

A G E N D A

LINCOLNTON CITY COUNCIL

March 3, 2016

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

LINCOLNTON CITY COUNCIL

March 3, 2016

7:00 p.m.

CALL TO ORDER – Mayor Ed Hatley

PLEDGE OF ALLEGIANCE – Boy Scout Troop 75 – Jake Bauer, Tyson Berg, Cater Kincaid, Jadon Rhyne and Luke Scronce

1. Approval of REGULAR AGENDA

2. Approval of CONSENT AGENDA

All items placed under 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 the following minutes:

January 27, 2016 – Special Meeting

February 4, 2016 - Regular Meeting

February 18, 2016 – Special Meeting

(APPT-05-16)

4. Appointment of David Black as liaison for the City on both the ABC Board and the Lincolnnton Housing Authority (*Mayor Hatley will represent the City on the Library Board replacing Councilman Cloninger*)

(P-04-16)

5. Amendment to Utility Accounts Policy/Procedures, extending the due date and default date

REGULAR AGENDA:

PUBLIC HEARING

6. CUP-2-2016 – Application from TowerCom requesting a conditional use permit to construct a 244 foot telecommunications tower in the Residential-25 (R-25) District. The subject property is located on the east side of Hilltop Road approximately 0.25 miles north of the intersection of Hilltop Road and South Grove Street Extension. (457 Hilltop Road, Parcel ID 17929)

(NOTE: Planning Board tabled consideration on this item at the request of the applicant at their March 15th meeting, therefore the Mayor would open the Public Hearing and ask for a motion to continue the hearing until the April 7th regular City Council meeting)

Laura Elam, Planning Director

RESOLUTION

(R-05-16)

- 7. Resolution for Installment Purchase up to \$ 1,025,000**

**Steve Zickefoose,
Interim City Manager**

CONTRACTS

(C-03-16)

- 8. Consideration of approval of contract between the City and Gilbert Engineering Co. in the amount of \$ 724,185.00 for Pump Station Replacements for Hwy 150 and Rhyne Mills**

**Steve Zickefoose, Interim City Manager
Steve Peeler, Director of PW&U**

(C-05-16)

- 9. Consideration of awarding the Installment Purchase Contract – financing up to \$ 1,025,000 at 1.65% with Carter Bank & Trust**

**Steve Zickefoose,
Interim City Manager**

(C-06-16)

- 10. Consideration of awarding bid to Atlantic Coast Fire Trucks (Smeal Fire Apparatus Co.) to purchase a 2016 Spartan Metro-Star Triple Combination Pumper in the amount of \$ \$468,275**

**Ryan Heavner,
Fire Chief**

(C-07-16)

- 11. Consideration of a contract between the City and East Coast Pyrotechnics for the 2016 Fireworks Display**

**Donna Flowers,
City Clerk**

OTHER BUSINESS

- 12. Request from American Legion to add a program to the July 4th Celebration prior to the fireworks display**

Dale Punch, American Legion

- 13. Request to consider amending the current Façade Grant program to include signage (currently signage is ineligible to be considered))**

**And Lynn & Erika Thompson
Chamber of Commerce
Downtown Revitalization Committee**

- 14. Monthly Financial Report/Overtime Report**

Steve Zickefoose, Interim 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 to be eligible to speak***

CLOSED SESSION

In accordance with NCGS 143-318.11(a)(6)

NEWS MEDIA

ADJOURNMENT

ITEM #

1

APPROVAL

OF

REGULAR

AGENDA

ITEM #

2

APPROVAL

OF

CONSENT

AGENDA

ITEM #

3

SPECIAL MEETING - FEBRUARY 18, 2016

The Mayor and City Council held a Special Called meeting on Thursday, February 18, 2016 at 5:30 pm in the Council Chambers of the Lincolnton City Hall, located at 114 West Sycamore Street, Lincolnton NC.

Mayor Ed Hatley called the meeting to order and led the Pledge of Allegiance.

The following Council Members were in attendance:

RHYNE CLONINGER EADDY JETTON

COUNCILMAN CLONINGER – WARD II REPRESENTATIVE PUBLICLY GIVING NOTIFICATION OF HIS RESIGNATION OF HIS COUNCIL SEAT IMMEDIATELY UPON THE APPOINTMENT OF HIS SUCCESSOR:

Councilman Cloninger said, “Mayor and Council, and fellow citizens, bare with me when I do this, I hope that I can get through this without getting emotional but it’s ok if I do. I am sure that by now just about everybody knows that for health reasons, I have decided to resign from the City Council.”

“I had very much wanted to see some of the projects that we have talked about through to completion; but just like a winning basketball coach who has recruited some fine players for his team, there comes a time when one must leave it behind...leave his successor to make the most of what he has started; in hopes that it will be as good or even better than had he continued.”

“For health reasons, I will be unable to serve in the capacity that I believe the position deserves. I will undergo surgery and after recovering, I will continue to be active in local civic affairs while continuing my dental practice; but for now, the people deserve more time and effort than I will be able to given in the short-term.”

“That’s why, as I announce that I am stepping down, I want to make sure that the people of Lincolnton and Ward II which I serve are represented by someone with the knowledge and desire to do us proud. David Black served as our City Attorney, then as our Mayor. He certainly has the knowledge, and I am satisfied after talking with him that he has the desire to see us through to an even brighter future.”

SPECIAL MEETING - FEBRUARY 18, 2016

“Therefore, I am tendering my resignation from the Ward II seat on the Lincolnton City Council effective upon the selection of my successor.”

CONSIDERATION OF APPOINTMENT TO WARD II COUNCIL SEAT :

Councilman Cloninger concluded saying, “I hereby make a motion that David Black serve as my replacement on the Council.”

Mayor Hatley called for a second for this motion, Councilman Eaddy seconded the motion. Councilman Eaddy expressed a deep debt of gratitude for the countless hours and years Dr. Cloninger has served and the leadership he has provided to the City and its citizens.

Councilman Jetton began to speak and Councilman Eaddy asked that the Mayor call the question. Mayor Hatley said this is an unusual situation in that the seat would be up for election for a remaining two year term in November 2017. The appointee would serve effective immediately through December 2017. In 2017 this seat would go back on the ballot for the citizens to elect a Ward II representative to serve through December 2019, a two year term.

Mayor Hatley then repeated the motion on the floor by Councilman Cloninger to appoint David Black as the representative for Ward II. Councilmen Cloninger and Eaddy voted in favor and Councilmen Rhyne and Jetton voted no.

Mayor Hatley then voted in favor of David Black, breaking the tie. David Black was appointed to serve, beginning effectively immediately, until December 2017.

CONSIDERATION OF A MOTION FORMALLY ACCEPTING COUNCILMAN CLONINGER’S RESIGNATION:

Councilman Eaddy motioned, regretfully to accept Cloninger’s resignation. The motion passed unanimously.

Mayor Hatley took the opportunity to thank Dr. Cloninger for his service noting his leadership and experience would be hard to replace.

ADMINISTER THE OATH OF OFFICE TO NEWLY APPOINTED WARD II REPRESENTATIVE:

Mayor Hatley called David Black forward for the City Clerk to administer the Oath of Office. Upon completion of the Oath Councilman Black said, "I have some big

SPECIAL MEETING - FEBRUARY 18, 2016

shoes to fill and I hate to come in under the circumstances but I hope I can fill those shoes and do a good job for the City."

Mr. Wayne Howard, of the Lincoln Herald, asked Council to also wish David Black a happy birthday, as today is his birthday.

ADJOURNMENT:

While Dr. Cloninger has made the majority of the motions to adjourn for the past seventeen years, Councilman Eaddy on behalf of Dr. Cloninger, made the motion unanimously approved to adjourn the meeting.

DONNA C. FLOWERS, MMC
CITY CLERK

ED HATLEY
MAYOR

REGULAR MEETING - FEBRUARY 4, 2016

The Mayor and City Council met in regular session on Thursday, February 4, 2016 at 7:00 pm in the Council Chambers of City Hall located at 114 West Sycamore Street, Lincolnton NC.

Mayor Hatley called the meeting to order and led in the Pledge of Allegiance. The following Council members were in attendance:

RHYNE CLONINGER EADDY JETTON

Councilman Eaddy made the motion unanimously approved the REGULAR AGENDA.

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

- Approved of minutes from January 7th regular meeting and January 14th special called meeting
- Approved a Call to Public Hearing for the March 3rd meeting:
CUP-2-2016-Application from TowerCom requesting a conditional use permit to construct a 244 foot telecommunications tower in the Residential-25 (R-25) District. The subject property is located on the east side of Hilltop Road approximately 0.25 miles north of the intersection of Hilltop Road and South Grove Street Extension. (457 Hilltop Road, Parcel ID 17929)
- Approved (P-02-2016) – Amendment to policy item 10 of the City's Administrative Policy Manual reflecting a language change regarding the State Health Insurance Plan
- Approved (P-03-2016) – Amendment to policy item 11 of the City's Administrative Policy Manual defining the longevity steps in conjunction with recent action taken by Council at their December 2015 meeting
- Appointed (Appt-04-16) Interim City Manager/Finance Director Steve Zickefoose to serve as Second Alternate Commissioner to Electricities to represent the City
- Approved changing the Planning Retreat date from March 4th to Friday, March 18th, 2016 – 7 am to 7 pm

REGULAR MEETING - FEBRUARY 4, 2016

REGULAR AGENDA:

APPLICATION FROM THOMAS H. JOHNSON, JR. REPRESENTING SKYWAY TOWERS, REQUESTING A CONDITIONAL USE PERMIT TO CONSTRUCT A 195 FOOT TALL TELECOMMUNICATIONS TOWER IN THE GB DISTRICT. THE SUBJECT PROPERTY IS LOCATED ON THE SOUTH SIDE OF JACKSON DRIVE APPROXIMATELY 500 FEET WEST OF THE INTERSECTION OF JACKSON DRIVE AND LITHIA INN ROAD (133 JACKSON DRIVE, PARCEL ID 52159):

(CUP-1-2016)

Mayor Hatley opened the public hearing. Laura Elam, Planning Director, reviewed the background, site description, site plan, the applicants compliance with the conditional use permit requirements along with the findings of fact.

Staff review committee comments were as follows; (1) Skyway Towers shall maintain general liability insurance coverage of at least \$ 1,000,000. (2) Provisions should be made for the removal of the tower at the expense of the owners within one year of its discontinued use. (3) Erosion control permits must be obtained from Lincoln County. (4) Building permits must be obtained from Lincoln County Inspections. (5) Jackson Drive serves as a utility right of way, and this shall be noted on the plans.

Laura concluded recommending on behalf of Planning Board and staff that the proposed conditional use permit be approved subject to compliance with staff review committee comments; conversion of the tower from a lattice type tower to a monopole type tower with no guy wires and installation of evergreen plantings at a height suitable to block the view of the fence and the equipment shelter.

Both Mr. Thomas Johnson the applicant and Graham Herring, of Nexsen Pruitt, spoke in favor of the request. They provided details to Council about the proposed tower, noting three additional carriers could locate on this tower once completed. He reviewed the aerial view, depicted Mr. Sutton's property and explained how the staff review committee and the planning boards concerns have been addressed since the request was heard at the planning board meeting.

Mr. Graham spoke to surrounding property values, noting erection of this tower would not affect the values of properties in the surrounding area. They both offered to answer any questions from Council regarding the request. No one else spoke in favor or in opposition of the request.

Councilman Rhyne made the motion unanimously approved to close the public hearing.

Councilman Eaddy made the motion unanimously approved to consider the conditional use permit.

REGULAR MEETING - FEBRUARY 4, 2016

FINDINGS OF FACT:

- (1) Councilman Eaddy made the motion unanimously approved that the use will not materially endanger the public health or safety if located where proposed and developed according to plan.
- (2) Councilman Cloninger made the motion unanimously approved that the use meets all required conditions and specifications.
- (3) Councilman Rhyne made the motion unanimously approved that the use will not substantially injure the value of adjoining or abutting property or the use is a public necessity.
- (4) Councilman Jetton made the motion unanimously approved that the location and character of the use, if developed according to plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincoln Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.
- (5) Councilman Cloninger made the motion unanimously approved that the tower will not result in the interference with the safe operation of aircraft in relation to existing or planned airport facilities.

Councilman Rhyne made the motion unanimously approved to grant the conditional use permit as recommended by the Planning Board.

APPLICATION FROM THE LINCOLN PLANNING DEPARTMENT REQUESTING AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE. THE PROPOSED AMENDMENT WOULD AMEND SECTIONS 153.170 – 153.172 IN REGARDS TO SIGNS PERMITTED IN THE CENTRAL BUSINESS (CB) AND CENTRAL BUSINESS TRANSITIONAL (CBT) DISTRICTS:

(ZTA-1-2016)

Mayor Hatley opened the public hearing. Laura Elam, Planning Director, reviewed the request to amend the Unified Development Ordinance. She said the purpose of this change to the regulations for signs in the downtown area is to allow added flexibility to the available signage options for downtown property owners and businesses.

Laura said the existing regulations for the Central Business District (CB) and Central Business Transitional (CBT) districts allow wall signs, projecting signs and canopy and awning signs. Staff is recommending three changes to the UDO in order to allow added flexibility to the available signage options for downtown property owners and businesses. The proposed amendment includes the following three changes:

Wall Signage:

The current restriction on the size of signs on building walls facing a parking area or alley (eight square feet) would be replaced with the same size limit for signs located along a public street (10% of the building wall area, not to exceed 100

REGULAR MEETING - FEBRUARY 4, 2016

square feet). The additional signage area on the sides and/or rear walls of buildings could serve to heighten visibility and awareness of downtown businesses to drivers and pedestrians.

Projecting Signs:

The current provision which limits projecting signs in the CB district to no more than three square feet in area with an eight and one-half foot clearance from the sidewalk would be amended to allow a projecting sign of up to eight square feet in area with a clearance from the sidewalk of eight feet. This revision would allow projecting signage similar to the signs for Southern Charm Winery and The Salty Petal without the requirement for a variance from the Board of Adjustment.

Canopy and Awning Signs:

The standards for signs in the CB and CBT district that are hung under a canopy or awning perpendicular to the building would be revised to align with the proposed revised standards for projecting signs in the CB district. This change would increase the allowable sign area from three square feet to eight square feet and decrease the required vertical clearance from the sidewalk from eight and one half feet to eight feet. This would allow projecting signs under a canopy or awning similar to projecting signs attached to a building wall.

Laura concluded recommending on behalf of Planning Board and staff that the UDO be amended to incorporate the above stated additional signage options for downtown property owners and businesses.

Councilman Eaddy made the motion unanimously approved to close the public hearing.

Councilman Cloninger made the motion unanimously approved to amend the UDO as recommended. He said, "This seems to be an effort to be more friendly to downtown developers and businesses and I commend the Planning Department for presenting these changes."

Councilman Eaddy echoed Councilman Cloninger's comments and said, "There is no quality control on signs, just on the size of the signs."

RESOLUTION HONORING WILLIAM "ALLEN" LYNCH FOR 27 YEARS OF SERVICE WITH THE CITY OF LINCOLNTON:

(R-03-16)

Mayor Hatley called on Allen Lynch to come forward for the presentation of a framed resolution honoring his upcoming retirement. It read as follows:

WHEREAS, William "Allen" Lynch, began employment with the City of Lincolnton on July 22, 1987. During his employment, Allen has faithfully served the City working in both the Wastewater Treatment Plant Operations and Distribution and Collections Department; and

REGULAR MEETING - FEBRUARY 4, 2016

WHEREAS, William “Allen” Lynch, through his dedication and training received the highest levels of certification, through the NC Department of Environment and Natural Resources, in both Water Distribution and Water Pollution; and

WHEREAS, William “Allen” Lynch, has throughout his tenure assisted the City in the performance of his duties, working through Hurricane Hugo in 1989 serving as a Utilities Maintenance Mechanic, working throughout the devastation for the restoration of services to the City and its citizens;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Lincolnton, that appreciation be shown to **William “Allen” Lynch**, honoring him on his upcoming retirement on March 1, 2016 and that we extend congratulations and best wishes to him for continued success in all his future endeavors.

BE IT FURTHER RESOLVED, that this resolution be presented to him and spread upon the official minutes of the City of Lincolnton.

Adopted and presented this the 4th day of February, 2016. Councilman Cloninger made the motion unanimously approved to adopt the resolution as written.

