPB – CMAQ
Mr. Bjorn Hansen, Lake Norman RPO

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -
FEDERAL**

LINCOLN COUNTY

DATE: 7/28/2014

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: C-5532

AND

WBS Elements: PE 45507.1.F1

ROW 45507.2.F1

CITY OF LINCOLNTON

CON 45507.3.F1

OTHER FUNDING:

FEDERAL-AID NUMBER: CMS-1221(17)

CFDA #: 20.205

Total Funds [NCDOT Participation] \$465,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the City of Lincolnton, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, Section 1113 of the Moving Ahead for Progress in the 21st Century (MAP-21) allows for the allocation of Congestion Mitigation and Air Quality funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for Generals Boulevard and East Main Street Improvements, hereinafter referred to as the Project, in Lincoln County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$465,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of construction of high visibility crosswalks, pedestrian refuge islands, countdown timers, and connections to the existing sidewalk network to improve pedestrian access at the intersection of Generals Boulevard and East Main Street.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

as further set forth in this Agreement.

3. FUNDING

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate up to a maximum amount of Four Hundred Sixty Five Thousand Dollars (\$465,000), as detailed below. The Municipality shall provide a local match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
Congestion Mitigation and Air Quality	\$465,000	80 %	\$116,250	20 %
Total Estimated Cost		\$581,250		

4. TIME FRAME

The Municipality shall complete all work outlined in the Agreement within **five years** of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 49 Code of Federal Regulations Part 18.36; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional

Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4,

incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at

www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

If the costs of ROW acquisition are an eligible expense, the Municipality shall submit the appraisal to the Department's Right of Way Branch for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules

and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, shall provide the Right of Way Agent, located at the Department's Local Right of Way Office, all required documentation (deeds/leases/easement/plans) to secure right of way certification from that office. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document and utilities in conflict with the project are relocated.

13. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

14. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 49 of the Code of Federal Regulations, Part 18.36 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference

<https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx>.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference

www.fhwa.dot.gov/legregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

15. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

16. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

17. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Generals Boulevard and East Main Street Improvemen, or as required by an executed encroachment agreement.

18. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 (www.fhwa.dot.gov/legregs/directives/fapgtoc.htm) and Office of Management and Budget (OMB) Circulars A-102 (www.whitehouse.gov/omb/circulars/index.html) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm and by Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/index.html) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

▪ WORK PERFORMED BEFORE NOTIFICATION

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

▪ UNSUBSTANTIATED COSTS

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

▪ WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of

\$465,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 (http://www.whitehouse.gov/omb/circulars_default) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

19. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

20. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for Congestion Mitigation and Air Quality funds and obligations as approved by the Department under the terms of this Agreement.

E-VERIFY COMPLIANCE

Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by N.C. Gen. Stat. § 160A-20.1.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (http://www.whitehouse.gov/omb/circulars_default) and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

CITY OF LINCOLNTON

BY: _____ BY: _____

TITLE: _____ TITLE: _____

DATE: _____

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by _____ of the City of Lincoln as attested to by the signature of _____ Clerk of the _____ on _____ (Date)

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

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

City of Lincoln

Remittance Address:

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)

ITEM #

11

Donna Flowers

From: Abby Cole
Sent: Monday, August 25, 2014 3:38 PM
To: Jeff Emory; Donna Flowers
Subject: FW: Rhyne, Chafin & Farmer, Charlotte - Lincolnton Downtown Development Lease 01-31-2012
Attachments: Rhyne, Chafin & Farmer, Charlotte - Lincolnton Downtown Development Lease 01-31-2012.doc

Jeff & Donna:

An updated contract for the BCD/DDA building lease is attached. A hard copy has been placed in your mailbox as well. I plan to drop off a copy at TJ's office this afternoon.

Thanks,

Abby A. Cole
Events & Marketing Coordinator
City of Lincolnton
114 E Main St.
Lincolnton, NC 28092
Phone: 704-736-8915
Fax: 704-736-8917
abbycole@ci.lincolnton.nc.us

From: Dianne Jenkins [<mailto:djenkins@jonaslaw.com>]
Sent: Monday, August 18, 2014 3:50 PM
To: coppi@bellsouth.net; Abby Cole
Subject: Rhyne, Chafin & Farmer, Charlotte - Lincolnton Downtown Development Lease 01-31-2012

Enclosed is revised Lease Agreement with requested changes. Please advise if you have questions or concerns. Thank you.

Dianne Jenkins, Legal Assistant
Richard E. Jonas, Attorney
The Jonas Law Firm, PLLC
210 East Main Street
PO Box 38
Lincolnton, NC 28093
(Phone) 704-735-1423
(FAX) 704-735-1490

This is confidential legal correspondence. If you are receiving this correspondence by mistake, please return or delete the email.

North Carolina

Lincoln County

This contract (or, lease, or, agreement, or, contract of lease) made and entered into this ____ day of _____, 2014 by and between CHARLES C. RHYNE and wife, JENNY G. RHYNE and CHARLOTTE A. RHYNE, party of the first part, (hereinafter called Lessor, or Owner, or Landlord); and CITY OF LINCOLNTON/DOWNTOWN DEVELOPMENT ASSOCIATION, party of the second part (hereinafter called Lessee or Tenant) both of Lincoln County, North Carolina;

W I T N E S S E T H:

That subject to the terms and conditions hereinafter set forth, said party of the first part (Lessor, or, Owner, or, Landlord) doth hereby let and lease unto said party of the second part (Lessee, or, Tenant) and said party of the second part (Lessee, or, Tenant) doth hereby accept as Lessee (or, Tenant) of said party of the first part (Lessor, or, Owner, or, Landlord) a portion of the building and other improvements thereon situate, lying and being in Lincoln County, North Carolina, and more particularly described as follows:

That portion of the building located at 114 East Main Street, Lincolnton, NC 28092 which for several years has contained the offices of the Downtown Development Association.

The terms and conditions above referred to are as follows:

To have and to hold said premises, together with all privileges and appurtenances thereunto belonging, to him the said party of the second part (Lessee, or, Tenant) and his heirs for the term and upon the conditions hereinafter set forth:

TERM

This lease began as of May 1, 2006, and this form of Lease is a continuation thereof and the Lease term unless sooner terminated shall exist and continue until the 31st day of January 2016.

RENTAL

As rental for said premises said party of the second part shall pay to said party of the first part by mail or at the place of business of said party of the first part, and without notice or demand therefore, \$525.00 per month, payable on or before the first day of each calendar month for the then current month.

TAXES

During the term of this lease party of the first part shall pay all taxes and assessments imposed on the demised premises by any lawful authority; but party of the second part shall, in addition to the rental herein specified, repay to party of the first part the amount so paid by him in any taxable year over and above the amount of the taxes and assessments on said premises for the taxable year during which this lease was executed.

LIGHTS, HEAT, WATER, AND SEWER

During the term of this lease party of the first part shall provide and pay for all reasonable costs for lights, heat, water and sewer charges upon said demised premises.

REPAIRS

It is understood and agreed that party of the second part accepts said premises in the physical condition in which the same now are, and that party of the first part shall be under no obligation whatever to make any repairs or replacements to said premises during the term of this lease; notwithstanding the foregoing, the party of the first part shall keep the outer walls and roof of said building in proper and substantial repair.

IMPROVEMENTS BY TENANT

Party of the second part may at any time during the term of this lease make to the buildings on said demised premises such alternations and improvements as may be approved by party of the first part in advance and in writing but it is agreed that all such alternations and additions shall be and become a permanent part of the real estate, and as such the property of party of the first part.

All repairs and additions made by party of the second part to the heating and air conditioning, lighting, and plumbing systems shall be considered a part of the real estate and as such the property of party of the first part, but party of the second part may remove all shelving, counters, showcases or other mercantile appliances belonging to party of the second part which can be removed without injury to the building.

USE OF PREMISES

It is expressly agreed that the demised premises shall during the term of this lease be used exclusively as general office space for the City of Lincolnton/Downtown Development Association.

It is expressly further agreed that this lease is executed and accepted subject to all lawful zoning ordinances and regulations of the City of Lincolnton, now in force or hereafter adopted which in any manner affect the use of said premises.

DAMAGE OR DESTRUCTION BY FIRE

If said premises be damaged by fire or other casualty, or condemned by lawful authority during the term of this lease, the following provisions shall apply:

If the costs of repairs be not more than the rental for one year (based on the rental amount for the month in which the damage occurred) as herein provided, party of the first part shall make such repairs as soon as is reasonably possible.

If the costs of repairs be more than the rental for one year (based on the rental amount for the month in which the damage occurred) as herein provided, party of the first part may, if he so elects, make such repairs and continue this lease in effect.

If the costs of repairs be more than the rental for one year as herein provided, and party of the first part does not elect to make such repairs party of the second part may, if he so elects, call upon party of the first part to make such repairs and pay for the same to the extent of the rental for one year, and himself pay the excess and continue this lease in effect.

If the costs of repairs be more than the rental for one year and neither party elects to pay the excess over the rental for one year, then and in that event this lease shall terminate as of the date of such damage.

If the building be damaged and repaired in any of the methods above set forth, the rental shall be rebated for the period during which the building is unfit for use and occupancy for the purpose and in the manner that such building was used at the time of such damage.

BANKRUPTCY OR INSOLVENCY OF TENANT

It is expressly agreed that if at any time during the term of this lease party of the second part should be adjudged bankrupt or insolvent by any Federal or State court of competent jurisdiction, party of the first part may at his option declare this lease terminated and cancelled and take possession of said premises.

ASSIGNMENT AND SUBLETTING

Party of the second part shall not assign this lease or sublet any part of the demised property without the written consent of party of the first part.

FORFEITURE FOR NONCOMPLIANCE

It is expressly agreed that if any monthly installment of rent as herein called for remains overdue and unpaid for fifteen (15) days, party of the first part may at his option at any time during such default declare this lease terminated and cancelled and take possession of said premises.

HOLDING OVER

Should party of the second part hold over and not vacate the premises when required to do so hereunder, rent shall accrue from that point at 200% of the amount set forth in "rental" above.

LEGAL COUNSEL

This lease has been prepared by party of the first part by The Jonas Law Firm, P.L.L.C. Party of the second part acknowledges having ample time and opportunity to have this lease reviewed by independent legal counsel of his own choosing prior to considering it or executing it.

TESTIFICANDUM

In Testimony Whereof, said parties have executed this contract in duplicate originals, one of which is retained by each of the parties.

LANDLORD:

_____(SEAL)
Charles C. Rhyne

_____(SEAL)
Jenny G. Rhyne

Charlotte A. Rhyne

By: _____
Charles C. Rhyne,
Attorney in Fact

LESSEE:

CITY OF LINCOLNTON/DOWNTOWN
DEVELOPMENT ASSOCIATION

By _____

NORTH CAROLINA

LINCOLN COUNTY

I, a Notary Public for said County and State do hereby certify that
CHARLES C. RHYNE and wife, JENNY G. RHYNE personally
appeared before me this day and acknowledged the due execution of
the foregoing instrument.

WITNESS my hand and notarial seal, this the _____ day of
_____, 2014.

Notary Public

My Commission Expires: _____

NORTH CAROLINA

LINCOLN COUNTY

I, a Notary Public for said County and State do hereby certify that CHARLOTTE A. RHYNE personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the ____ day of _____, 2014.