RESOLUTION OF CONSIDERATION TO CONDUCT A PRIVATE SALE OF CITY PROPERTY:

(R-04-16)

Mayor Hatley read aloud the following resolution:

WHEREAS, the City of Lincolnton owns certain items of personal property that have become surplus for its current needs; and

WHEREAS, North Carolina General Statute 160A-266 permits the City to sell such property by private sale, upon authorization by the Lincolnton City Council at a regular meeting and notice to the public; and

WHEREAS, the Mayor and City Council is convened in a regular meeting;

THEREFORE, THE MAYOR and CITY COUNCIL of the CITY OF LINCOLNTON RESOLVES THAT:

1. The City Council authorizes the City to sell by private sale the following items of surplus personal property:
1920's Norfolk Southern Caboose weighing
2. The City Clerk shall publish a notice summarizing this resolution, and no sale may be executed pursuant to this resolution until at least 10 days after the day the notice is published.

Adopted this the 4th day of February 2016.

Councilman Rhyne made the motion unanimously approved to adopt the resolution as presented.

REGULAR MEETING - FEBRUARY 4, 2016

PRESENTATION OF INTERMEDIATE LAW ENFORCEMENT CERTIFICATION AWARD TO DETECTIVE TONY POTTS OF THE LINCOLNTON POLICE DEPT:

Rodney Jordan, Chief of Police, recognized an eight year veteran of the Lincolnton Police Department, Tony Potts, for recently being promoted to detective and for receiving his Intermediate Law Enforcement Certification. The Chief said a lot of hard work and classroom hours of training are required, above and beyond what is required of the law enforcement officer, to achieve this certification. He commended Detective Potts as did Mayor and City Council on this accomplishment.

CONSIDERATION OF A BUDGET AMENDMENT INCREASING THE GENERAL FUND - STATE GRANTS LINE ITEM IN THE AMOUNT OF \$ 96,107.00 FOR DOWNTOWN REVITALIZATION NOTE: THE CITY RECEIVED THIS FUNDING AS A RESULT OF SESSION LAW 2015-241

(BA-01-16)

Steve Zickefoose, Interim City Manager, requested Council consider approval of a budget amendment to include recent grant monies received, in the amount of \$ 96,107.00, for downtown revitalization efforts. The City was awarded this grant through the Office of the NC Governor, through the state budget (Session Law 2015-241). Vicki Davis, Business & Community Development Director is currently working with the state to identify possible uses for these funds.

Councilman Eaddy made the motion unanimously approved the budget amendment, amending the 2015-16 fiscal year budget, adding a State Grants line item increasing the general fund by the above said amount.

CONSIDERATION OF CONTRACT BETWEEN THE CITY AND DDA FOR THE LINCOLNTON WINE FEST TO BE HELD SATURDAY, APRIL 23, 2016 FROM 11 AM TO 5 PM:

(C-01-16)

Donna Beringer, DDA Chair and Abby Cole, Events and Marketing Coordinator requested that Council consider approving the 2016 contract for the Wine Fest to be held on Saturday, April 23rd, in downtown Lincolnton. A description of the event along with a map depicting the event areas were presented.

This item generated some discussion. Councilman questioned if the City should be named, additionally insured. The City Attorney said definitely. Councilman Eaddy asked if there was a way to encourage downtown businesses to stay open during these type events. Abby said they will use the Ever Bridge system to contact businesses encouraging them to stay open and support downtown events.

REGULAR MEETING - FEBRUARY 4, 2016

Councilman Eaddy made the motion unanimously approved to enter into the contract granting permission for alcohol sales for this event.

CONSIDERATION OF CONTRACT BETWEEN THE CITY AND DDA FOR THE 2016 ALIVE AFTER FIVE CONCERT SERIES & CRUISE-IN:

(C-02-16)

Donna Beringer, DDA Chair and Abby Cole, Events and Marketing Coordinator requested that Council consider approving the 2016 contract for Alive After Five Concert Series, to be held in downtown Lincolnton. A description of the event along with a map depicting the event areas were presented. The schedule for this years events were listed as follows:

Thursday, May 26th, 2016 from 6 to 10 pm

Thursday, June 30th, 2016 from 6 to 10 pm

Thursday, July 28th, 2016 from 6 to 10 pm

Thursday, August 25th, 2016 from 6 to 10 pm

Thursday, September 29th, 2016 from 6 to 10 pm

Councilman Cloninger made the motion unanimously approved to enter into the contract granting permission for alcohol sales for this event.

CONSIDERATION OF CONTRACT BETWEEN THE CITY AND DDA FOR THE 2016 HOG HAPPENIN TO BE HELD FRIDAY, JUNE 3 FROM 6 PM TO 10 PM AND SATURDAY JUNE 4, 2016 FROM 10 AM TO 6 PM (ALCOHOL PERMIT TIME 10 TO 4 PM ON SATURDAY)

(C-04-16)

Donna Beringer, DDA Chair and Abby Cole, Events and Marketing Coordinator requested that Council consider approving the 2016 contract for the Hog Happenin Event to be held on Friday, June 3rd from 6 pm to 10 pm and Saturday, June 4th, 2016 from 10 am to 6 pm (with alcohol permit time from 10 am to 4 pm), in downtown Lincolnton. A description of the event along with a map depicting the event areas were presented.

Councilman Jetton questioned if this permit was only for the sale of beer and wine. Abby confirmed that it was as liquor sales are through a separate permit and are not included for any of these events.

Councilman Eaddy made the motion unanimously approved to enter into the contract granting permission for alcohol sales for this event.

REGULAR MEETING - FEBRUARY 4, 2016

MONTHLY FINANCIAL/ OVERTIME REPORT:

Steve Zickefoose, Interim City Manager, told Council that these numbers reflect the half way point for this budget year and to date the numbers are looking pretty good. He provided Council with the following numerical financial/overtime update:

February 2016 Council Meeting

Executive Summary

December 2015 Year-To-Date

Comparative for Budgetary Purposes

		15-16	% of Budget	14-15	Difference	
General Fund						
Fund 10	Revenues	5,336,608.15	(1) 45.33%	5,085,295.60	251,312.55	(1)
	Expenses	4,231,810.52	(2) 45.39%	4,298,409.49	(66,598.97)	(2)
	Difference	1,104,797.63		786,886.11	317,911.52	
Water & Sewer Fund						
Fund 61	Revenues	4,567,151.24	(3) 49.55%	4,412,706.86	154,444.38	(3)
	Expenses	2,892,382.64	(4) 39.03%	2,951,163.33	(58,780.69)	(4)
	Difference	1,674,768.60		1,461,543.53	213,225.07	
Electric Fund						
Fund 63	Revenues	3,959,929.31	(5) 51.15%	3,855,582.05	104,347.26	(5)
	Expenses	3,686,632.35	(6) 51.75%	3,821,717.72	(135,085.37)	(6)
	Difference	273,296.96		33,864.33	239,432.63	
Overtime	80+ hours	129,259.29		159,787.63	(30,528.34)	

- (1) Property tax, sales tax, franchise tax up total of \$195,000. Cemetery sales up \$13,000. GovDeals up \$
- (2) Salaries and Benefits up \$145,000 due to health insurance. Capital purchases down \$189,000.
- (3) Water & Sewer revenues up \$359,000. Late/Default Fees up \$10,000. Miscellaneous revenue down (\$216,000). We had received FEMA and Insurance claim payments for \$216,000 in 2014.
- (4) Salaries and Benefits up \$34,000 due to filling vacant positions and health insurance. Capital expense up \$78,000. Obligations and services up \$40,000. Debt Service down (\$161,000). Fixed charges down (\$77,000). Supplies and inventory up \$31,000.
- (5) Electric sales up \$274,000. Sales tax no longer a budget line (\$179,000.) Gov Deals up \$8,000.
- (6) Sales tax due to State no longer a budget line. Taxes collected and given directly to State. (\$179,000).

REGULAR MEETING - FEBRUARY 4, 2016

REVIEW OF JOB SPECIFICATION, PROFILE BROCHURE AND ADVERTISEMENT FOR RECRUITMENT OF A CITY MANAGER:

Mayor Hatley and Tanya Osborne, Human Resources Director, presented Council a brochure to assist in the recruitment of a City Manager, defining a profile of the position while marketing Lincoln. She also presented a job specification and an advertisement for their consideration and approval to begin the process for recruitment as early as next week.

Council considered each item separately and took action as follows; Councilman Rhyne made the motion unanimously approved to proceed with the landscape format of the brochure.

Councilman Eaddy made the motion unanimously approved to proceed with the job specification as presented to Council.

Councilman Rhyne made the motion unanimously approved to proceed with the advertisement as presented to Council.

Tanya credited Chris Jones, IT Analysis, for his work on creating a brochure in a short time frame. Council commended Tanya and Chris for putting this information together so quickly. They were very pleased with the brochure noting it could be used as a marketing tool on our website generically after the city manager search is complete.

PUBLIC COMMENT:

Mr. Tommy Huskey, of 821 S Poplar Street, presented Council information on the NC Rehabilitation Code written expressly for existing buildings. This code moves away from the historic and nearly universal reliance on new building codes as the measuring stick for safety in existing buildings.

He said developers and building owners can not predict with certainty the time and resources required to rehab outdated or deteriorated buildings. Thus, many projects are not even attempted – and buildings become dilapidated or vacant. The five page handout addressed repair, renovation, alteration, reconstruction, change of use and additions for structures.

This item generated some discussion with Council expressing concerns that the City may get to a point that we consider having our own building inspector. Council suggested a meeting with the County Manager and Lincoln County Inspections to discuss possible ways to assist with more reasonable ways to rehab buildings in downtown. Mayor Hatley asked Laura Elam and Vicki Davis to discuss this further at the upcoming Planning retreat to be held March 18th.

REGULAR MEETING - FEBRUARY 4, 2016

Robert Tomlinson, of 501 S Grove Street spoke to Council expressing his concerns questioning the cost of liability insurance for downtown events.

CLOSED SESSION:

City Attorney TJ Wilson told Council they would need to add a section to the closed session portion of the meeting to discuss a proposed insurance settlement, he cited section (3) to be added to the motion.

Councilman Rhyne made the motion unanimously approved to enter into Closed Session in accordance with NCGS 143-318.11(a)(1)(3)(6) to discuss both consideration of a legal settlement and personnel.

Councilman Eaddy made the motion unanimously approved to return to regular session.

City Attorney TJ Wilson reported that Council took action whereby they discussed and considered a settlement for an EEOC claim, Flowers vs The City of Lincolnton. He said a settlement has been reached in the amount of \$ 10,000 and EEOC charges have been dismissed by both parties.

NEWS MEDIA:

There were no questions for Council from the News Media.

ADJOURNMENT:

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

DONNA C. FLOWERS, MMC
CITY CLERK

ED HATLEY
MAYOR

SPECIAL MEETING - JANUARY 27, 2016

The Mayor and City Council held a special called meeting on Wednesday, January 27, 2016 at 7:00 p.m. in the Council Chambers of City Hall, located at 114 West Sycamore Street Lincoln. The purpose of the meeting was to review citizens input regarding qualifications for a City Manager as well to finalize a profile and job description for the position.

Council members in attendance were:

RHYNE CLONINGER EADDY JETTON

Mayor Hatley called the meeting to order. He noted that the City has received input from four citizens regarding qualifications for a City Manager. Copies of each were provided to Council.

CONSIDERATION OF CITIZENS INPUT FOR CITY MANAGER QUALIFICATIONS TO BUILD A PROFILE:

Interim City Manager Steve Zickefoose gave a summary of the four responses from citizens. Mayor and Council took several minutes to look over the responses prior to starting the list of what they would like to see in a City Manager.

Councilman Eaddy said, "The citizen input shows a lot of consistency, from person to person, one of the statements that is indicative of management is a collaborative approach style management." Mayor Hatley said "The management style that is a take credit style has since long passed and I feel a collaborative style management is what we need."

Holding a degree in Public Administration or Political Science or something in a specialized governmental field, credentialed, would be necessary.

MAYOR AND COUNCIL INPUT ON QUALIFICATIONS TO INCORPORATE AND FINALIZE PROFILE:

Mayor Hatley called on Human Resources Director Tanya Osborne to compile the list of Council's qualifications, on a flip chart, while they were discussing their ideas.

SPECIAL MEETING - JANUARY 27, 2016

Councilman Jetton said he also would like to see the next manager be a team player with a collaborative leadership style but most of all he wants that person to have good common sense.

After much discussion, Mayor and Councils thoughts on the qualities they would like to see in the next manager were very similar.

DISCUSSION OF DRAFT ADVERTISEMENT TO BEGIN SEARCH FOR A CITY MANAGER :

Tanya Osborne, Human Resources Director, presented samples of both position profiles and job descriptions for a City Manager. She outlined a proposed process for recruitment which was in line with a recommendation from Mr. Hartwell Wright, HR Consultant with the NC League of Municipalities.

After some discussion, Council directed Tanya, with the assistance of Chris Jones, IT Analyst for the City, to create a brochure patterned from samples from the City of Oxford.

City Council would then look at drafts for the job specification, brochure/profile and position advertisement at their February 4th City Council meeting at which time they would determine a definite timeline for reviewing cover letters and resumes for applicants. Mayor Hatley said once applications are received for thirty days Council could meet again to review and discuss potential candidates to be interviewed. The first review could be done on March 12th or March 18th at the conclusion of the budget workshop.

ADJOURNMENT:

Councilman Rhyne made the motion unanimously approved that the meeting be adjourned.

DONNA C. FLOWERS, MMC
CITY CLERK

ED HATLEY
MAYOR

ITEM #

4

***NO BACKUP
NECESSARY
FOR THIS ITEM***

ITEM #

5

CITY OF LINCOLNTON

CITY COUNCIL
Ed L. Hatley, Mayor
Martin A. Eaddy, Mayor Pro-Tem
Devin Rhyne
David M. Black
Roby D. Jetton



INTERIM CITY MANAGER
Steve Zickefoose
szickefoose@lincolntonnc.org
CITY CLERK
Donna C. Flowers, CMC
donnaflowers@ci.lincolnton.nc.us
CITY ATTORNEY
Thomas J. Wilson, Jr..

MEMORANDUM

TO: Mayor and Council

FROM: Steve Zickefoose, Interim City Manager *Steve*

SUBJECT: Utility Account Policy and Procedures

DATE: February 24, 2016

We recently extended the utility accounts due date and default date in an effort to be more customer friendly.

For safekeeping, and in keeping with prior practices, I am placing an updated version of the "Important Utility Account Information" procedure list on the consent agenda for approval.

This has been a very positive change and appreciated by many of our customers.

Thank you.



Important Utility Account Information

- Utility accounts are due and payable at the City Office by the **20th of every month by 5pm.**
- Accounts not paid in full by the **20th of the month** will be assessed a late fee of **\$15.00 or two percent (2%)** of the total bill, whichever is greater. (Adopted 8-3-06)
- Any account not paid in full by the **27th of the month by 5 pm** is in **Default**, and utility services may be discontinued at anytime thereafter without further notice. Any account in **Default** will be assessed a **Default fee** of **\$25.00** subject to the following provisions. Provided that the said **Default fee** will be assessed whether or not utility services have been disconnected at the time the account is brought current; moreover, the **Default Fee** will be **\$50.00** if utility services are restored on weekends, holidays, or after 4:30 pm.
- An additional fee will be imposed for any check presented to the City that is subsequently dishonored by the financial institution upon which it is drawn.
- **No water adjustments are allowed.** One sewer adjustment will be allowed within a 12 month period. (Adopted 8-3-06)
- A second sewer adjustment will be considered, based on the circumstances surrounding the request. The manager shall have the authority to request information from the customer, in order to make a final determination. (Adopted 6-3-10)
- The filling of a swimming pool will not count as an adjustment. To receive a sewer adjustment for a pool, the city must be notified in advance in order for the city to acquire a meter reading immediately before and after the pool is filled. (Adopted 6-3-10)
- If you have any questions concerning your bill, you may contact the City Office during regular office hours: 8:30 a.m. – 5:00 p.m. Monday through Friday except holidays at 114 W. Sycamore Street or by calling (704) 736-8980. For your convenience, a night deposit box is located at the drive thru window.
- **STATE AND LOCAL LAWS PROHIBIT TAMPERING WITH SERVICE.**
- North Carolina General Statutes prohibit the release of any information in regards to public utilities to anyone other than the person or persons listed on the application for service. The City of Lincolnton abides by this privacy statute and will not release any information in regards to an account unless the applicant gives express written permission by means of a notarized document or verbally in person with proper identification. This applies to owners and landlords of rental properties as well. The specific statute is NC G.S. 132-1.1 sec c. A copy of that statute is available if requested.