Notary Public

My Commission Expires: _____

NORTH CAROLINA

LINCOLN COUNTY

I, a Notary Public for said County and State do hereby certify that _____ of City of Lincolnton/Downtown Development Association personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the ____ day of _____, 2014.

Notary Public

My Commission Expires: _____

ITEM #

12

Memorandum

To: Jeff Emory, City Manager
From: Abby A. Cole, Interim Business & Community Development Director
Date: August 29, 2014
Re: Beer Sales at 2015 Hog Happenin' Event

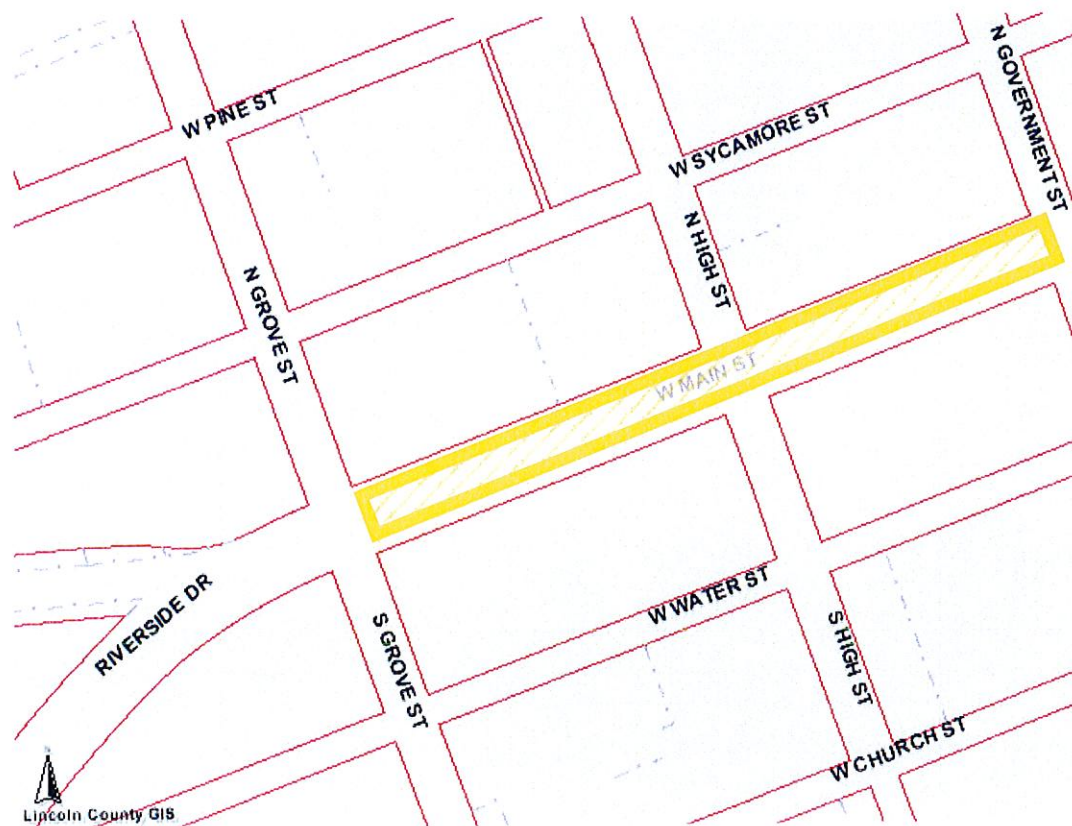
The Downtown Development Association of Lincolnton, Inc. (DDA) Board of Directors would like to sell beer again at the 2015 Hog Happenin' event to be held on Friday, June 5th and Saturday, June 6th. Non-profit organizations are permitted by North Carolina state law to obtain temporary permits to sell alcohol at events. Organizations selling beer at events is a common practice throughout the Charlotte Region primarily because beer sales are a major source of revenue for underwriting the costs of these events.

It is DDA's intent to serve beer from 'draft wagons' positioned in the 200 and 300 block of West Main Street between 6 p.m. and 10 p.m. on Friday, June 5th and 10 a.m. to 6 p.m. Saturday June 6th. Purchasing and consumption of beer would be restricted to the area of West Main Street between Grove Street and Government Street (see attached map). DDA volunteers will supervise and monitor the area with the support of enforcement from City of Lincolnton Police Department.

This year was the third year the Main Stage and Beer Garden were located on West Main Street. This location worked well according to feedback from the City of Lincolnton Police Department and North Carolina Alcohol Law Enforcement.

DDA will secure all required permits and purchase alcohol liability insurance at a cost of just over \$3,000.00 to cover itself and name the City as an additional insured.

This location requires West Main Street between Grove Street and Government Street to be closed all day on Friday, June 5th to permit the installation of the main stage and Corn Hole tournament. All other roads will remain open until 3 p.m. at which time the entire event area will be closed to through traffic and detours will be in place.



2015 Hog Happenin' Beer Garden Map
West Main Street
Grove Street to Government Street

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

THIS CONTRACT AND AGREEMENT made and entered into on this the ____ day of _____, 2014, by and between the **DOWNTOWN DEVELOPMENT ASSOCIATION OF LINCOLNTON, INC.**, a corporation existing and doing business under the laws of the State of North Carolina, party of the first part, (hereinafter referred to as DDA), and the **CITY OF LINCOLNTON**, a municipal corporation created and existing under the laws of the State of North Carolina, party of the second part, (hereinafter referred to as CITY);

W I T N E S S E T H:

The parties to this Contract hereby recite and declare that:

- a. The Code of Ordinances of the City of Lincolnton was so amended by the Lincolnton City Council at its regular meeting on April 4th, 2002 to allow the City to authorize and regulate the possession and consumption of malt beverages and unfortified wine on the public streets, alleys, and parking lots which have been temporarily closed to regular traffic for special events.
- b. The DDA is the sponsor, promoter, and operator of a weekend festival known as "Hog Happenin'", which will be staged in downtown Lincolnton on June 5th and June 6th, 2015.
- c. At the request of the DDA, the City Council agreed, subject to the provisions and conditions hereinafter set forth, to allow the DDA to sell malt beverages and unfortified wine to the public along the 200 & 300 Blocks of West Main Street and to supervise and monitor the consumption of said alcoholic beverages at and during the "Hog Happenin'" in downtown Lincolnton in 2015.