ITEM #

6

Mayor & City Council:

***The Planning Board tabled consideration of this
item at the request of the applicant
at their March 15th meeting.***

***The Public Hearing has been advertised for tonight's
meeting, therefore the Mayor would open the Public
Hearing and ask for a motion
to continue the Public Hearing
until the April 7th regular City Council meeting.***

***Back up information for this hearing
will appear in the April 7th regular agenda***

MEMO TO: Steve Zickefoose
Donna Flowers

FROM: Laura Elam

SUBJECT: Agenda Packet for the March 3, 2016 City Council Meeting

DATE: February 22, 2016

PUBLIC HEARING TO BE TABLED TO APRIL 7

CUP-2-2016:

The Planning Board tabled consideration of CUP-2-2016 to their March 15 meeting at the request of the applicant. Therefore, the public hearing will be April 7.

CALLS TO PUBLIC HEARING

There are no calls to hearing for the March City Council meeting.

MONTHLY REPORT

The February 2016 monthly report is attached.

ITEM #

7

INSTALLMENT PURCHASE CONTRACT

BETWEEN

CARTER BANK & TRUST

AND

CITY OF LINCOLNTON, NORTH CAROLINA

**Dated
March 10, 2016**

**INSTALLMENT PURCHASE CONTRACT
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THIS INSTRUMENT HAS BEEN PRE-AUDITED
IN THE MANNER REQUIRED BY
THE LOCAL GOVERNMENT BUDGET AND
FISCAL CONTROL ACT.

Steven Zickefoose
Finance Director

INSTALLMENT PURCHASE CONTRACT

THIS INSTALLMENT PURCHASE CONTRACT, dated March 10, 2016 (the "*Contract*"), is between **CARTER BANK & TRUST** (the "*Lender*") and the **CITY OF LINCOLNTON, NORTH CAROLINA** (the "*City*"), a municipal corporation duly created and validly existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the "*State*"), existing as such under and by virtue of the Constitution, statutes and laws of the State;

PREAMBLES

WHEREAS, the City has the power, pursuant to North Carolina General Statutes, Section 160A-20, to (1) purchase real and personal property and (2) enter into installment purchase contracts to finance the purchase of real and personal property used, or to be used, for public purposes;

WHEREAS, the City Council of the City (the "*City Council*") has previously determined, and hereby further determines, that it is in the best interests of the City to finance the acquisition of motor vehicles (the "*Equipment*") for its general governmental purposes;

WHEREAS, to obtain the funds to purchase the Equipment, the City Council has determined that it is in the best interests of the City to enter into this Contract with the Lender under which it will make Installment Payments and Additional Payments in consideration thereof;

WHEREAS, the proceeds from the advance of funds by the Lender to the City hereunder (the "*Purchase Price*") are to be used to purchase the Equipment and for other purposes set forth herein;

WHEREAS, the Lender is willing to advance to the City money for the purchase of the Equipment and the City is willing to repay the money so advanced as more fully provided herein and, as security for repayment of such money, will grant to the Lender, or its designated assignee, a security interest in the Equipment acquired pursuant to this Contract;

WHEREAS, the execution, performance and delivery of this Contract have been authorized, approved and directed by the City Council by a resolution finally passed and adopted by the City Council on March 3, 2016;

WHEREAS, the execution, delivery and performance of this Contract by the Lender have been authorized, approved and directed by all necessary and appropriate action of the Lender;

WHEREAS, the obligation of the City to make Installment Payments and Additional Payments shall constitute a limited obligation of the City, payable solely from currently budgeted appropriations of the City; shall not constitute a general obligation or other indebtedness of the City within the meaning of the Constitution of the State; and shall not constitute a direct or indirect pledge of the faith and credit or taxing power of the City within the meaning of the Constitution of the State;

WHEREAS, in order to secure the obligations of the City hereunder, the City has granted a security interest in the right, title and interest of the City in the Equipment and will execute a North Carolina Uniform Commercial Code Financing Statement for the benefit of the Lender relating to its lien on the Equipment; and

WHEREAS, no deficiency judgment may be rendered against the City in any action for breach of a contractual obligation under this Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under this Contract;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following terms have the meanings specified below unless the context clearly requires otherwise:

“Acquisition Fund” means the special escrow fund created under Section 4.1 for the purpose of disbursing a portion of the funds derived from the advance of the Purchase Price in payment of the Cost of Acquisition.

“Additional Payments” means the reasonable and customary expenses and fees of the Lender, any expenses of the Lender in defending an action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes or property taxes which the Lender is expressly required to pay as a result of this Contract (together with interest that may accrue thereon in the event that the City shall fail to pay the same, as set forth herein).

“Business Day” means a day on which the Lender, at its principal corporate offices, is not required or authorized by law to remain closed.

“City” means the City of Lincolnton, North Carolina or any successor to its functions.

“City Council” means the duly elected City Council of the City, or any successor to its functions.

“City Representative” means (i) the person or persons at the time designated to act on behalf of the City for the purpose of performing any act under this Contract by a written certificate furnished to the Lender containing the specimen signatures of such person or persons and signed on behalf of the City by its City Manager, or (ii) if any or all of the City’s rights and obligations are assigned under this Contract, the person or persons at the time designated to act on behalf of the City and the assignee by a written certificate similarly furnished and of the same tenor.

“Code” means the Internal Revenue Code of 1986, as amended, including regulations promulgated thereunder.

“Completion Date” means the date by which the City reasonably expects to complete the acquisition of the Equipment.

“Cost of Acquisition” shall be deemed to include payment of or reimbursement for the purchase of the Equipment, including:

(a) obligations incurred or assumed in connection with the acquisition of the Equipment;

(b) the cost of the acquisition of the Equipment; including, without limitation, the Lender’s fees and expenses (including the fees and expenses of its counsel) incurred in connection with the delivery of the Purchase Price to the City, fees and expenses of the Local Government Commission, if any, legal fees and expenses, taxes, inspection costs, the cost of permit fees, filing fees and other fees paid in connection with the acquisition of the Equipment;

(c) all other costs which are considered to be a part of the costs of the acquisition of the Equipment in accordance with generally accepted accounting principles and which will not affect the tax status for federal income tax purposes of the designated interest component of Installment Payments payable by the City under this Contract, including sums required to reimburse the City for advances made by the City that are properly chargeable to the acquisition of the Equipment; and

(d) payment or prepayment of the principal component of Installment Payments, at the option of the City, from any money remaining in the Acquisition Fund subsequent to the Completion Date.

“Event of Default” means one or more events of default as defined in Section 12.1.

“Financing Statement” means the North Carolina Uniform Commercial Code Financing Statement setting forth the City as debtor and the Lender as secured party thereunder.

“Installment Payments” means those payments made by the City to the Lender as described in Article III and in the Payment Schedule attached hereto.

“Interest Rate” means 1.65% per annum, calculated on a 360-day year of twelve 30-day months.

“Lender” means Carter Bank & Trust, and its successors and assigns.

“Lender Representative” means any person or persons at the time designated to act on behalf of the Lender for purposes of performing any act on behalf of the Lender under this Contract by a written certificate furnished to the City containing the specimen signatures of such person or persons and signed on behalf of the Lender by its vice president.

“Payment Schedule” means the document attached hereto and incorporated herein by reference, which sets forth the City’s Installment Payments.

“Purchase Price” means the total aggregate amount of \$[Par Amount] advanced by the Lender to enable the City to acquire the Equipment under the terms of this Contract and pay the costs of entering into this Contract.

“State” means the State of North Carolina.

[END OF ARTICLE I]

ARTICLE II

ADVANCE OF THE PURCHASE PRICE

The Lender hereby agrees to make an advance to the City of the Purchase Price for deposit in the Acquisition Fund created under Section 4.1 hereof, and the City hereby accepts from the Lender the Purchase Price to be held, invested and applied in accordance with the terms and conditions of this Contract. The advance of the Purchase Price is being used to acquire the Equipment.

[END OF ARTICLE II]

ARTICLE III

INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

Section 3.1 *Amounts and Times of Installment Payments and Additional Payments.* THE CITY SHALL REPAY THE PURCHASE PRICE IN ANNUAL PAYMENTS OF THE INTEREST COMPONENTS OF THE INSTALLMENT PAYMENTS BEGINNING ON MAY 1, 2016 AND CONTINUING EACH MAY 1 (EACH A "PAYMENT DATE") THEREAFTER AND ANNUAL PAYMENT OF THE PRINCIPAL COMPONENTS OF THE INSTALLMENT PAYMENTS BEGINNING OF MAY 1, 2016 AND EACH MAY 1 THEREAFTER UNTIL MAY 1, 2022, AS PROVIDED IN THIS CONTRACT AND THE ATTACHED PAYMENT SCHEDULE. THE CITY HEREBY APPROVES THE ADVANCE OF THE PURCHASE PRICE BY THE LENDER TO THE CITY PURSUANT TO THIS CONTRACT IN THE AMOUNT OF \$[PAR AMOUNT] TO BE REPAID BY THE CITY IN THE INSTALLMENT PAYMENTS AS PROVIDED IN THIS CONTRACT AT AN INTEREST RATE PER ANNUM OF 1.65%. EACH INSTALLMENT SHALL BE DEEMED TO BE AN INSTALLMENT PAYMENT AND SHALL BE PAID IN THE AMOUNTS AND AT THE TIMES SET FORTH ON THE ATTACHED PAYMENT SCHEDULE EXCEPT AS PROVIDED HEREIN. IF AN INSTALLMENT PAYMENT IS DUE ON A DAY WHICH IS NOT A BUSINESS DAY, SUCH INSTALLMENT PAYMENT SHALL BE DUE ON THE NEXT SUCCEEDING BUSINESS DAY AND THE CITY SHALL MAKE SUCH INSTALLMENT PAYMENT ON SUCH BUSINESS DAY WITH NO ADDITIONAL INTEREST DUE THEREON. INSTALLMENT PAYMENTS SHALL BE SUFFICIENT IN THE AGGREGATE TO PAY THE PRINCIPAL AND INTEREST COMPONENTS OF THE PURCHASE PRICE AS THE SAME BECOME DUE AND PAYABLE. THE CITY SHALL PAY ADDITIONAL PAYMENTS ON A TIMELY BASIS DIRECTLY TO THE PERSON OR ENTITY TO WHICH SUCH ADDITIONAL PAYMENTS ARE OWED.

Section 3.2 *Place of Payments.* ALL PAYMENTS REQUIRED TO BE MADE TO THE LENDER HEREUNDER SHALL BE MADE TO THE LENDER AT THE ADDRESS SET FORTH IN SECTION 15.4 IN IMMEDIATELY AVAILABLE FUNDS OR AS MAY BE OTHERWISE DIRECTED IN WRITING BY THE LENDER.

Section 3.3 *Late Charges.* IF THE CITY FAILS TO PAY ANY INSTALLMENT PAYMENT BY THE TENTH DAY AFTER SUCH INSTALLMENT PAYMENT IS DUE, THE CITY SHALL PAY A LATE PAYMENT CHARGE EQUAL TO THE AMOUNT OF THE DELINQUENCY TIMES A PER DIEM RATE CALCULATED AT THE INTEREST RATE FROM THE TENTH DAY AFTER SUCH INSTALLMENT PAYMENT WAS DUE, PLUS A LATE PAYMENT CHARGE OF 4% OF THE AMOUNT OF THE PAST DUE INSTALLMENT PAYMENT. IF AN INSTALLMENT PAYMENT IS DUE ON A DAY WHICH IS NOT A BUSINESS DAY, SUCH INSTALLMENT PAYMENT SHALL BE DUE ON THE NEXT SUCCEEDING BUSINESS DAY AND THE CITY SHALL MAKE SUCH INSTALLMENT PAYMENT ON SUCH BUSINESS DAY WITH NO ADDITIONAL INTEREST DUE THEREON.

Section 3.4 *No Abatement.* THERE WILL BE NO ABATEMENT OR REDUCTION OF THE INSTALLMENT PAYMENTS OR ADDITIONAL PAYMENTS BY THE CITY FOR ANY REASON, INCLUDING BUT NOT LIMITED TO, ANY FAILURE BY THE CITY TO APPROPRIATE FUNDS TO THE PAYMENT OF THE INSTALLMENT PAYMENTS OR ADDITIONAL PAYMENTS, ANY DEFENSE, RECOUPMENT, SETOFF, COUNTERCLAIMS OR ANY CLAIM (REAL OR IMAGINARY) ARISING OUT OF OR RELATED TO THE ACQUISITION OF THE EQUIPMENT. THE CITY ASSUMES AND SHALL BEAR THE ENTIRE RISK OF LOSS AND DAMAGE TO THE EQUIPMENT FROM ANY CAUSE WHATSOEVER, IT BEING THE INTENTION OF THE PARTIES THAT THE INSTALLMENT PAYMENTS SHALL BE MADE IN

ALL EVENTS UNLESS THE OBLIGATION TO MAKE SUCH INSTALLMENT PAYMENTS IS TERMINATED AS OTHERWISE PROVIDED HEREIN.

Section 3.5 *Prepayment of Purchase Price.* CITY SHALL HAVE THE OPTION TO PREPAY ITS OBLIGATIONS UNDER THIS CONTRACT, IN WHOLE OR IN PART, ON ANY BUSINESS DAY (THE “*OPTIONAL PREPAYMENT DATE*”), UPON NOT LESS THAN 30 DAYS’ PRIOR WRITTEN NOTICE TO THE LENDER. AFTER PAYMENT OF ALL AMOUNTS OWED WITH RESPECT TO THIS CONTRACT, THE CITY WILL OWN THE EQUIPMENT FREE AND CLEAR OF ANY INTEREST OF LENDER THEREIN, AND LENDER’S SECURITY INTERESTS IN AND TO SUCH EQUIPMENT WILL BE TERMINATED.

[END OF ARTICLE III]

ARTICLE IV

ACQUISITION FUND

Section 4.1 Acquisition Fund. THERE IS HEREBY CREATED A SEPARATE FUND TO BE HELD BY THE CITY DESIGNATED AS THE "CITY OF LINCOLNTON 2016 EQUIPMENT INSTALLMENT FINANCING ACQUISITION FUND" (THE "*ACQUISITION FUND*"), WHICH SHALL BE MAINTAINED SEPARATE AND APART FROM OTHER FUNDS OF THE CITY. THE PURCHASE PRICE SHALL BE DEPOSITED IN THE ACQUISITION FUND, TOGETHER WITH THE EARNINGS FROM THE INVESTMENT THEREOF. PURSUANT TO THIS CONTRACT, THE CITY GRANTS A SECURITY INTEREST TO THE LENDER IN THE FUNDS HELD IN THE ACQUISITION FUND. SUCH INTEREST SHALL TERMINATE WITH THE TERMINATION OF THE ACQUISITION FUND. THE FUNDS IN THE ACQUISITION FUND WILL BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE IV.

Section 4.2 Investment. THE CITY SHALL INVEST AND REINVEST THE MONEY, AND ANY INTEREST THEREON, HELD IN THE ACQUISITION FUND AS PERMITTED UNDER SECTION 159-30 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. THE CITY SHALL BE SOLELY RESPONSIBLE FOR ASCERTAINING THAT ALL PROPOSED INVESTMENTS AND REINVESTMENTS COMPLY WITH FEDERAL, STATE AND LOCAL LAWS, REGULATIONS AND ORDINANCES GOVERNING INVESTMENT OF FUNDS HELD PURSUANT TO A LOAN AGREEMENT SIMILAR IN SUBSTANCE TO THE ARRANGEMENT CONTEMPLATED BY THIS CONTRACT.

Section 4.3 Disbursements. MONEY HELD IN THE ACQUISITION FUND IS TO BE DISBURSED BY THE CITY FOR PAYMENT OF THE COSTS OF ACQUISITION. THE CITY SHALL MAINTAIN RECORDS OF ALL DISBURSEMENTS FROM THE ACQUISITION FUND, INCLUDING THE INVOICES FOR WHICH THE DISBURSEMENTS WERE MADE, AND WILL PROVIDE THE LENDER A COPY OF SUCH RECORDS UPON THE LENDER'S REQUEST.

If amounts held to the credit of the Acquisition Fund are insufficient to pay the Costs of Acquisition, the City shall provide any balance of funds necessary to do so. Any money remaining in the Acquisition Fund after the completion of the acquisition of the Equipment is to be transferred to the Lender as a credit against the Installment Payment due from the City on the next payment date.

Section 4.4 Termination. THE ACQUISITION FUND SHALL BE TERMINATED AT THE EARLIEST OF (1) THE FINAL DISTRIBUTION OF AMOUNTS HELD IN THE ACQUISITION FUND OR (2) THE TERMINATION OF THIS CONTRACT.