NOW, THEREFORE, in consideration of the reasons and facts recited above, the mutual promises and covenants of the parties as herein set out and for other good and valuable consideration, the receipt of which is hereby respectively acknowledged by the parties, the parties agree as follows:

I.

That in accordance with and subject to the terms and conditions herein set forth, the DDA is authorized to sell malt beverages and unfortified wine at its "Hog Happenin'" in 2014, which is scheduled to be held on June 6th and 7th.

II.

That all alcoholic beverages sold and served by the DDA will be sold and consumed within the confines of a contained area or "Beer Garden," the design and location of which must be approved by the City. The DDA agrees to obtain, pay for, and comply with all governmental permits and licenses necessary for the sale and consumption of the alcoholic beverages.

That DDA agrees to provide at its expense capable and competent personnel to administer, and monitor the sale and consumption of alcoholic beverages for the duration of the events. The DDA agrees that its personnel will exercise all due care and circumspection to refuse service or sell of alcoholic beverages to any minor or to any person who may appear to be under the influence of alcohol or any controlled substance.

That DDA will not sell or allow the consumption of any alcoholic beverages before 6 p.m. or after 10 p.m. on June 5th or before 10 a.m. or after 6 p.m. on June 6th, 2015.

III.

That DDA hereby agrees to indemnify and hold the City and its employees harmless from any claims, causes of action, loss, or injury resulting from the sale of alcoholic beverages and subsequent consumption thereof by the public at "Hog Happenin'". That DDA agrees to defend the City against any such claims of loss or injury filed against the City.

IV.

That DDA will obtain and pay for liability insurance coverage (in an amount satisfactory to the City) for itself and the City as a result of the sale of alcoholic beverages on the streets of the City during "Hog Happenin'". That DDA will promptly provide a copy of said insurance policy (policies) to the City. All policies will designate the City as a named insured.

V.

That the City reserves the exclusive right to modify, cancel, and rescind this Contract at any time hereafter if, in its sole discretion, the sale and consumption of alcoholic beverages at any "Hog Happenin'" event has resulted in problems that are detrimental to the health, welfare, or well-being of the City or its citizens.

VI.

That it is further understood and agreed by both parties that no promises or agreements not herein expressed have been made to or by either party hereto, and that this Contract contains the entire agreement between the parties hereto, and that the terms and conditions of the Contract are contractual and not a mere recital.

VII.

That this Contract may be amended only by written instrument signed and executed by the parties hereto.

IN WITNESS WHEREOF, the party of the first part has caused this instrument to be signed in its corporate name by its duly-authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, and the party of the second part has caused this instrument to be signed by its Mayor and attested by its Clerk, the day and year first above written.

THE DOWNTOWN DEVELOPMENT ASSOCIATION OF LINCOLNTON, INC.

By: _____
President

Attest:

Secretary

CITY OF LINCOLNTON

By: _____
John O. Gilleland, Mayor

Attest:

Donna C. Flowers, City Clerk (**Municipal Seal**)

ITEM #

13

Memorandum

To: Jeff Emory, City Manager
From: Abby A. Cole, Interim Business & Community Development Director
Date: 8/29/2014
Re: Special Event Request Third Annual Lovable Lincolnton Wine & Art Fest

The Downtown Development Association of Lincolnton, Inc. (DDA) requests permission to organize the third annual Lovable Lincolnton Wine and Art Fest on Saturday, October 11th. The event would require closing East Main Street between Court Square and Poplar Street and Academy Street between East Water Street and East Sycamore Street and permitting the sale and consumption of beer & wine within the event area.

This event highlights the wine industry in the region and is targeted to create a destination for day trip visitors from the Charlotte region to downtown Lincolnton. Wine production is a growing industry in the state. While the Yadkin Valley is probably the best-known area in the state for wine production, we have two wineries and three vineyards in Lincoln County and more in the surrounding area.

DDA volunteers and Business and Community Development staff will coordinate the event. Approximately 40 vendor spaces will be available on Main Street between Court Square and Poplar Street for vineyards and wineries to sample and sell their products. DDA will be responsible for securing and coordinating all required permits and insurance for the event as well as monitoring alcohol sales and consumption in the event area.

Ten wineries participated in the inaugural event. DDA expects to attract more wineries, vendors and visitors for the third annual event with additions including a juried art entrance, live entertainment and live artist demonstrations.

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

THIS CONTRACT AND AGREEMENT made and entered into on this the ____ day of _____ 2014, by and between the **DOWNTOWN DEVELOPMENT ASSOCIATION OF LINCOLNTON, INC.**, a corporation existing and doing business under the laws of the State of North Carolina, party of the first part, (hereinafter referred to as DDA), and the **CITY OF LINCOLNTON**, a municipal corporation created and existing under the laws of the State of North Carolina, party of the second part, (hereinafter referred to as CITY);

W I T N E S S E T H:

The parties to this Contract hereby recite and declare that:

- a. Section 10-2 of the Code of Ordinances of the City of Lincolnton was so amended by the Lincolnton City Council at its regular meeting on April 4th, 2002 to allow the City to authorize and regulate the possession and consumption of malt beverages and unfortified wine on the public streets, alleys, and parking lots which have been temporarily closed to regular traffic for special events.
- b. The DDA is the sponsor, promoter, and operator of an event known as "Lovable Lincolnton Wine & Art Fest", which is staged along East Main Street and Court Square in downtown Lincolnton.
- c. At the request of the DDA, the City Council agreed, subject to the provisions and conditions hereinafter set forth, to allow the DDA, wineries and vineyards to sell malt beverages and unfortified wine to the public and to supervise and monitor the consumption of said alcoholic beverages at and during the "Lovable Lincolnton Wine & Art Fest" event in downtown Lincolnton in 2014.