Section 4.5 Reliance of Lender on Documents. THE LENDER MAY ACT IN RELIANCE ON ANY WRITING OR INSTRUMENT OR SIGNATURE WHICH IT BELIEVES, IN GOOD FAITH, TO BE GENUINE AND MAY ASSUME THE VALIDITY AND ACCURACY OF ANY STATEMENT OR ASSERTION CONTAINED IN SUCH A WRITING OR INSTRUMENT. THE LENDER IS NOT LIABLE IN ANY MANNER FOR THE SUFFICIENCY OR CORRECTNESS AS TO FORM, MANNER AND EXECUTION, OR VALIDITY OF ANY INSTRUMENT NOR AS TO THE IDENTITY, AUTHORITY, OR RIGHT OF ANY PERSON EXECUTING THE SAME; AND THEIR DUTIES UNDER THIS CONTRACT ARE LIMITED TO THE RECEIPT OF SUCH MONEY, INSTRUMENTS OR OTHER DOCUMENTS RECEIVED BY IT AS THE LENDER, AND FOR THE DISPOSITION OF THE SAME IN ACCORDANCE HERewith.

[END OF ARTICLE IV]

ARTICLE V

COVENANTS WITH RESPECT TO THE EQUIPMENT

Section 5.1 *Care and Use.* THE CITY SHALL USE THE EQUIPMENT IN A CAREFUL AND PROPER MANNER FOR ITS GOVERNMENTAL PURPOSES, IN COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, AND, AT ITS SOLE COST AND EXPENSE, SHALL SERVICE, REPAIR AND MAINTAIN THE EQUIPMENT SO AS TO KEEP THE EQUIPMENT IN GOOD CONDITION, REPAIR, APPEARANCE AND WORKING ORDER FOR THE PURPOSES INTENDED, ORDINARY WEAR AND TEAR EXCEPTED, AND SHALL REPLACE ANY PART OF THE EQUIPMENT AS MAY FROM TIME TO TIME BECOME DAMAGED OR DESTROYED, LOST OR STOLEN. IN ADDITION, THE CITY AGREES TO COMPLY IN ALL RESPECTS WITH ALL APPLICABLE LAWS, REGULATIONS AND RULINGS OF ANY LEGISLATIVE, EXECUTIVE, ADMINISTRATIVE, OR JUDICIAL BODY, INCLUDING, WITHOUT LIMITATION, ALL ANTI-MONEY LAUNDERING LAWS AND REGULATIONS; PROVIDED THAT THE CITY MAY CONTEST IN GOOD FAITH THE VALIDITY OR APPLICATION OF ANY SUCH LAW, REGULATION OR RULING IN ANY REASONABLE MANNER THAT DOES NOT, IN THE OPINION OF LENDER, ADVERSELY AFFECT THE INTEREST OF LENDER IN AND TO THE EQUIPMENT OR ITS INTEREST OR RIGHTS UNDER THIS CONTRACT. HOWEVER, THE CITY IS NOT OBLIGATED TO RENEW, REPAIR OR REPLACE ANY INADEQUATE, OBSOLETE, UNSUITABLE, UNDESIRABLE OR UNNECESSARY EQUIPMENT. NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, ANY AND ALL ADDITIONS TO OR REPLACEMENTS OF THE EQUIPMENT AND ALL PARTS THEREOF CONSTITUTE ACCESSIONS TO THE EQUIPMENT AND ARE SUBJECT TO ALL THE TERMS AND CONDITIONS OF THIS CONTRACT AND ARE INCLUDED IN THE TERM "*EQUIPMENT*" AS USED IN THIS CONTRACT.

Section 5.2 *Inspection.* THE LENDER HAS THE RIGHT ON REASONABLE PRIOR NOTICE TO THE CITY TO ENTER INTO AND ON THE PREMISES WHERE THE EQUIPMENT IS LOCATED TO INSPECT THE EQUIPMENT AND OBSERVE ITS USE DURING NORMAL BUSINESS HOURS. THE CITY FURTHER AGREES THAT THE LENDER HAS SUCH RIGHTS OF ACCESS TO THE EQUIPMENT AS MAY BE REASONABLY NECESSARY TO CAUSE THE PROPER MAINTENANCE OF THE EQUIPMENT IF THE CITY FAILS TO PERFORM ITS OBLIGATIONS PURSUANT TO SECTION 5.1.

Section 5.3 *Alterations and Modifications.* THE CITY MAY AT ANY TIME AND FROM TIME TO TIME, IN ITS SOLE DISCRETION AND AT ITS OWN EXPENSE, MAKE ALTERATIONS, MODIFICATIONS OR ATTACHMENTS TO THE EQUIPMENT; PROVIDED, THAT ALL SUCH ALTERATIONS, MODIFICATIONS AND ATTACHMENTS ARE SUBJECT TO THE SECURITY INTEREST OF THE LENDER IN THE EQUIPMENT; AND PROVIDED FURTHER, THE CITY SHALL REPAIR AND RESTORE ANY AND ALL DAMAGE TO THE EQUIPMENT RESULTING FROM THE INSTALLATION, MODIFICATION OR REMOVAL OF ANY SUCH ITEMS AND SUCH ITEMS SHALL NOT DAMAGE THE FUNCTIONAL CAPABILITIES OR ECONOMIC VALUE OF THE EQUIPMENT.

Section 5.4 *Title.* TITLE TO THE EQUIPMENT AND ANY AND ALL ADDITIONS, REPAIRS, REPLACEMENTS OR MODIFICATIONS THERETO IS IN THE NAME OF THE CITY SUBJECT ONLY TO THE SECURITY INTEREST CREATED UNDER THIS CONTRACT AND, ON PAYMENT OF THE INSTALLMENT PAYMENTS AND OTHER OBLIGATIONS OF THE CITY HEREUNDER, OR ON EARLIER RELEASE AS PROVIDED IN SECTION 7.4, SHALL BE OWNED BY THE CITY FREE AND CLEAR OF ANY LIEN OR SECURITY INTEREST CREATED HEREUNDER AS PROVIDED IN SECTION 7.4.

Section 5.5 *Personal Property.* THE EQUIPMENT IS, AND SHALL AT ALL TIMES BE AND REMAIN, PERSONAL PROPERTY NOTWITHSTANDING THAT THE EQUIPMENT OR ANY PART THEREOF MAY NOW BE, OR HEREAFTER BECOME, IN ANY MANNER AFFIXED OR ATTACHED TO, IMBEDDED IN, OR PERMANENTLY RESTING ON, REAL PROPERTY OR ANY BUILDING THEREON OR ANY FIXTURES.

Section 5.6 *Insurance.* THE CITY SHALL MAINTAIN, OR CAUSE TO BE MAINTAINED, AT ITS OWN EXPENSE, EXCEPT AS HEREINAFTER PROVIDED, (A) (1) CASUALTY INSURANCE POLICIES WRITTEN BY COMMERCIAL INSURANCE COMPANIES WITH RESPECT TO THE EQUIPMENT INDIVIDUALLY VALUED OVER \$50,000 AND (2) A CASUALTY SELF-INSURANCE PROGRAM WITH RESPECT TO THE PORTION OF THE EQUIPMENT INDIVIDUALLY VALUED AT \$50,000 OR LESS; PROVIDED THAT ANY COMMERCIAL INSURANCE POLICIES SHALL NAME THE LENDER AS EITHER AN ADDITIONAL INSURED OR A LOSS PAYEE, AS THEIR RESPECTIVE INTERESTS MAY APPEAR; (B) LIABILITY INSURANCE NAMING LENDER AND ITS ASSIGNS AS ADDITIONAL INSURED THAT PROTECTS LENDER FROM LIABILITY WITH LIMITS OF AT LEAST \$1,000,000 FOR BODILY INJURY AND PROPERTY DAMAGE COVERAGE, OR SUCH OTHER MINIMUM COVERAGE AMOUNT AS MAY BE APPROVED BY THE LENDER; AND (C) WORKER'S COMPENSATION COVERAGE AS REQUIRED BY THE LAWS OF THE STATE. NOTWITHSTANDING THE FOREGOING, THE CITY MAY SELF-INSURE AGAINST THE RISKS DESCRIBED IN CLAUSES (A) AND/OR (B) THROUGH A GOVERNMENT POOLING ARRANGEMENT, SELF-FUNDED LOSS RESERVES, RISK RETENTION PROGRAM OR OTHER SELF-INSURANCE PROGRAM, IN EACH CASE WITH LENDER'S PRIOR WRITTEN CONSENT (WHICH LENDER MAY GRANT, WITHHOLD OR DENY IN ITS SOLE DISCRETION) AND PROVIDED THAT THE CITY HAS DELIVERED TO LENDER SUCH INFORMATION AS LENDER MAY REQUEST WITH RESPECT TO THE ADEQUACY OF SUCH SELF-INSURANCE TO COVER THE RISKS PROPOSED TO BE SELF-INSURED AND OTHERWISE IN FORM AND SUBSTANCE ACCEPTABLE TO LENDER.

[END OF ARTICLE V]

ARTICLE VI

RESPONSIBILITIES OF THE CITY

Section 6.1 Taxes. THE CITY AGREES TO PAY WHEN DUE ANY AND ALL TAXES RELATING TO THE EQUIPMENT AND THE CITY'S OBLIGATIONS HEREUNDER INCLUDING, BUT NOT LIMITED TO, ALL LICENSE OR REGISTRATION FEES, GROSS RECEIPTS TAX, SALES AND USE TAX, IF APPLICABLE, LICENSE FEES, DOCUMENTARY STAMP TAXES, RENTAL TAXES, ASSESSMENTS, CHARGES, AD VALOREM TAXES, EXCISE TAXES, AND ALL OTHER TAXES, LICENSEES AND CHARGES IMPOSED ON THE OWNERSHIP, POSSESSION OR USE OF THE EQUIPMENT BY ANY GOVERNMENTAL BODY OR AGENCY, TOGETHER WITH ANY INTEREST AND PENALTIES.

Section 6.2 Risk of Loss.

(a) If the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, except as permitted under subsection (c) below, the City and the Lender will cause the Net Proceeds (as hereinafter defined) of any insurance claim to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be retained by the City. Notwithstanding the foregoing, the City has the option to use such Net Proceeds to prepay the Installment Payments in accordance with Section 3.5. For purposes of this Article, the term "*Net Proceeds*" means the amount remaining from the gross proceeds of any insurance claim after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

(b) If the City elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this section, the replacement equipment (the "*Replacement Equipment*") must be of similar type, utility and condition to the Replaced Equipment and of similar value than the Replaced Equipment. The City hereby grants the Lender a security interest in any such Replacement Equipment. The City shall represent, warrant and covenant to the Lender that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through the Lender, and shall provide to the Lender any and all documents as the Lender may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to the Lender evidencing the Lender's security interest in the Replacement Equipment. The Lender and the City hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph constitutes "*Equipment*" for purposes of this Contract. The City shall complete the documentation of Replacement Equipment within 60 days after the occurrence of a casualty event.

Section 6.3 Performance by the Lender of the City's Responsibilities. ANY PERFORMANCE REQUIRED OF THE CITY OR ANY PAYMENTS REQUIRED TO BE MADE BY THE CITY MAY, IF NOT TIMELY PERFORMED OR PAID, BE PERFORMED OR PAID BY THE LENDER, AND, IN THAT EVENT, THE LENDER SHALL BE IMMEDIATELY REIMBURSED BY THE CITY FOR SUCH PAYMENTS OR OTHER PERFORMANCE BY THE LENDER, WITH INTEREST THEREON AT THE INTEREST RATE.

Section 6.4 Financial Statements. THE CITY AGREES THAT IT WILL FURNISH THE LENDER ANNUALLY WITHIN 270 DAYS OF THE END OF EACH FISCAL YEAR CURRENT FINANCIAL STATEMENTS (INCLUDING, WITHOUT LIMITATION, THE CITY'S ANNUAL BUDGET AS SUBMITTED OR APPROVED) AND SUCH OTHER DOCUMENTS RELATING TO THE CITY'S ABILITY TO CARRY OUT ITS OBLIGATIONS UNDER THIS CONTRACT AS THE LENDER SHALL REASONABLY REQUEST, AND PERMIT THE LENDER OR ITS AGENTS AND REPRESENTATIVES TO INSPECT THE CITY'S BOOKS AND RECORDS AND MAKE

EXTRACTS THEREFROM. THE CITY ELECTRONICALLY POSTING THE ANNUAL FINANCIAL STATEMENTS AND THE ANNUAL BUDGET ON ITS WEBSITE SHALL BE CONSIDERED FURNISHING SUCH DOCUMENTS TO THE LENDER. THE CITY REPRESENTS AND WARRANTS TO AND COVENANTS WITH THE LENDER THAT ALL FINANCIAL STATEMENTS THAT HAVE BEEN OR MAY BE DELIVERED TO THE LENDER FAIRLY AND ACCURATELY REFLECT THE CITY'S FINANCIAL CONDITION AND THERE HAS BEEN AND WILL BE NO MATERIAL ADVERSE CHANGE IN THE CITY'S FINANCIAL CONDITION AS REFLECTED IN THE FINANCIAL STATEMENTS SINCE THE RESPECTIVE DATES THEREOF.

[END OF ARTICLE VI]

ARTICLE VII

TITLE; LIENS

Section 7.1 Title. TITLE TO THE EQUIPMENT AND ANY AND ALL ADDITIONS, REPAIRS, REPLACEMENTS OR MODIFICATIONS THERETO SHALL BE IN THE CITY FROM AND AFTER THE DATE OF EXECUTION AND DELIVERY OF THIS CONTRACT SO LONG AS THE CITY IS NOT IN DEFAULT HEREUNDER AND SHALL VEST PERMANENTLY IN THE CITY ON THE PAYMENT IN FULL OF THE PRINCIPAL COMPONENT OF THE INSTALLMENT PAYMENTS THEN OUTSTANDING, FREE AND CLEAR OF ANY LIEN OR SECURITY INTEREST OF THE LENDER THEREIN. SIMULTANEOUSLY WITH THE EXECUTION AND DELIVERY OF THIS CONTRACT, THE CITY SHALL DELIVER TO THE LENDER THE FINANCING STATEMENT IN FORM SUITABLE FOR RECORDATION. ON PAYMENT OR PROVISIONS FOR PAYMENT IN FULL OF ALL OF THE CITY'S OBLIGATIONS HEREUNDER, INCLUDING THE PRINCIPAL COMPONENT OF THE INSTALLMENT PAYMENTS THEN OUTSTANDING AND ALL OTHER PAYMENTS DUE HEREUNDER, THE LENDER OR ITS ASSIGNEE, AT THE CITY'S EXPENSE AND REQUEST, SHALL TERMINATE THE FINANCING STATEMENT AND THIS CONTRACT WILL TERMINATE.

Section 7.2 Liens. THE CITY SHALL NOT DIRECTLY OR INDIRECTLY CREATE, INCUR, ASSUME OR SUFFER TO EXIST ANY MORTGAGE, PLEDGE, LIEN, CHARGE, SECURITY INTEREST, ENCUMBRANCE OR CLAIM ON OR WITH RESPECT TO THE EQUIPMENT OR THE ACQUISITION FUND OR ANY INTEREST THEREIN, EXCEPT FOR: (1) THE LIEN AND SECURITY INTEREST OF THE LENDER THEREIN; AND (2) SUCH MINOR DEFECTS, IRREGULARITIES, ENCUMBRANCES AND CLOUDS ON TITLE AS NORMALLY EXIST WITH RESPECT TO PROPERTY OF THE GENERAL CHARACTER OF THE EQUIPMENT AND AS DO NOT MATERIALLY IMPAIR TITLE TO THE EQUIPMENT SO LONG AS THE CITY TAKES ACTION TO REMOVE SUCH LIENS WITHIN 30 DAYS OF ACTUAL NOTICE OF SUCH LIENS. THE CITY SHALL PROMPTLY, AT ITS OWN EXPENSE, TAKE SUCH ACTION AS MAY BE NECESSARY DULY TO DISCHARGE ANY SUCH MORTGAGE, PLEDGE, LIEN, SECURITY INTEREST, CHARGE, ENCUMBRANCE OR CLAIM IF THE SAME SHALL ARISE AT ANY TIME. THE CITY SHALL REIMBURSE THE LENDER FOR ANY EXPENSE INCURRED BY IT TO DISCHARGE OR REMOVE ANY SUCH MORTGAGE, PLEDGE, LIEN, SECURITY INTEREST, CHARGE, ENCUMBRANCE OR CLAIM.

Section 7.3 Security Agreement. TO SECURE ALL OBLIGATIONS OF THE CITY HEREUNDER, THE CITY HEREBY GRANTS TO THE LENDER UNDER THIS CONTRACT A SECURITY INTEREST IN ANY AND ALL OF THE CITY'S RIGHT, TITLE AND INTEREST IN THE EQUIPMENT, ALL ADDITIONS, ATTACHMENTS, ACCESSIONS, SUBSTITUTIONS AND REPLACEMENTS THERETO, AND RENTAL PAYMENTS DUE OR TO BECOME DUE THEREUNDER, AND ANY AND ALL PROCEEDS THEREOF, INCLUDING WITHOUT LIMITATION, THE PROCEEDS OF INSURANCE THEREON. THE LENDER IS AUTHORIZED TO FILE FINANCING STATEMENTS WITHOUT THE CITY'S SIGNATURE OR TO EXECUTE AND FILE SUCH FINANCING STATEMENTS WITHOUT THE CITY'S SIGNATURE ON THE CITY'S BEHALF AS SPECIFIED BY THE UNIFORM COMMERCIAL CODE IN THE STATE OF NORTH CAROLINA RELATED TO THE LENDER'S SECURITY INTEREST IN THE EQUIPMENT.

Section 7.4 Release of Security Interest. THE LENDER SHALL RELEASE THE SECURITY INTEREST IN THE CITY'S RIGHT, TITLE AND INTEREST IN AND TO THE EQUIPMENT AND THE RELATED ADDITIONS, ATTACHMENTS, ACCESSIONS, SUBSTITUTIONS, REPLACEMENTS AND PROCEEDS WITH RESPECT THERETO WHEN THE AMOUNTS DUE UNDER THIS CONTRACT ARE PAID IN FULL OR THIS CONTRACT IS

OTHERWISE TERMINATED IN ACCORDANCE WITH THE PROVISIONS HEREIN. PRIOR TO PAYMENT IN FULL AND ON THE CITY'S WRITTEN REQUEST, THE LENDER MAY CONSENT TO THE RELEASE OF A PORTION OF THE EQUIPMENT AND THE RELATED ADDITIONS, ATTACHMENTS, ACCESSIONS, SUBSTITUTIONS, REPLACEMENTS AND PROCEEDS WITH RESPECT THERETO IF THE CITY CAN DEMONSTRATE THAT THE VALUE OF THE EQUIPMENT REMAINING SUBJECT TO THE LIEN FOLLOWING THE RELEASE IS AT LEAST EQUAL TO THE PRINCIPAL COMPONENT OF THE CITY'S REMAINING INSTALLMENT PAYMENTS. ON ANY RELEASE SUBJECT TO THIS PROVISION, THE CITY SHALL PROVIDE THE LENDER WITH A REVISED LIST OF EQUIPMENT SUBJECT TO THE SECURITY INTEREST UNDER THIS CONTRACT.

Before the release of the security interest in all the Equipment, the City must pay or provide for payment of any rebatable arbitrage with respect to the proceeds of the Purchase Price to be paid to the United States and any other obligations of the City under this Contract.

On any such agreed release of the security interest with respect to a portion of the Equipment pursuant to this Section, the Lender shall execute and deliver to the City all necessary documents to effect such release of security interest, including any termination statements or partial termination statements. The City shall deposit in escrow with the Lender any applicable executed documents to effect such release of security interest, in form satisfactory to the Lender. On any such agreed release of the security interest with respect to a portion of the Equipment pursuant to this Section, the Lender shall execute, date and release any applicable documents to the City.

[END OF ARTICLE VII]

ARTICLE VIII

WARRANTIES AND REPRESENTATIONS OF THE CITY

The City warrants and represents to the Lender (all such representations and warranties being continuing) that:

(a) The City is a municipal corporation, validly organized and existing under the laws of the State and has all powers necessary to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder;

(b) The City agrees that during the term of this Contract it will take no action that would adversely affect its existence as a municipal corporation in good standing in the State, cause the City to be consolidated with or merge any political subdivision or another municipal corporation of the State or permit one or more other municipal corporations or political subdivisions of the State to consolidate with or merge into it, unless the City is the surviving municipal corporation or the municipal corporation or political subdivision of the State created thereby expressly assumes in writing the City's obligations hereunder;

(c) This Contract and all other documents relating hereto and the performance of the City's obligations hereunder and thereunder have been duly and validly authorized, executed and delivered by the City and approved under all laws, regulations and procedures applicable to the City including, but not limited to, compliance with public meeting and bidding requirements, and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute valid, legal and binding obligations of the City, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having jurisdiction may impose;

(d) Neither the execution and delivery of this Contract nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound or constitutes a default under any of the foregoing, nor conflicts with or results in a violation of any provision of applicable law or regulation governing the City and no representation, covenant and warranty herein is false, misleading or erroneous in any material respect;

(e) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public agency or body pending or, to the best of the City's knowledge, threatened, against or affecting the City challenging the validity or enforceability of this Contract or any other documents relating hereto and the performance of the City's obligations hereunder and thereunder, and compliance with the provisions hereof or thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect conflict with, constitute on the part of the City a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the City (except as contemplated herein or therein) pursuant to any agreement or other instrument to which the City is a party, or any existing law, regulation, court order or consent decree to which the City is subject;

(f) Other than any procedural requirements which are a prerequisite to the acquisition of the Equipment, no approval or consent is required from any governmental authority with respect to the entering into or performance by the City of this Contract and all other documents related thereto and the transactions contemplated hereby and thereby or if such approval is required, it has been duly obtained;

(g) The money in the Acquisition Fund and any investment earnings thereon will be used only for the purposes permitted in Article IV;

(h) No approval or consent is required from any governmental authority with respect to the entering into or performance by the City of this Contract and all other documents related thereto and the transactions contemplated hereby and thereby or if such approval is required, it has been duly obtained;

(i) There are no liens or encumbrances on the Equipment other than the lien created by this Contract;

(j) The resolutions relating to the performance by the City of this Contract and the transactions contemplated hereby and thereby, have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded;

(k) The acquisition of the Equipment is essential to the proper, efficient and economical operation of the City and the delivery of its services and permit the City to carry out public functions that it is authorized by law to perform;

(l) The City reasonably believes funds will be available to satisfy all of its obligations hereunder;

(m) The City shall (1) cause its City Manager and Finance Director to include the Installment Payments coming due in each fiscal year in the corresponding annual budget request and shall require the City Manager and Finance Director to each use his or her best efforts to obtain an appropriation therefor and (2) require that the deletion of such funds from the City's final budget be made only pursuant to an express resolution of the City Council which explains the reason for such action. This covenant on the part of the City contained in this paragraph shall be deemed to be and shall be construed to impose by law ministerial duties and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenant in this paragraph and the agreements in this Contract to be carried out and performed by the City. Nothing contained in this paragraph (m) obligates the City to appropriate the money that are included in the annual budget request;

(n) Money appropriated by the City to make Installment Payments in any fiscal year shall be used for no other purpose; and

(o) The City is not required to seek or obtain approval from the North Carolina Local Government Commission for execution and delivery of this Contract pursuant to Section 159-148(b)(2) of the North Carolina General Statutes, as amended.

[END OF ARTICLE VIII]

ARTICLE IX

TAX COVENANTS AND REPRESENTATIONS

The City covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income taxation purposes of the interest portion of the obligation created by this Contract under Section 103 of the Code. The City will not directly or indirectly use or permit the use of any proceeds of any fund created under this Contract or any funds of the City, or take or omit to take any action that would cause the obligation created by this Contract to be an "arbitrage bond" within the meaning of Section 148(a) of the Code. The City will maintain books on which will be recorded (1) the Lender or (2) any assignee of the Installment Payments due under this Contract as the registered owner of such Installment Payments. To that end, the City has executed the Arbitrage and Tax Regulatory Certificate, dated March 10, 2016, and will comply with all requirements of Section 148 of the Code to the extent applicable. The City further covenants that this Contract is not a "private activity bond" as defined in Section 141 of the Code.

Without limiting the generality of the foregoing, the City agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created by this Contract from time to time. This covenant shall survive the termination of this Contract.

Notwithstanding any provision of this Article, if the City shall provide to the Lender an opinion of counsel to the effect that any action required under this Section or the Arbitrage and Tax Regulatory Certificate is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the obligation created by this Contract pursuant to Section 103 of the Code, the City and the Lender may rely conclusively on such opinion in complying with the provisions hereof.

The City hereby designates the Installment Payments due under this Contract as a "*qualified tax-exempt obligation*" eligible for the exception from the disallowance of the deduction of interest by financial institutions allocable to the cost of carrying tax-exempt obligations in accordance with the provisions of Section 265(b)(3) of the Code. The City does not reasonably anticipate issuing more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3), including all entities which issue obligations on behalf of the City and all subordinate entities of the City, during calendar year 2016 and will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to such Section 265(b)(3) during calendar year 2016.

[END OF ARTICLE IX]

ARTICLE X

INDEMNIFICATION

To the fullest extent permitted by law, the City hereby agrees to indemnify, protect and save the Lender and its officers, employees, directors, members and agents harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees that (1) arise in tort (including strict liability claims), in contract, under 42 U.S. Code §1983 or under the public bidding laws of the State or (2) arise out of, are connected with, or result, directly or indirectly, from the Equipment or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Equipment or any portion thereof. The indemnification arising under this Article shall continue in full force and effect notwithstanding the payment in full of all obligations under or termination of this Contract.

[END OF ARTICLE X]

ARTICLE XI

DISCLAIMER OF WARRANTIES

Section 11.1 No Representations by the Lender. THE CITY ACKNOWLEDGES AND AGREES THAT IT HAS SELECTED THE EQUIPMENT BASED ON ITS OWN JUDGMENT AND DISCLAIMS ANY RELIANCE ON ANY STATEMENTS OR REPRESENTATIONS BY THE LENDER WITH RESPECT THERETO.

Section 11.2 Disclaimer by the Lender. THE LENDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT THE EQUIPMENT.

[END OF ARTICLE XI]

ARTICLE XII

DEFAULT AND REMEDIES

Section 12.1 Definition of Event of Default. THE CITY SHALL BE DEEMED TO BE IN DEFAULT HEREUNDER UPON THE HAPPENING OF ANY OF THE FOLLOWING EVENTS OF DEFAULT (EACH, AN “EVENT OF DEFAULT”):

- (a) The City fails to make any Installment Payment or Additional Payment when due;
- (b) The City fails to budget and appropriate money sufficient to pay all Installment Payments and the reasonably estimated Additional Payments coming due in any fiscal year of the City;
- (c) The City deletes from its duly adopted budget any appropriation for the purposes specified in clause (a);
- (d) The City fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in (a) or (b) above, or breaches any warranty by the City herein or therein contained, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Lender unless the Lender shall agree in writing to an extension of such time prior to its expiration;
- (e) Any bankruptcy, insolvency or reorganization proceedings or similar litigation, is instituted by the City, or a receiver, custodian or similar officer is appointed for the City or any of its property, and such proceedings or appointments are not vacated or fully stayed within 90 days after the institution or occurrence thereof;
- (f) Any warranty, representation or statement made by the City herein or in any other document executed or delivered in connection herewith is found to be incorrect or misleading in any material respect on the date made; or
- (g) An attachment, levy or execution is levied on or against the Equipment;

Section 12.2 Remedies on Default. ON THE OCCURRENCE OF ANY EVENT OF DEFAULT, THE LENDER MAY EXERCISE ANY ONE OR MORE OF THE FOLLOWING REMEDIES AS THE LENDER, IN ITS SOLE DISCRETION, SHALL ELECT:

- (a) Declare the unpaid portion of the principal component of the Installment Payments then outstanding immediately due and payable without notice or demand to the City;
- (b) Proceed by appropriate court action to enforce performance by the City of the applicable covenants of this Contract or to recover for the breach thereof;
- (c) Exercise all the rights and remedies of a secured party under the general laws of the State with respect to the enforcement of the security interest granted or reserved hereunder including, without limitation, requiring the City to assemble the Equipment, or evidence thereof, and make it reasonably available to the Lender at one or more places to be designated by the Lender which are reasonably convenient to the Lender, and, to the extent permitted by law, and take possession of the Equipment without any court order or other process of law, sell or make

other disposition of the Equipment in a commercially reasonable manner for the account of the City, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale or other disposition, toward the balance due under this Contract and, thereafter, shall pay any remaining proceeds to the City. Any required notice by the Lender of sale or other disposition or default, when mailed to the City at its address set forth herein, shall constitute reasonable notice to the City.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH GENERAL STATUTES OF NORTH CAROLINA SECTION 160A-20. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE CITY IN FAVOR OF THE LENDER IN VIOLATION OF SECTION 160A-20 INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE EQUIPMENT IS INSUFFICIENT TO PRODUCE ENOUGH MONEY TO PAY IN FULL ALL REMAINING OBLIGATIONS UNDER THIS CONTRACT.

Section 12.3 Further Remedies. THIS CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT AND THE CITY SHALL BE AND REMAIN LIABLE FOR THE FULL PERFORMANCE OF ALL ITS OBLIGATIONS HEREUNDER. ALL REMEDIES OF THE LENDER ARE CUMULATIVE AND MAY BE EXERCISED CONCURRENTLY OR SEPARATELY. THE EXERCISE OF ANY ONE REMEDY SHALL NOT BE DEEMED AN ELECTION OF SUCH REMEDY OR PRECLUDE THE EXERCISE OF ANY OTHER REMEDY.

[END OF ARTICLE XII]

ARTICLE XIII

ASSIGNMENT

The City will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Equipment without the prior written consent of the Lender. The City's interest herein may not be assigned or transferred by operation of law. The Lender may only transfer and assign its interests in this Contract to a Lender, an insurance company or a similar financial institution with prior written notice approved by the City.

[END OF ARTICLE XIII]

ARTICLE XIV

LIMITED OBLIGATION OF THE CITY

NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE CITY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, ANY FAILURE OR REFUSAL BY THE CITY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE CITY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT, AND THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEY DUE UNDER THIS CONTRACT. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE CITY'S MONEY, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE CITY'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE CITY'S MONEY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE SHALL TAKE PRIORITY.

[END OF ARTICLE XIV]

ARTICLE XV

MISCELLANEOUS

Section 15.1 Waiver. NO COVENANT OR CONDITION OF THIS CONTRACT CAN BE WAIVED EXCEPT BY THE WRITTEN CONSENT OF THE LENDER. ANY FAILURE OF THE LENDER TO REQUIRE STRICT PERFORMANCE BY THE CITY OR ANY WAIVER BY THE LENDER OF ANY TERMS, COVENANTS OR CONTRACTS HEREIN SHALL NOT BE CONSTRUED AS A WAIVER OF ANY OTHER BREACH OF THE SAME OR ANY OTHER TERM, COVENANT OR CONTRACT HEREIN. NOTWITHSTANDING THE FOREGOING, EACH OF THE PARTIES HERETO, INCLUDING THE LENDER BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS CONTRACT OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE.

Section 15.2 Severability. IF ANY PORTION OF THIS CONTRACT IS DETERMINED TO BE INVALID UNDER ANY APPLICABLE LAW, SUCH PROVISION SHALL BE DEEMED VOID TO THE EXTENT OF THE INVALIDITY AND THE REMAINDER OF THIS CONTRACT SHALL CONTINUE IN FULL FORCE AND EFFECT.

Section 15.3 Governing Law. THIS CONTRACT SHALL BE CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE.

Section 15.4 Notices. ANY AND ALL NOTICES, REQUESTS, DEMANDS, AND OTHER COMMUNICATIONS GIVEN UNDER OR IN CONNECTION WITH THIS CONTRACT ARE EFFECTIVE ONLY IF IN WRITING AND EITHER PERSONALLY DELIVERED OR MAILED BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, ADDRESSED AS FOLLOWS:

To the City —

City of Lincolnton
114 W Sycamore St.
Lincolnton, North Carolina 28092
Attention: City Manager

To the Lender —

Carter Bank & Trust
Post Office Box 1776
Martinsville, Virginia 24115-1776

The City and the Lender may, by written notice to the other or by agreement with the other, designate any further or different addresses, including electronic, to which subsequent notices, certificates or other communications shall be sent.

Section 15.5 Section Headings. ALL SECTION HEADINGS CONTAINED HEREIN ARE FOR CONVENIENCE OF REFERENCE ONLY AND ARE NOT INTENDED TO DEFINE OR LIMIT THE SCOPE OF ANY PROVISION OF THIS CONTRACT.

Section 15.6 Entire Contract. THIS CONTRACT, TOGETHER WITH THE SCHEDULES AND EXHIBITS HERETO, CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES AND THIS CONTRACT SHALL NOT BE MODIFIED, AMENDED, ALTERED OR CHANGED EXCEPT AS THE CITY AND THE LENDER MAY SUBSEQUENTLY AGREE IN WRITING.

Section 15.7 Binding Effect. SUBJECT TO THE SPECIFIC PROVISIONS OF THIS CONTRACT, THIS CONTRACT IS BINDING ON AND INURES TO THE BENEFIT OF THE PARTIES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (INCLUDING EXPRESSLY ANY SUCCESSOR OF THE LENDER).