NOW, THEREFORE, in consideration of the reasons and facts recited above, the mutual promises and covenants of the parties as herein set out and for other good and valuable consideration, the receipt of which is hereby respectively acknowledged by the parties, the parties agree as follows:

I.

That in accordance with and subject to the terms and conditions herein set forth, DDA, wineries and vineyards are authorized to sell malt beverages and unfortified wine at its "Lovable Lincolnton Wine & Art Fest" event in 2014, which is scheduled to be held on Saturday, October 11th, 2014.

II.

That all alcoholic beverages sold and served by the DDA, wineries and vineyards will be sold and consumed within the confines of a contained area or "Wine Garden," the design and location of which must be approved by the City. The DDA agrees to obtain, pay for, and comply with all governmental permits and licenses necessary for the sale and consumption of the alcoholic beverages.

That DDA agrees to provide at its expense capable and competent personnel to administer, and monitor the sale and consumption of alcoholic beverages for the duration of the event. The DDA agrees that its personnel and the personnel of the wineries and vineyards will exercise all due care and circumspection to refuse service or sell of alcoholic beverages to any minor or to any person who may appear to be under the influence of alcohol or any controlled substance.

That DDA will not sell or allow the consumption of any alcoholic beverage before 11 a.m. or after 5 p.m. on Saturday, October 11th, 2014.

III.

That DDA hereby agrees to indemnify and hold the City and its employees harmless from any claims, causes of action, loss, or injury resulting from the sale of alcoholic beverages and subsequent consumption thereof by the public at the "Lovable Lincolnton Wine & Art Fest" event. That DDA agrees to defend the City against any such claims of loss or injury filed against the City.

IV.

That DDA will obtain and pay for liability insurance coverage (in an amount satisfactory to the City) for itself and the City as a result of the sale of alcoholic beverages on the streets of the City during the "Lovable Lincolnton Wine & Art Fest." That DDA will promptly provide a copy of said insurance policy (policies) to the City. All policies will designate the City as a named insured.

V.

That the City reserves the exclusive right to modify, cancel, and rescind this Contract at any time hereafter if, in its sole discretion, the sale and consumption of alcoholic beverages at the "Lovable Lincolnton Wine & Art Fest" event has resulted in problems that are detrimental to the health, welfare, or well-being of the City or its citizens.

VI.

That it is further understood and agreed by both parties that no promises or agreements not herein expressed have been made to or by either party hereto, and that this Contract contains the entire agreement between the parties hereto, and that the terms and conditions of the Contract are contractual and not a mere recital.

VII.

That this Contract may be amended only by written instrument signed and executed by the parties hereto.

IN WITNESS WHEREOF, the party of the first part has caused this instrument to be signed in its corporate name by its duly-authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, and the party of the second part has caused this instrument to be signed by its Mayor and attested by its Clerk, the day and year first above written.

THE DOWNTOWN DEVELOPMENT ASSOCIATION OF LINCOLNTON, INC.

By: _____
Board Chairman

Attest:

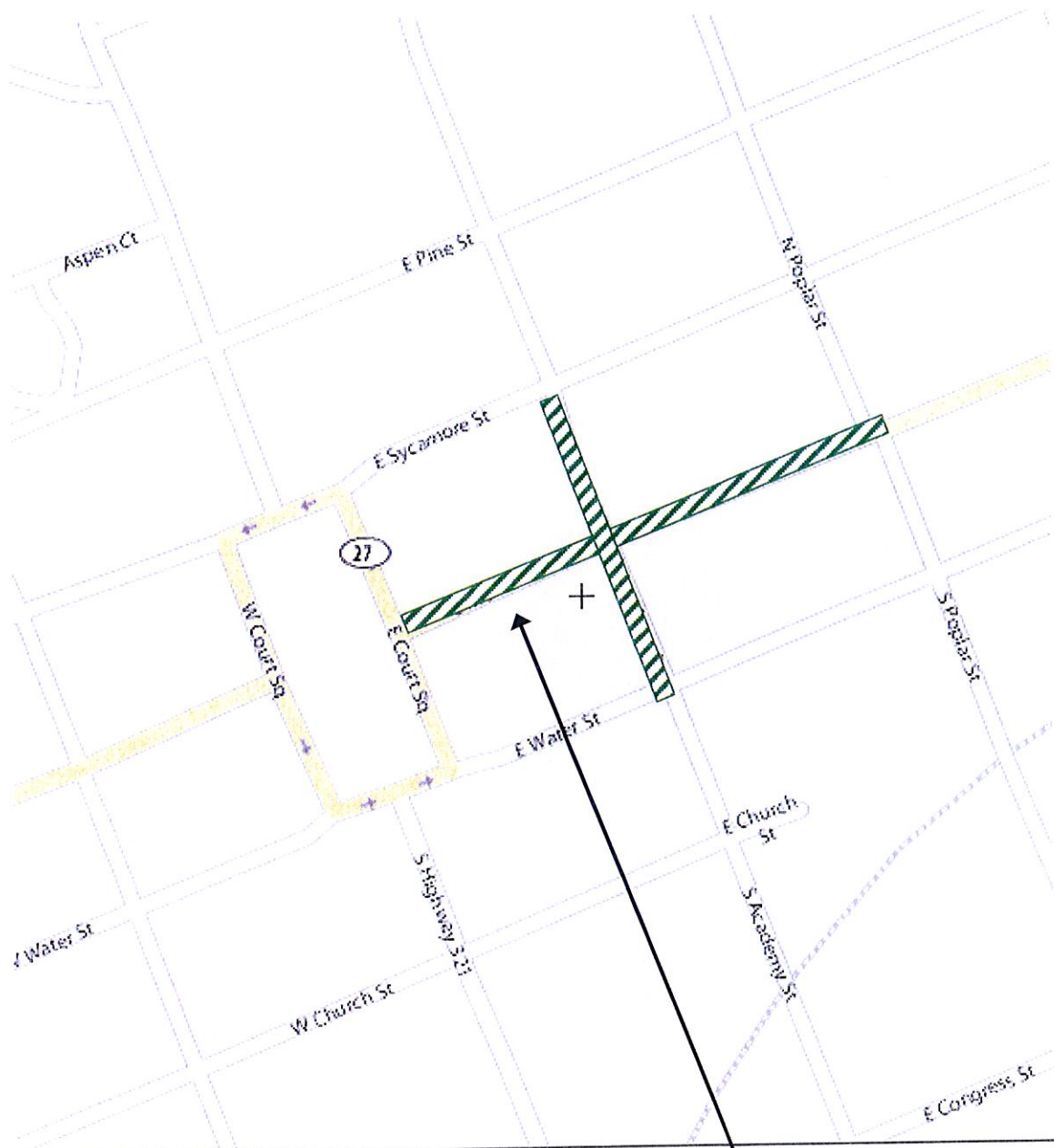
Secretary (Corporate Seal)