Section 15.8 Time. TIME IS OF THE ESSENCE OF THIS CONTRACT AND EACH AND ALL OF ITS PROVISIONS.

Section 15.9 If Payment or Performance Date Not a Business Day. IF THE DATE FOR MAKING PAYMENT, OR THE LAST DATE FOR PERFORMANCE OF ANY ACT OR THE EXERCISING OF ANY RIGHT, AS PROVIDED IN THIS CONTRACT, IS NOT A BUSINESS DAY, SUCH PAYMENT MAY BE MADE OR ACT PERFORMED OR RIGHT EXERCISED ON THE NEXT SUCCEEDING BUSINESS DAY, WITH THE SAME FORCE AND EFFECT AS IF DONE ON THE NOMINAL DATE PROVIDED IN THIS CONTRACT, AND NO INTEREST SHALL ACCRUE FOR THE PERIOD AFTER SUCH NOMINAL DATE.

Section 15.10 Covenants of City not Covenants of Officials Individually. NO COVENANT, STIPULATION, OBLIGATION OR AGREEMENT CONTAINED HEREIN SHALL BE DEEMED TO BE A COVENANT, STIPULATION, OBLIGATION OR AGREEMENT OF ANY PRESENT OR FUTURE MEMBER, AGENT OR EMPLOYEE OF THE CITY IN HIS INDIVIDUAL CAPACITY, AND NEITHER THE MEMBERS OF THE CITY COUNCIL NOR ANY OTHER OFFICER OF THE CITY COUNCIL OR THE CITY SHALL BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE EXECUTION AND DELIVERY OF THIS CONTRACT. NO MEMBER OF THE CITY COUNCIL OR ANY AGENT OR EMPLOYEE OF THE CITY SHALL INCUR ANY PERSONAL LIABILITY IN ACTING OR PROCEEDING OR IF NOT ACTING OR NOT PROCEEDING, IN GOOD FAITH, REASONABLY AND IN ACCORDANCE WITH THE TERMS OF THIS CONTRACT.

Section 15.11 Execution in Counterparts. THIS CONTRACT MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE AN ORIGINAL AND ALL OF WHICH SHALL CONSTITUTE BUT ONE AND THE SAME INSTRUMENT.

Section 15.12 E-Verify. THE LENDER UNDERSTANDS THAT "E-VERIFY" IS A FEDERAL PROGRAM OPERATED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND OTHER FEDERAL AGENCIES, OR ANY SUCCESSOR OR EQUIVALENT PROGRAM USED TO VERIFY THE WORK AUTHORIZATION OF NEWLY HIRED EMPLOYEES PURSUANT TO FEDERAL LAW IN ACCORDANCE WITH SECTION 64-25(5) OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. THE BANK USES E-VERIFY TO VERIFY THE WORK AUTHORIZATION OF ITS EMPLOYEES IN ACCORDANCE WITH SECTION 64-

26(A) OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. THE BANK WILL REQUIRE THAT ANY SUBCONTRACTOR THAT IT USES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT CERTIFY TO SUCH SUBCONTRACTOR'S COMPLIANCE WITH E-VERIFY.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers as of the day and year first above written.

CITY OF LINCOLNTON, NORTH CAROLINA

By: _____
Steven Zickefoose
Interim City Manager

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT PURCHASE CONTRACT
BETWEEN THE CITY OF LINCOLNTON, NORTH CAROLINA AND CARTER BANK & TRUST]

CARTER BANK & TRUST

John J. Engel, III
Senior Vice President

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

PAYMENT SCHEDULE

DATE	INSTALLMENT PAYMENT		TOTAL
	PRINCIPAL COMPONENT	INTEREST COMPONENT	
5/1/2017			
5/1/2018			
5/1/2019			
5/1/2020			
5/1/2021			
5/1/2022			
TOTAL			

ITEM #

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CITY OF LINCOLNTON

CITY COUNCIL
Ed L. Hatley, Mayor
Martin A. Eaddy, Mayor Pro-Tem
Devin Rhyne
David M. Black
Roby D. Jetton



INTERIM CITY MANAGER
Steve Zickefoose
szickefoose@lincolntonnc.org
CITY CLERK
Donna C. Flowers, CMC
donnaflowers@ci.lincolnton.nc.us
CITY ATTORNEY
Thomas J. Wilson, Jr.,

MEMORANDUM

TO: Mayor and Council

FROM: Steve Zickefoose, Interim City Manager *Steve*

SUBJECT: Pump Station Replacements

DATE: February 23, 2016

Bids were opened on Wednesday, January 27th, 2016 for the installation of pumps for the Highway 150 and Rhyne Mill locations. During the RFP process, the regulations changed regarding emergency generators. We will be required to have a permanent generator for each site being replaced. This adds \$100,000 cost to the project.

The low bidder was Gilbert Engineering Co. at a price of \$851,185. The original budget for this project is \$624,770. However, we have been successful in negotiating with the contractor to bring the total bid to the \$724,185. This will still increase the capacities of the pump stations. The city would delay the replacement of the 6 inch force main from the river to the WWTP until needed for capacity purposes.

The other option is to accept all deductions noted by Gilbert Engineering in their negotiation letter. However, this would eliminate any capacity growth.

Administration concurs with Pease Engineering in accepting the negotiated bid of \$724,185.

We will need to appropriate an additional \$100,000 from the Water & Sewer fund balance if this recommendation is accepted.

A copy of the bid tabulation, bid negotiation and recommendation of award are attached.

February 22, 2016

Mr. Steve Zickefoose
Interim City Manager
City of Lincolnton
P.O. Box 617
Lincolnton, NC 28093-0617

Reference: Rhyne Mill and Hwy. 150 Project
City of Lincolnton
Lincolnton, North Carolina
Pease Commission No. 2150781

Subject: Recommendation of Award of Contract

Dear Mr. Zickefoose:

On Wednesday, January 27, 2016, at 2:00 PM in the City of Lincolnton City Hall, 114 W. Sycamore Street, Lincolnton, NC, bids for the referenced project were received, opened and publicly read. Bids were received for Single-Prime Construction of the Rhyne Mill and Hwy.150 Force Main Replacement and Pump Station Rehabilitation Project.

A total of five (5) bids were received from the following:

Contractor	Total Base Bid
Gilbert Engineering Co.	\$851,185.00
Hickory Sand	\$856,822.50
Zoladz Construction Co. Inc.	\$891,340.00
Buckeye Bridge LLC	\$897,181.00
Sanders Utility Construction Co. Inc.	\$920,365.00

One copy of the Certified Bid Tabulation is included with this letter.

After bids were received, Pease Engineering at the request of the owner initiated the process of negotiating items with the apparent low bidder to reduce construction cost of the project. Attached is a revised letter dated 2/15/16 itemizing a breakdown of potential items for consideration. Based on discussions with staff, we recommend awarding the contract to Gilbert Engineering Co. in the amount of

Relationships. Resources. Results.

\$724,185 which is a net deduct of \$127,000 from the base bid. The items deducted from base bid are, Hwy. 150 6-inch force main from Station 11+29 to 28+05, Hwy. 150 right of way clearing from Station 0+00 to 11+29, City continues to provide bypass of existing wastewater during construction and City accept change in electrical subcontractor.

Pease Engineering & Architecture, PC recommends that the Single-Prime Construction Contract be awarded to Gilbert Engineering Co. based on the total adjusted base bid of \$724,185.00.

The contractor receiving the award will be required to provide a Performance and Payment Bond, prior to executing a Construction Contract with the City of Lincoln, to insure that the project will be completed according to the specifications in the Construction Documents.

Please do not hesitate to contact me with any questions or comments regarding this information or the project in general (Direct: 704-941-2120, Email: dgarbrick@pease-ae.com).

Sincerely,



Donald T. Garbrick P.E.
Vice President

Enclosure: Certified Bid Tabulation

Cc Steve Peeler, Director of Public Works and Utilities

V:\2150781-Lincolnton\CFile\Ph6\120-Bidding Docs\Recommendation For Award_.doc



Engineers & Contractors serving
Statesville and the surrounding
region for over 80 years... 

February 10, 2016 REVISED 2-15-16

Donald Garbrick, Vice President
Pease Engineering & Architecture, PC
1520 South Blvd., Suite 210
Charlotte, NC 28203

Reference: City of Lincolnton, NC – Rhyne Mill & Hwy 150 Force Main Replacement & Pump Station
Rehabilitation Project
Negotiations

Mr. Garbrick:

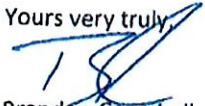
I have assembled deductive pricing for the proposed changes in scopes of work listed below per our conversations on Monday 2/8/16.

Bid Price	\$851,185.00
Delete Hwy 150 2900LF Force Main & Valves	-\$102,000.00
Hwy 150 to River – Sta. 0+00 – 11+29	-\$57,000.00
River to WWTP – Sta. 11+29 – 28.05	-\$35,000.00
Clearing	-\$10,000.00
Delete Rhyne Mill 955LF Force Main	-\$18,000.00
Change Electrical Subcontractor	-\$42,000.00
City to Maintain Bypass Operation	-\$40,000.00
Delete Contingency	-\$30,000.00
Total Proposed Deduct	<u>-\$232,000.00</u>
Negotiated Bid Price	\$619,185.00

I hope you find these deductions satisfactory and I look forward to the opportunity to work with you and the City on this project.

If you have any questions on any items, please let me know.

Yours very truly,


Brandon Campbell
Project Manager/Estimator
GILBERT ENGINEERING COMPANY

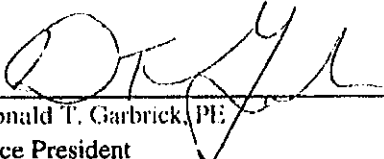
**BID TABULATION: Lincolnton Rhyne Mill/Hwy. 150 Force Main Replacement and P.S. Rehabilitation
Lincolnton, North Carolina***Single-Prime Bid Construction*

Contractor		Total Base Bid
Gilbert Engineering Co.	Statesville, NC	\$851,185.00
Hickory Sand	Hickory, NC	\$856,822.50
Zoladz Construction Co. Inc.	Alden, NY	\$891,340.00
Buckeye Bridge LLC	Canton, NC	\$897,181.00
Sanders Utility Const. Co. Inc.	Charlotte, NC	\$920,365.00

For Bids taken on January 27, 2016 at 2:00 pm at the City of Lincolnton City Hall, 114 W. Sycamore Street, Lincolnton, North Carolina.

REMARKS:

I hereby certify that, to the best of my knowledge and belief, this is a true and accurate tabulation of all bids received on this project.


Donald T. Garbrick, PE
Vice President



ITEM #

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CITY OF LINCOLNTON

CITY COUNCIL
Ed L. Hatley, Mayor
Martin A. Eaddy, Mayor Pro-Tem
Devin Rhyne
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Roby D. Jetton



INTERIM CITY MANAGER
Steve Zickefoose
szickefoose@lincolntonnc.org
CITY CLERK
Donna C. Flowers, CMC
donnaflowers@ci.lincolnton.nc.us
CITY ATTORNEY
Thomas J. Wilson, Jr.,

MEMORANDUM

TO: Mayor and Council

FROM: Steve Zickefoose *Steve*

SUBJECT: Bids for Installment Financing Agreement- Fire Truck and Garbage Packers

DATE: February 12, 2016

Nine proposals were received as of 5:00 p.m. on February 11, 2016 regarding the RFP for Installment Financing Agreement for One (1) Fire Engine and Two (2) Garbage Packers for a maximum of \$1,020,000.

First Tryon Advisors assisted with the RFP process and is coordinating the loan and closing process.

After evaluating the proposals, Carter Bank & Trust appears to be the lowest responsive bidder. Their bid meets all proposal requirements and offers the lowest overall cost to the City.

I am attaching the bid tabulation and the RFP for your review.

It will be necessary for the Council to approve the award of the bid. The Debt Payment for 2015-16 is already included in the approved budget.

Please let me know if there are any questions.

City of Lincolnton, North Carolina
Summary of Bids Received
February 12, 2016

Installment Financing Agreement, Series 2016						
Bank	Rate	Full Fixed Term	Fees	Firm Commitment	Prepayment	
Carter Bank & Trust	1.650%	Yes	\$ -	Yes	100% any time	
US Bank - Option A	1.736%	Yes	\$ -	No	Make Whole or 103%	
BB&T	1.740%	Yes	\$ -	Yes	100% on a payment date	
US Bank - Option B	1.911%	Yes	\$ -	No	100% on a payment date	
Wells Fargo	1.912%	Yes	\$ -	No	PV of total payments	
Santander	1.950%	Yes	\$ -	No	100% on a payment date after 12 mo.	
Capital One	2.150%	Yes	\$ -	No	100% on a payment date	
Carolina Bank	2.190%	Yes	\$ -	No	100% any time	
SunTrust	2.500%	Yes	\$ 500	No	101% on a payment date	
First Federal	2.750%	Yes	\$ -	No	100% - Confirm prepayment timing	

\$1,020,000*
City of Lincolnton, North Carolina
Installment Financing Agreement, Series 2016

The City of Lincolnton, North Carolina (the "City"), is requesting proposals from financial institutions with respect to a \$1,020,000* tax-exempt Installment Financing Agreement, Series 2016 (the "Agreement"), proceeds of which will be used to purchase a Fire Truck (\$450,000), 2 Garbage Packers (\$550,000) and to pay the costs of issuance.

Your response to the RFP would be greatly appreciated. The following key assumptions are to be utilized in preparing your proposal:

Issuer: City of Lincolnton, North Carolina

Use of Proceeds: The Agreement will be issued to purchase a Fire Truck (\$450,000), 2 Garbage Packers (\$550,000) and to pay the costs of issuance.

Tax Treatment: Tax Exempt

Bank Qualified: Yes

Audit: Audited financial statements and budget information is available from the City's website at:

<http://www.ci.lincolnton.nc.us/163/Budgets-Financial-Reports>

Security: The Installment Financing Agreement will be secured by a security interest in the vehicles to be financed with the proceeds of the Agreement. The City's obligation to pay the debt service will be subject to annual appropriation by City Council. The taxing power of the City will not be pledged to secure repayment.

Rating: No rating is expected to be obtained for the Agreement.

Issue Size: Not to exceed \$1,020,000*

Debt Structure: A preliminary amortization has been provided below and should be used in preparation of your bid.

Date	Par Amount
5/1/2016	\$153,000
5/1/2017	135,000
5/1/2018	139,000
5/1/2019	142,000
5/1/2020	146,000
5/1/2021	150,000
5/1/2022	155,000
Total	\$1,020,000

Principal Payments: Annual principal payments commencing May 1, 2016.

Interest Payments: Annual interest payments commencing May 1, 2016.

Optional Redemption: The Agreement shall be prepayable anytime at 100%.

Closing Costs: None anticipated to be paid to or on behalf of the bank. Please specify any exceptions.

Annual/Ongoing Costs: None anticipated to be paid to or on behalf of the bank. Please specify any exceptions.

Closing: Closing is anticipated to take place on March 10, 2016. The interest rate bid must be held firm until this date.

Ongoing Disclosure: The City will provide its audit to the purchaser of the Agreement annually within 210 days of the end of the fiscal year.

Award: The City reserves the right to request additional information from the bidders and to waive any irregularity or informality and to negotiate provisions and covenants directly with any bidder. The City also reserves the right to reject all proposals for any reason. Although the selection will be based substantially on lowest total financing cost (including both interest cost and upfront fees and expenses), the City reserves the right to select the bidder that best meets the needs of the City.

To be considered, a proposal must be received by 1:00pm on February 11, 2016. Email submission of the proposal to the following persons is preferred.

stevezickefoose@ci.lincolnton.nc.us; avitner@firsttryon.com; ttraudt@firsttryon.com

DATE	TASK
January 25, 2016	Distribute bank RFP to potential lenders
February 11, 2016	Bank Bids Due
March 10, 2016	Closing

Questions may be addressed to the City through its financial advisor:

Financial Advisor
 Tyler Traudt
 First Tryon Advisors
 1355 Greenwood Cliff, Suite 400
 Charlotte, NC 28204
 (704) 831-5035
 ttraudt@firsttryon.com

ITEM #

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CITY OF LINCOLNTON



C. Ryan Heavner
Fire Chief

**FIRE
DEPARTMENT**

P.O. BOX 617-116 WEST SYCAMORE STREET • TELEPHONE 704.736.8920 • FACSIMILE 704.736.8929
LINCOLNTON, NORTH CAROLINA 28093-0617

To: Steven Zickefoose, Interim City Manager
From: C. Ryan Heavner, Fire Chief
Re: Bid for Fire Apparatus
Date: February 18, 2016

Pursuant to the General Statutes of North Carolina a formal bid opening occurred on February 7th, 2016 at 3:00 p.m. in the office of the Fire Chief. Two vendors requested a copy of Lincolnton's Specifications and only one was returned from:

Atlantic Coast Fire Trucks
37 Stonington Drive
Murrells Inlet, SC 29576

Representing the Company:

Smeal Fire Apparatus Co.
610 West 4th Street
Snyder, NE 68664

The price quoted was: \$468,275.00 plus -0- North Carolina sales tax, and to be delivered in 270-360 calendar days. This was the only bid that was received by the Lincolnton Fire Department for construction of a Triple Combination Pumper.