CITY OF LINCOLNTON

By: _____
John O. Gilleland, Mayor

Attest:

Donna C. Flowers, City Clerk (Municipal Seal)



2014 Lincolnton Wine & Art Fest
Event Map

East Main Street: East Court Square to Poplar Street
Academy Street: East Water Street to East Sycamore Street

ITEM #

14

Memorandum

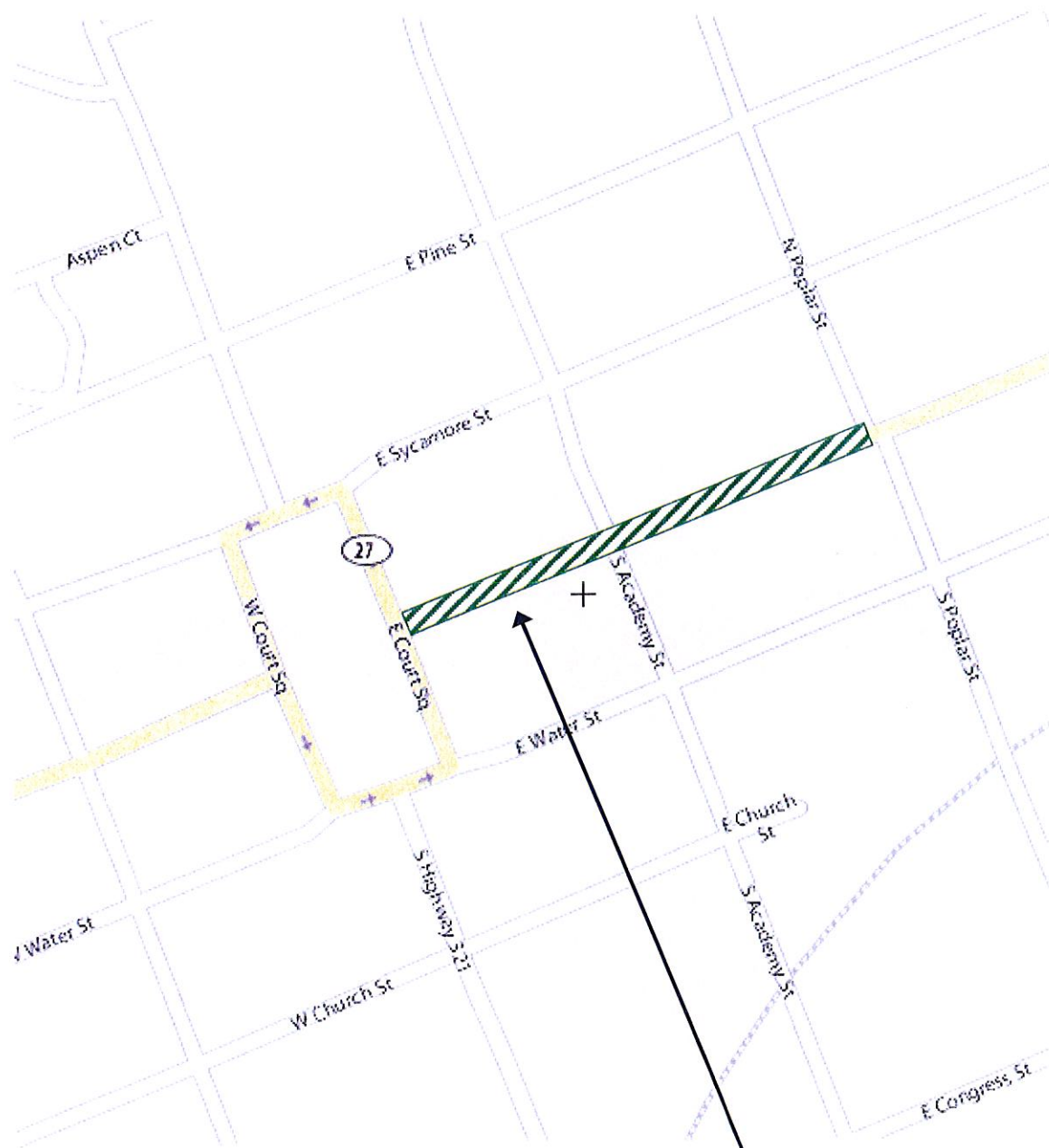
To: Jeff Emory, City Manager
From: Abby Cole, Interim Business & Community Development Director
Date: August 29, 2014
Re: 2014 Alive After Five Beer Garden Extension

The Downtown Development Association of Lincoln, Inc. (DDA) Board of Directors would like to extend the location of the Alive After Five summer concert series beer garden area to the 200 Block of East Main Street.