This bid stands good for 60 days; please make this an agenda item for March 3rd, 2016 City Council Meeting.

Cc: Donna Flowers, City Clerk



Feb. 07, 2016

Lincolnton Fire Department
116 West Sycamore Street
Lincolnton, NC 28092

Gentlemen,

We are pleased to submit the following Discount Breakdown to our proposal for a Smeal Custom Engine:

The following items shall be discounted and added from our proposal:

- Performance Bond – (add) - \$3,164.87
- 100% Pre-Pay Discount – (delete) - \$4,250.00
- No Chassis Interest will be added
- 80%/20% Pre-Pay Discount – (delete) - \$3,280.00
- No Chassis Interest will be added

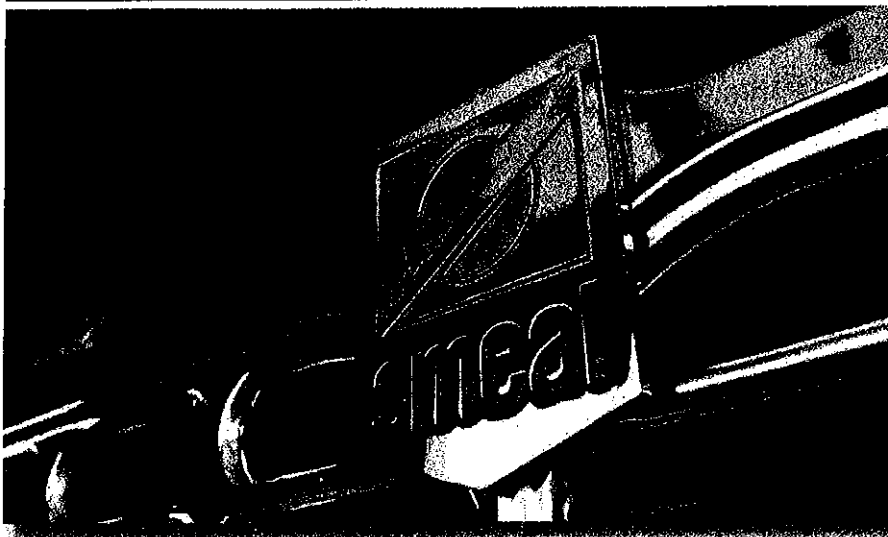
I would like to thank you for the opportunity to work with you on this project and look forward in getting a new Smeal Custom Engine on order for the Lincolnton Fire Department.

Sincerely,

Rob Smith
ACFT

BID PROPOSAL

Lincolnton Fire Department
116 W. Sycamore Street
Lincolnton, North Carolina 28092



SMEAL FIRE APPARATUS CO.

610 West 4th Street

Snyder, NE 68664

402.568.2224

www.smeal.com

WE BUILD RESPECT.



610 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 588-2224

WE BUILD RESPECT.

Ryan Heavner
Lincolnton Fire Department
116 W. Sycamore Street
Lincolnton, North Carolina 28092

02/07/2016

Dear Chief Ryan Heavner,

We are pleased to offer the attached proposal package. We would like to thank you for the opportunity for allowing us to supply you with this information.

As you may already be aware, Smeal Fire Apparatus Co. has been in business since 1964 developing, designing and manufacturing the highest quality aerials, platforms and pumper apparatus on the market today. We have a proven track record in many communities ranging from the small run volunteers to the high run large municipalities. Our apparatus are built with pride and integrity every day.

We can assure that you will be pleased with not only the end product but the process involved from start to finish in the manufacturing of your apparatus.

Please call me at or e-mail me at Rob@acfiretrucks.com if I can be of assistance.

Sincerely,

Atlantic Coast Fire Trucks

Rob Smith
Dealer Sales Rep



810 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 588-2224

WE BUILD RESPECT.

PROPOSAL (General)

Date: 02/07/2016

TO: Lincolnton Fire Department

116 W. Sycamore St.,

Lincolnton, North Carolina 28092

Dear Sirs:

We hereby propose and agree to furnish, after your acceptance of this proposal and the proper execution and approval of award of bid, the following apparatus and equipment:

2016 Spartan Metro-Star EMFD/Smeal Custom Pumper

For the sum of: Four Hundred Sixty-eight Thousand Two Hundred Seventy-five Dollars

Dollars \$ 468,275

All of which are to be built in accordance with the Smeal proposed specifications attached, and which are made a part of this proposal agreement, to deliver same **270-360** calendar days after date of receipt and approval of all submitted documents affiliated with order placement with Smeal Fire Apparatus Co., properly executed, subject to all causes beyond our control.

The amount named in this proposal shall remain firm for a period of **60** days from the date of same. All state and local taxes are included above figure. Any and all additional applicable taxes are to be paid by customer upon registration and licensing of vehicle. It is understood by both the Seller and the Buyer that *Change Orders* executed after contract acceptance may delay delivery. It is understood by both the buyer and the seller that *Change Orders* executed after contract acceptance may increase or decrease the price. The purchase price herein is based upon all applicable state and federal manufacturing law, regulations, orders, mandates and standards in effect as of the date of this Agreement (hereinafter "Standards") such as, for example, the Standards mandated by the National Fire Protection Association, tentative interim amendments to the National Fire Protection Association Standard, Underwriters Laboratories of Canada, and the Environmental Protection Agency. The purchase price shall be subject to increase due to any state or federal Standards that are adopted, issued or mandated following the date of this Agreement that require the apparatus(es) described above to be manufactured and/or delivered in compliance with such Standard(s).



610 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 588-2224

WE BUILD RESPECT.

This Proposal Document, in order to be effective and binding upon Seller must be signed and accepted by an authorized officer of Seller. The effective date of this Proposal Document will be the date it is signed and accepted by the Seller.

Performance Bond Required:

 X Performance Bond NOT required.

 Performance Bond Required - Performance Bond (Surety Bond) will cover standard one year warranty period only and will not cover extended warranties offered by seller or other component manufacturer.

All checks must be made payable to Smeal Fire Apparatus Co. only and delivered to Seller at its offices in Snyder, Nebraska. Under no circumstances shall payment be made to a dealer or anyone else as Seller's agent. Smeal Fire Apparatus Co. is the only authorized payee. Any representation that payment is to be made to any other party is absolutely unauthorized.

Official ownership documents shall remain property of the seller until the purchase price is paid in full. Upon receipt of payment, ownership documents shall be forwarded to purchaser.

Respectfully submitted,

We agree to accept the above proposal:

x_Rob Smith_____

x_____

SMEAL FIRE APPARATUS CO.

C/O: Atlantic Coast Fire Trucks

Rob Smith

(Printed Name)

Date: 02/07/16 (mmddyy)

Date: _____ (mmddyy)



810 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 588-2224

WE BUILD RESPECT.

SALES CONTRACT

(Standard)

This Sales Contract is made and entered into by and between Smeal Fire Apparatus Co. of Snyder, Nebraska, Seller and Lincolnton Fire Department Buyer.

PRODUCT DESCRIPTION: 2016 Spartan Metro-Star EMFD/Smeal Custom Pumper

PURCHASE. Buyer does hereby agree to purchase and accept delivery of the apparatus described in the Smeal Fire Apparatus Co. Proposal attached hereto, which is made a part hereof by this reference, upon the following terms and conditions:

1. **ACCEPTANCE.** This Sales Contract shall become a contract and a binding obligation only when accepted by the Seller as provided in paragraph 9 hereof.

2. **COMPLETION.** The Smeal Fire Apparatus Co. supplied apparatus and equipment, excluding dealership supplied equipment, covered by this contract will be completed in Snyder, Nebraska within approximately 270-330 calendar days after written acceptance of this Sales Contract by the Seller, or as soon thereafter as is consistent with good workmanship and subject to any and all delays resulting from causes beyond the control of Seller, and contingencies set out in paragraph 11 hereof. It is understood by both the Seller and the Buyer that *Change Orders* executed after contract acceptance will delay delivery.

3. **SPECIFICATIONS.** The attached Smeal Fire Apparatus Co. Proposal, shall control the construction of the apparatus and be binding upon both Buyer and Seller, notwithstanding any other specifications or proposals whether written or oral heretofore supplied, considered or discussed. If there is any conflict between Buyer's specifications and the attached Proposal, the attached Proposal and specifications will control and prevail.

4. **WARRANTY.** The attached warranty or warranties shall apply to this agreement:

(Copies may be attached.)

5. **PERFORMANCE BOND.** The following bonding provisions are applicable:

 X Performance Bond NOT required.



610 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

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WE BUILD RESPECT.

SALES CONTRACT

(Standard)

_____ Performance Bond Required - Performance Bond (Surety Bond) will cover standard one year warranty period only and will not cover extended warranties offered by seller or other component manufacturer.

EXCEPT AS SPECIFICALLY PROVIDED ABOVE, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT ARISE BY OPERATION OF LAW, COURSE OF TRADE, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

6. **LIMITATION OF REMEDIES.** In no event shall Seller be liable for special, incidental, or consequential damages nor for any damages which exceed the purchase price of the apparatus.

7. **PRICE.** Buyer agrees to pay for the apparatus described herein the total sum of:

Four Hundred Sixty-eight Thousand Two Hundred Seventy-five Dollars

Dollars \$468,275.

State and local sales taxes, if any, are not included in the purchase price. It is understood by both the buyer and the seller that *Change Orders* executed after contract acceptance may increase or decrease the price. The purchase price herein is based upon all applicable state and federal manufacturing law, regulations, orders, mandates and standards in effect as of the date of this Agreement (hereinafter "Standards") such as, for example, the Standards mandated by the National Fire Protection Association, tentative interim amendments to the National Fire Protection Association Standard, Underwriters Laboratories of Canada, and the Environmental Protection Agency. The purchase price shall be subject to increase due to any state or federal Standards that are adopted, issued or mandated following the date of this Agreement that require the apparatus(es) described above to be manufactured and/or delivered in compliance with such Standard(s).

8. **PAYMENT.** The purchase price shall be paid in the following manner:

All checks must be made payable to Smeal Fire Apparatus Co. only and delivered to Seller at its offices in Snyder, Nebraska. Under no circumstances shall payment be made to a dealer or any one else as Seller's agent. Smeal Fire Apparatus Co. is the only authorized payee. Any representation that payment is to be made to any other party is absolutely unauthorized.



610 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 569-2224

SALES CONTRACT

WE BUILD RESPECT.

(Standard)

9. **SELLER'S REPRESENTATIONS.** All representations made and/or actions taken by a dealer or agent either before or after execution of this Sales Contract are not binding on the Seller. This Sales Contract in order to be effective and binding upon Seller must be signed and accepted by an authorized officer of Seller. The effective date of this Sales Contract will be the date it is signed and accepted by the Seller.

10. **BUYER'S REPRESENTATIONS.** Buyer is a , fire department

and has the power and authority to enter into this Sales Contract and perform its obligations hereunder; this Agreement has been duly authorized, executed and delivered by Buyer and is the valid, enforceable and binding obligation of Buyer; and Buyer represents that there are no warranties, agreements or understandings, written or oral, which in any manner alter, abridge or conflict with the terms of this Sales Contract. Buyer represents that the individuals listed below have authority to sign all documents including but not limited to, all change orders on behalf of Buyer.

11. **DELAY ON PERFORMANCE.** Seller's Performance under this Sales Contract is subject to delays resulting from strike, insurrection, war, accidents, fires, floods, commandeering of plant or other demands of governmental authority, delays in transportation, or materials, delays in receipt of information when clarifications are requested, and all other causes beyond the control of Seller.

12. **TESTING.** In the event Buyer wishes to test the apparatus, such test shall be made within ten (10) days after arrival of the apparatus at its destination. A written report of any and all tests shall be promptly forwarded to Seller. If Buyer fails to test within this time limit and/or fails to forward test results to Seller, the apparatus shall be considered as fully complying with contract specifications as described in paragraph 3.

13. **TITLE.** All apparatus shall remain the property of Seller until the purchase price is paid in full. In the event of default in payment, Seller may take full possession of all apparatus sold hereunder and any payments that have been made shall be forfeited and/or considered as rental for the use of the apparatus up to date of taking possession.



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SALES CONTRACT

WE BUILD RESPECT.

(Standard)

14. **MISCELLANEOUS.** The following miscellaneous provisions shall apply to this Sales Contract:

14.1 **Entire Agreement.** This Sales Contract, and the specifications and warranty attached hereto sets forth the entire agreement between the parties and there are no promises, agreements, conditions or understandings, either oral or written between them that are other than as herein set forth. Except as herein otherwise provided, no subject alteration, amendment, change or addition to this Sales Contract shall be binding upon either Seller or Buyer unless reduced to writing and signed by them.

14.2 **Severability.** If any term, covenant or condition of this Sales Contract, or any application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Sales Contract or application of such term, covenant or condition to persons or circumstances other than those as to which it is held as invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Sales Contract shall be valid and enforceable to the fullest extent permitted by law.

14.3 **Binding Effect.** This Sales Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Except with the written consent of the other party hereto, no person shall take any action which will allow any right hereunder to be assigned or held by any other person.

IN WITNESS WHEREOF, this Sales Contract has been duly executed by the parties hereto on the date set forth opposite their name.



810 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 586-2224

WE BUILD RESPECT.

SALES CONTRACT

(Standard)

To be completed by the Authorized Smeal Distributor

By: x Rob Smith

Date: 02 / 07 / 2016

Atlantic Coast Fire Trucks

Rob Smith
Dealer Sales Rep

Mailing Address of Customer: Lincolnton Fire Department
116 W.Sycamore Street
Lincolnton, North Carolina 28092

Ryan Heavner Title: Chief

Business Telephone Number: 704-736-8920



610 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 568-2224

WE BUILD RESPECT.

SALES CONTRACT

(Standard)

To be completed by the Purchasing Entity

Printed Name: _____ Title: _____

Signature: _____ Date: ____/____/____

Printed Name: _____ Title: _____

Signature: _____ Date: ____/____/____

Printed Name: _____ Title: _____

Signature: _____ Date: ____/____/____

Printed Name: _____

Title: _____

Signature: _____ Date: ____/____/____

Attests: _____ Date: ____/____/____



610 WEST 4TH ST. - P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 568-2224

SALES CONTRACT

WE BUILD RESPECT.

(Standard)

To be completed by Smeal Fire Apparatus Co.

By: _____ Date of Acceptance: ____/____/____

Smeal Fire Apparatus Co.

Mark Denniston Huber, President

Attests: _____ Date: ____/____/____

ITEM #

11

CITY OF LINCOLNTON

CITY COUNCIL

Ed L. Hatley, Mayor
Martin A. Eaddy, Mayor Pro-Tem
Devin Rhyne
David M. Black
Roby D. Jetton



INTERIM CITY MANAGER

Steve Zickefoose
szickefoose@lincolntonnc.org

CITY CLERK

Donna C. Flowers, MMC
donnaflowers@ci.lincolnton.nc.us

CITY ATTORNEY

Thomas J. Wilson, Jr..

TO: Mayor & City Council

FROM: Donna C. Flowers, City Clerk

DATE: February 26, 2016

SUBJECT: July 4th Celebration - 2016 Fireworks Contract & Date of Event

The July 4th Committee is currently comprised of local veterans, city and county officials, and employee's. Committee members have changed throughout the years as this annual event originated from the City planning a parade for troops that had returned from Operation Desert Storm in 1991 at the end of the Gulf War. This year Ritchie Haynes, Recreation Director will Chair the July 4th Celebration Committee this year and Jim Mayhew, of the American Legion Post # 30, will chair the parade.

The event, for the past ten years, has been co-sponsored by Lincoln County. The County Manager confirmed to me this week, funding in the amount of \$ 6,000 is in their FY 15-16 budget, to again share the cost with the City. The total budget for these festivities; parade, children's activities, advertising, and the live remote broadcast by WLON from the stadium cost approximately \$ 13,000.

This year July 4th falls on a Monday. In talking with Joel Mathews, of East Coast Pyrotechnics, he shared with me that other governmental units and surrounding organizations have moved their display date. East Lincoln Betterment Association will host festivities followed by fireworks on Saturday, June 25th at East Lincoln High School. Lincolnton could choose to have their event on Saturday, July 2nd, Sunday July 3rd or Monday July 4th.