DDA introduced a car show to the second block of East Main Street to the summer concert series this year. Car enthusiasts have expressed their interests in the ability to consume their alcoholic beverage purchased in the 100 block within the 200 block area. The 200 block is located on East Main Street between Academy Street and Poplar Street.

The final concert in this series will be held on Thursday September 25th featuring our hometown band, The Fantastic Shakers.

DDA will take proper action to amend the already secured permits to adjust this extension if approved.



2014 Alive After Five Beer Garden Map
East Court Square to Poplar Street

ITEM #

15

(Ord. passed - -)

§ 70.31 FINDINGS; AUTHORITY.

(A) The city finds and determines that:

(1) Establishment of a golf cart transportation plan will serve to expand mobility to those persons not operating automobiles;

(2) The selected areas for golf cart travel will be roads and highways within the city limits of Lincolnton and with speed limits of 25 miles per hour or less and will not cause an adverse impact upon traffic safety; and

(3) The regulations and use of golf carts on streets and highways in the city will fall under the same standards of all motor vehicles (specifically including inspections, registrations and liability insurance) operated in the state and will be required to meet the same minimum requirements as set forth under G.S. Chapter 20.

(B) Authority is contingent upon approval of legislation.

(Ord. passed - -)

§ 70.32 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Lincolnton, NC.

GOLF CART. A motor vehicle having not less than three wheels in contact with the ground and unladen weight less than 1,300 pounds which is designed to be operated at not more than 25 miles per hour and is designed to carry golf equipment. This does not include vehicles known as all terrain vehicles (ATVs) or go-carts.

GOLF CART OPERATOR. A person having a valid North Carolina driver's license who is driving the golf cart and has full control of its operation.

PLAN AREA. The area within the city limits that golf carts will be allowed to travel which includes any public street or highway within the city limits with a speed limit of 25 miles per hour or less.

(Ord. passed - -)

§ 70.33 GOLF CART DESIGN CRITERIA.

(A) Minimum golf cart vehicle design criteria and travel plan areas are hereby established. In order for a golf cart to pass the state inspection, it must be built to federal DOT guidelines and have a 17-character Vehicle Identification Number, or a letter from the golf cart manufacturer stating that the golf cart meets the

federal Standard Guidelines.

(B) The following elements are minimum design and equipment requirements:

(1) The golf cart must be the shape and size that conforms to industry standards for manufactured golf carts and meet federal DOT guidelines; and

(2) The golf cart must be equipped and safely operated with:

(a) Seat belts for drivers and passengers;

(b) Equipped with either an unobstructed rear-view mirror and left side mirror, or a wide angle cross bar rear-view mirror;

(c) Lights, reflectors and emblems that conform to G.S. § 20-129;

(d) A whip antenna with a reflective flag mounted on the golf cart with a minimum of six feet in height above the street; and

(e) Any other requirements for inspection.

(Ord. passed - -)

§ 70.34 PERMIT PROCESS.

Operators will be required to obtain a special issue permit for the operation of any golf cart within the city to ensure that the operator is a licensed driver and that the golf cart is equipped with all the necessary warning devices, registration, inspection and insurance required to operate a vehicle in the state. The city reserves the right to impose additional limitations, restrictions and fees for the operation of golf carts within the city limits.

(Ord. passed - -)

§ 70.35 OPERATION RESTRICTIONS.

The following restrictions limiting the operation of golf carts in the city shall apply:

(A) Only those golf carts that have been retrofitted with the safety equipment specified herein, have passed North Carolina state inspection, and have obtained the proper permit may be operated under the provisions of this subchapter;

(B) Golf cart transportation is limited to those streets and highways within the city limits which have a posted speed limit of 25 miles per hour or less;

(C) A golf cart operator must maintain his or her golf cart in a safe condition at all times;

(D) The golf cart must have displayed a slow moving vehicle emblem on the back of the cart and conform to all provisions for slow moving vehicles under G.S. § 20-121.1; and

(E) Golf carts may not be operated on any public street or roadway in the city during one-half hour after

sunset to one-half hour before sunrise.

(Ord. passed - -)

§ 70.36 OPERATION ON PUBLIC HIGHWAYS.

It shall be unlawful to operate a golf cart on a public street or highway in the city unless the following requirements are met:

- (A) Golf cart must display a slow moving vehicle emblem on the back of the golf cart;
- (B) Golf carts must display a valid state license plate, inspection sticker and special use permit;
- (C) No person shall operate a golf cart on a public street or highway in the city unless said person has a valid North Carolina driver's license or a valid, recognized, out-of-state license in accordance with G.S. § 20-7;
- (D) Golf carts must be operated in accordance with all applicable state and local laws and ordinances, including all laws, regulations and ordinances pertaining to the possession and use of drugs and alcoholic beverages;
- (E) Only the number of people the golf cart is designed to seat may ride on a golf cart. Additionally, passengers shall not be carried on the part of a golf cart designed to carry golf bags;
- (F) Golf carts shall not be operated during inclement weather or when visibility is impaired by weather, smoke, fog or other conditions;
- (G) Golf carts shall not be operated in a negligent manner. For the purpose of this division (G), ***TO OPERATE IN A NEGLIGENT MANNER*** is defined as the operation of a golf cart in such a manner as to endanger any person or property, or to obstruct, hinder or impede the lawful course of travel of any motor vehicle or the lawful use by any pedestrian of public streets, sidewalks, paths, trails, walkways or parks;
- (H) The city may prohibit the operation of golf carts on any street or highway if the City Council determines that the prohibition is necessary in the interest of safety; and
- (I) Golf carts may not be operated on any public street or roadway in the city during one-half hour after sunset to one-half hour before sunrise.

(Ord. passed - -)

§ 70.37 SAFETY INSPECTION.

- (A) No golf cart may be operated on any street or highway in the city without first passing a safety inspection which will be conducted prior to the issuance of a special use permit. Furthermore, no permit will be issued until the operator presents proof that the golf cart is fully insured, registered and tagged with a valid North Carolina license plate, and the operator has a valid North Carolina driver's license. This inspection is above and beyond the required state inspection which is governed under G.S. § 20-183.4c.

(B) To pass the safety inspection for the city and to obtain a special use permit, the golf cart must have the following:

- (1) Headlights, tail lights and turn signals;
- (2) Windshield wipers if equipped with a permanent windshield;
- (3) Rubber or equivalent tires;
- (4) Horn audible up to 500 feet, adequate steering gear, brakes, emergency or parking brake, rear-view mirror, adequately fixed drivers seat;
- (5) All other factory installed safety or mechanical systems, including checking for gasoline or propane leaks;
- (6) Speed governor if gasoline powered; and
- (7) Safety lap belts for operators and passengers.

(Ord. passed - -)

§ 70.38 INSURANCE REQUIREMENTS.

Every golf cart and driver thereof shall have in full force and effect, a valid insurance policy as set forth in G.S. § 20-309 of the state motor vehicle laws.

(Ord. passed - -)

§ 70.39 LIABILITY DISCLAIMER.

This section is adopted to address the interest of public safety. Golf carts are not designed or manufactured to be used on public streets, and the city in no way advocates or endorses their operation on public streets and roadways. The city, by regulating such operation, is merely trying to address obvious safety issues, and adoption of this section is not to be relied upon as a determination that operating on public streets and roadways is safe or advisable if done in accordance with this section. All persons who operate or ride upon golf carts on public streets, or rides, do so at their own risk and peril, and must be observant of and attentive to the safety of themselves and others, including their passengers, other motorists, bicycles and pedestrians. The city has no liability under any theory of liability and the city assumes no liability for permitting golf carts to be operated on public streets and roadways. Any person who operates a golf cart is responsible for procuring liability insurance sufficient to cover the risk involved in using a golf cart on the public streets and roadways.

(Ord. passed - -)

§ 70.40 VIOLATIONS.

Any operation of a golf cart in violation of either this subchapter or the motor vehicle laws of the state

shall be guilty of the same traffic law violations and charged the same as any other driver of any registered vehicle in the state and will lose its special use permit with the city for a period of one year.

(Ord. passed - -)

§ 70.99 PENALTY FOR TITLE VII.

Any violation of the sections of this chapter set forth below shall subject the violator to those civil penalties hereinafter enumerated. Civil penalties that are not voluntarily paid by the violator may be recovered by the city by a civil action in the nature of a debt.

(A) *Generally.* Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) *Notice to be affixed.* Whenever a member of the Police Department of the city or other person authorized with the enforcement of the provisions of this chapter regulating parking of vehicles shall find that any of those provisions are being, or have been violated by the owner or operator of the vehicle, the officer or person shall notify the owner or operator of the vehicle of the violation by conspicuously attaching to the vehicle a parking violation notice or citation.

(C) *Responsibility for penalty.* Upon receiving a notice or citation serving as notice of violation of the parking regulations set forth in these sections, the owner or operator of the vehicle found in violation shall be responsible for penalties herein established.

(D) *Penalty.*

(1) Any penalty for parking violation that is not paid within 15 days of issuance will accrue an additional penalty of \$5 per 15 days it remains unpaid. After 15 days of issuance of a parking violation, a delinquent notice will be mailed to the registered owner of the vehicle.

(2) The maximum total combined fines and penalties for a single \$20 violation shall be \$50. When the maximum is reached for either a single violation or receives three or more for the same owner or operator, he or she will be notified in writing of the intent of the city to pursue claims through appropriate civil action or through referral to a collection agency. Once a civil action is initiated, any fees or costs involved in the civil action will be added to the settlement in each action.

(3) The penalty for any violation of § 72.02, Chapter 75 and Chapter 74, Schedule V shall be \$20.

(Prior Code, § 13-12) (Ord. O-49-97, passed 4-10-1997; Ord. O-05-10, passed 12-2-2010)

CHAPTER 71: TRAFFIC REGULATIONS

Section

71.01 Vehicles shall not be driven on the sidewalk

71.02 Clinging to moving vehicles

ITEM #

16

**NOTE: THE CITY MANAGER AS
DIRECTED AT OUR SPECIAL
MEETING HELD 8-27-14
WILL UPDATE COUNCIL
ON THE NEXT STEP FOR
DEVELOPMENT OF A
STRATEGIC PLAN**

ITEM #

17

September 2014 Council Meeting

Executive Summary
July 2014 Year-To-Date

Comparative for Budgetary Purposes - Prior to Closing 2014 Fiscal Year

		14-15	% of Budget	13-14	Difference
General Fund					
Fund 10	Revenues	372,556.09	3.63%	407,003.35	(34,447.26)
	Expenses	897,667.57	13.55%	895,016.88	2,650.69
	Difference	(525,111.48)		(488,013.53)	(37,097.95)
Water & Sewer Fund					
Fund 61	Revenues	767,977.52	8.76%	739,614.42	28,363.10
	Expenses	225,280.51	7.04%	303,409.89	(78,129.38)
	Difference	542,697.01		436,204.53	106,492.48
Electric Fund					
Fund 63	Revenues	615,741.80	7.54%	569,063.09	46,678.71
	Expenses	61,402.07	2.76%	88,567.22	(27,165.15)
	Difference	554,339.73		480,495.87	73,843.86
Overtime		19,693.46		21,283.03	(1,589.57)