I have attached the proposed contract for the 2016 fireworks display. East Coast Pyrotechnics work very well with the City when planning this event and they have kept the cost the same for the past five years. I recommend Council approve entering into the contract with East Coast Pyrotechnics and set the date for this year's July 4th Celebration. Please feel free to contact me should you have any questions.



January 29, 2016

Ms. Donna Flowers
City of Lincolnton
P.O. Box 617
Lincolnton, NC 28093

Dear Ms. Flowers:

Thank you for your continued interest in East Coast Pyrotechnics.

Enclosed, please find a display outline, and contract for your review. Keep in mind that this proposal represents a complete turnkey display. East Coast will provide all necessary material, qualified technicians and 5 million dollars liability insurance coverage. In addition, we will work with the local authorities to secure the required discharge permit.

The proposed display package will contain the same high quality special effect and brilliant color effect materials as displayed during previous events. The display will again incorporate electronic discharge for timing control and the best of our new inventory.

As we discussed, if you elect to move the display date to July 2nd or July 3rd, please notify me and I will be happy to change the schedule.

If the proposed display meets your approval, please return the enclosed contract to secure your 2016 event. There is no need for deposit at this time; East Coast will invoice for 50% deposit April 1st.

If you should have any questions, please do not hesitate to contact me at (800) 238-5114 or joel@eastcoastpyro.com at anytime.

As always, I look forward to the opportunity to be of service.

Sincerely,

Joel Matthews
Event Producer

City of Lincolnton
July 4th, 2016
\$10,000.00 Proposal Synopsis

Opening

3 – 3” Silver Titanium Salutes with Rising Tails
120 Shot – 1 ½” Red, White & Blue Peony “Z Shape”

Body

120 – 3” Caliber Shells
110 – 4” Caliber Shells
58 – 5” Caliber Shells
20 – 6” Caliber Shells

Low Level Segment

300 Shot – 1” Silver Comets and Silver Whistles
36 Shot – 2 ½” Multi-Color Palm Tree with 36 Rising Tails
100 Shot – 1 ½” Multi-Color Crossettes with Rising Tails

Grand Finale

100 Shot – 2” Assorted Color Stars & Salutes with Rising Tails
36 Shot – 2 ½” Assorted Color Peony & Salutes with 36 Rising Tails
50 – 3” Assorted Color Dahlia & Crown Shells
60 – 3” Variegated Color Peony & Chrysanthemum Shells
30 – 3” Silver Titanium Salutes with Rising Silver Tails

Suggested Duration: 15 – 18 minutes

EAST COAST PYROTECHNICS, INC.
AGREEMENT

This contract entered in this 29th day of January A.D. 2016 by and between EAST COAST PYROTECHNICS, INC. of Catawba, S.C. and City of Lincolnton (customer) of City Lincolnton State NC.

WITNESSETH: EAST COAST PYROTECHNICS, INC. for and in consideration of the terms hereinafter mentioned, agrees to furnish to the CUSTOMER one (1) Fireworks Display(s) as per agreement made and accepted and made a part hereof, including the services of our Operator to take charge of and fire display under the supervision and direction of the Customer, said display to be given on the evening of July 4, 2016 Customer Initial _____, weather permitting, it being understood that should inclement weather prevent the giving of this display on the date mentioned herein the parties shall agree to a mutually convenient alternate date, within six (6) months of the original display date. Customer shall remit to the first party an additional 15% of the total contract price or additional expenses in presenting the display on an alternate date. The determination to cancel the show because of inclement or unsafe weather conditions shall rest within the sole discretion of EAST COAST PYROTECHNICS, INC. In the event the customer does not choose to reschedule another date or cannot agree to a mutually convenient date, EAST COAST PYROTECHNICS, INC. shall be entitled to 40% of the contract price for costs, damages and expenses. If the fireworks exhibition is cancelled by CUSTOMER prior to the display, CUSTOMER shall be responsible for and shall pay EAST COAST PYROTECHNICS, INC. on demand, all EAST COAST PYROTECHNICS, INC.'s out of pocket expenses incurred in preparation for the show including but not limited to, material purchases, preparation and design costs, deposits, licenses, and employee charges.

EAST COAST PYROTECHNICS, INC. agrees to furnish all necessary fireworks display materials and personnel for fireworks display in accordance with the program approved by the parties. Quantities and varieties of products in the program are approximate. After final design, exact specifications will be supplied upon request. EAST COAST PYROTECHNICS, INC. enters this agreement contingent upon its ability to secure delivery of product for the display.

It is further agreed and understood that the CUSTOMER is to pay EAST COAST PYROTECHNICS, INC. the sum of \$10,000.00(50% of the Deposit due April 1, 2016). A service fee of 1 ½% per month shall be added if account is not paid in full within 30 days of the show date.

EAST COAST PYROTECHNICS, INC. will obtain Commercial Liability and Property Damage and Workers Compensation insurance. Certificate of Insurance will be provided prior to the event. All the entities listed on the Certificate of Insurance will be deemed as an additional insured per this contract.

Customer will provide the following items:

- (a) Sufficient area for the display, including a minimum spectator set back of 420 feet at all points from the discharge area.
- (b) Protection of the display area by roping-off or similar facility.
- (c) Adequate police protection to prevent spectators from entering display area.
- (d) Search of the fallout area at first light following a nighttime display.

It is further agreed and mutually understood that nothing in this contract shall be constructed or interpreted to mean a partnership, both parties being hereto responsible for their separate and individual debts and obligations, and neither party shall be responsible for any agreements not stipulated in this contract. Customer agrees to pay any and all collection costs, including reasonable attorney's fees and court costs incurred by EAST COAST PYROTECHNICS, INC. in the collection or attempted collections of any amount due under this agreement and invoice. Signor of this contract personally guarantees full payment of this agreement.

The parties hereto do mutually and severally guarantee terms, conditions, and payments of this contract, these articles to be binding upon the parties, themselves, their heirs, executors, administrators, successors and assigns.

EAST COAST PYROTECHNICS, INC.

By _____

Date Signed: January 29, 2016

Joel Matthews

PO Box 209

Catawba, SC 29704

P803-789-5733

F803-789-6440

joel@eastcoastpyro.com

CUSTOMER

By _____

It is duly authorized agent, who represents he/she has full authority to bind the Customer

Date Signed: _____

(Please Type or Print)

Name: _____

Address: _____

Phone: _____

Email: _____

Billing Email: _____

ITEM #

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City of Lincoln

AGENDA REQUEST FORM

Please Print

Name

Dale Panch

Address

151 Benton Dr.

Phone

207-777-8829

Lincoln, NC 28098

FAX

Dale Panch, 207-777-8829

Name of Firm or Corporation (if applicable)

Acrop. Co. Inc.

Other Persons Accompanying Speaker

Purpose of Request to Appear

To Ask the Board of the Community of the City of Lincoln

Council Meeting date you wish to appear

3/23/16

Amount of time required for Presentation

3-5 min.

Date form submitted to the City Clerk

3-19-16

Dale Panch

Signature of Requestor (Print)

Return Form to:

City Clerk's Office
City of Lincoln
P.O. Box 617
Lincoln, NC 28093

8-000-12345

ITEM #

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City of Lincolnton

AGENDA REQUEST FORM

Please Print

Name Erika Thompson

Address 1595 Arden Dr
Lincolnton NC 28092

Phone 704-400-5553

EMAIL: erikansd2be@gmail.com

Name of Firm or Corporation (if applicable) speaking on behalf of the Chamber of Commerce

Other Persons Accompanying Speaker And Lynn Downtown Revitalization Committee

Purpose of Request to Appear Request to modify current facade grant, (Storefront Rehabilitation) to include signage.

Council Meeting date you wish to appear March 3rd

Amount of time required for Presentation 5 minutes, maybe 10 if questions

Date form submitted to the City Clerk _____

Erika Thompson
Signature of Requesting Party

Return forms to:

City Clerk's Office
City of Lincolnton
P.O. Box 617
Lincolnton, NC 28093

Donna Flowers

From: Erika Thompson [erikansd2be@gmail.com]
Sent: Thursday, February 18, 2016 2:48 PM
To: Donna Flowers
Subject: Agenda request form

Hello Donna,

I am emailing the agenda request form to present a Storefront Rehabilitation Grant modification proposal regarding signage on behalf of the Chamber of Commerce Downtown Revitalization Committee. And Lynn has already spoken to you a little bit. If I need to hand-deliver this request I'm happy to do so, just let me know. I have also included the modified document per our proposal. The only change to note is the addition of the word 'signage' included in the approved facade improvements and the removal of the word signage from exclusions. I will have a copy for everyone to review at the meeting. Is 10 copies enough? Thank you for your time and I look forward to hearing back from you.

Sincerely,

Erika Thompson

Here's a link to "Storefront Rehabilitation Grant Application_PROPOSED20160202.pdf" in my Dropbox:

https://www.dropbox.com/s/a5qgejzh5usn7df/Storefront%20Rehabilitation%20Grant%20Application_PROPOSED20160202.pdf?dl=0

Lincolnton Incentive Grant Program For Storefront Rehabilitation

Fact Sheet

What is the Incentive Grant Program for Storefront Rehabilitation?

An incentive to taxpayers who improve the appearance of their property by retaining and preserving the historic character of the property

Provides 50% of the total cost of approved projects up to \$40 per linear foot of *front* façade. Side facades are eligible on corner buildings and buildings where the side façade is clearly visible from a public right-of-way as the result of a missing building or change in building setback. (If a building has more than one eligible facade, each façade is considered separately. See Example) Rear facades are ineligible to receive grant funds.

Encourages further private reinvestment in existing infrastructure and promotes appropriate and attractive design projects that preserve the architectural character found only in older buildings.

Who may apply for the grant?

Building owners or tenants with building owner's consent.

What buildings are eligible?

Any building greater than 50 years old located in Lincolnton with priority given to improvements that will make the greatest impact on the surrounding built environment

Buildings used in a trade or business or held for the production of income from either residential or nonresidential purposes

What storefront rehabilitation expenditures qualify?

Eligible expenditures include: exterior painting of previously painted surfaces and/or paint removal, appropriate exterior cleaning, masonry repair and repainting, repair of architectural details or materials, repair of windows or window framing, removal of siding and exterior false facades, removal of inappropriate/out of date signs, signage, rehabilitation or compatible reconstruction of storefront, new canvas awnings, replacement of transom glass

Ineligible expenditures include: general maintenance, painting of previously unpainted surfaces, interior rehabilitation, electrical work, roof and chimney repairs, installation of aluminum, vinyl, stone, stucco brick veneer or other inappropriate building materials, sandblasting, improvements made prior to grant approval

Rehabilitations must meet the Secretary of the Interior's "Standards for Rehabilitation" program standards that are attached. (An illustrated manual is also available to provide a better understanding of the requirements)

Who makes the decision to approve or reject a request?

A volunteer committee made up of property and business owners and other interested professionals.

###MORE###

What is the process for applying for a grant?

- 1.) Meet with the City of Lincoln Business and Community Development Director
- 2.) Complete application including required support materials.
- 3.) A public meeting is held the first Wednesday of each month where the Design Work Group members consider application
- 4.) Applicant is notified by mail of acceptance, acceptance with conditions or rejection of application.
- 4.) Any changes to approved work during construction must be approved by the Business and Community Development office in writing
- 5.) Upon completion, applicant sends copies of paid statements to Business and Community Development office
- 6.) Business and Community Development office inspects completed work and disburses grant funds provided work was completed in accordance with the application.

What other conditions apply?

Grants are based on the entire scope of the project. All work must be eligible and approved expenditures or the total grant award is void.

All applications must be approved prior to commencement of work

Each building façade is considered separately to meet the 50% matching rule

Grant applicants are respectfully asked to follow the intent of the programs guidelines and not complete ineligible work preceding a grant request or following a grant disbursement.

Assurances made by city staff or committee members regarding applications should not be construed as binding. All applications are reviewed and approved on their merit by the entire committee.

Grant Approval or changes to the scope of work in an approved project will be conveyed in writing.

Examples

- 1.) A property owner applies for façade grant for a building with a storefront of 27 linear feet. The applicant is potentially eligible for a grant up to \$1,080 (\$40 x linear feet of storefront). The planned storefront improvement costs \$1,200. The applicant receives a matching grant of 50% which equals \$600 in this situation.
- 2.) A property owner applies for façade grant for a building with a storefront of 27 linear feet. The applicant is potentially eligible for a grant up to \$1,080. The planned storefront improvement costs \$4,000. The applicant receives a matching grant up to the grant maximum of \$1,080.
- 3.) A property owner applies for façade grant for corner building with a storefront of 27 linear feet and the side of 90ft. The applicant is potentially eligible for a grant up to \$1,080 for the storefront and \$3,067 for the side. The planned storefront improvement costs \$4,000. The planned side improvement is \$1,500. The applicant receives a grant of \$1,080 (maximum award) for the front and a grant of \$750 (Half of \$1,500) for the side. (Important: *On corner buildings, each storefront is considered separately for grant awards. Work completed on the front is considered eligible for a grant on front and work completed on the side is considered eligible for a grant on the side*) The \$2,920 'overage' for the grant match on the front **does not** carry over to the side. Each façade is considered separately.

Program Standards

The Secretary of the Interior's Standards for Rehabilitation

The Secretary of the Interior's Standards for Rehabilitation are ten basic principles created to help preserve the distinctive character of a historic building and its site, while allowing for reasonable change to meet new needs. All façade changes must meet these standards. An illustrated guide is available for use from the City of Lincoln Business and Community Development Department to help property owners meet the standards.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

I have read and understand these guidelines.

Signature of Applicant

Date

Lincolnton Incentive Grant Program for Storefront Rehabilitation

Application

Location of Property: _____

Name of Property Owner/Leasee: _____

Mailing Address: _____

Telephone: _____

Are you applying as the property owner _____ or leasee _____?

Please describe in detail what your plans are for improving the building. Include a drawing/sketch of proposed renovations specifically identifying changes for each detail of the building. For example, new paint schemes, awning size, placement and color and legitimate estimates of the work to be done.

Please Check:

☐ I have attached project plans, specifications or other appropriate information including estimates of the work to be done.

☐ I have attached a signed copy of the guidelines for the Lincolnton Incentive Grant Program for Storefront Rehabilitation indicating that I have read and understand the program's requirements and intend to follow the program guidelines.

☐ I understand that grant funds can be used only for the project described in the application. The work must be completed within four (4) months of the date of review by the Lincolnton Façade Grant Committee (unless otherwise specified by the committee). All work must be completed according to state and local building codes and ordinances and approved, when necessary, by the proper authorities. (ALL FAÇADE CHANGES DOWNTOWN REQUIRE A ZONING PERMIT)

☐ I also understand that this application ***must*** be reviewed ***before*** any work is done on the project and that no projects will be funded if work was done before the application was approved. I also agree to inspection of my business records to document all work done on this project.

Signature of Applicant

Date

ITEM #

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March 2016 Council Meeting
Executive Summary
January 2016 Year-To-Date
Comparative for Budgetary Purposes

		15-16	% of Budget	14-15	Difference	
General Fund						
Fund 10	Revenues	6,209,408.36	(1) 52.47%	5,979,808.33	229,600.03	(1)
	Expenses	5,142,356.97	(2) 52.47%	5,054,349.81	88,007.16	(2)
	Difference	1,067,051.39		925,458.52	141,592.87	
Water & Sewer Fund						
Fund 61	Revenues	5,127,533.38	(3) 55.63%	5,055,719.23	71,814.15	(3)
	Expenses	3,203,776.70	(4) 42.35%	3,279,174.36	(75,397.66)	(4)
	Difference	1,923,756.68		1,776,544.87	147,211.81	
Electric Fund						
Fund 63	Revenues	4,441,663.88	(5) 57.37%	4,351,665.97	89,997.91	(5)
	Expenses	4,239,369.44	(6) 57.83%	4,387,093.31	(147,723.87)	(6)
	Difference	202,294.44		(35,427.34)	237,721.78	
Overtime	80+ hours	144,175.35		176,800.87	(32,625.52)	

(1) Property tax, sales tax, franchise tax up total of \$183,000. Cemetery sales up \$17,000. GovDeals up \$6,000.

(2) Salaries and Benefits up \$247,000 due to health insurance and COL and CMO payoffs .
Elections cost up \$29,000. GF Debt Service up \$32,000. Capital purchases down (\$223,000).

(3) Water & Sewer revenues up \$266,000. Late/Default Fees up \$10,000. GovDeals up \$11,000.
Miscellaneous revenue down (\$216,000). We had received FEMA and Insurance claim payments for \$216,000 in 2014.

(4) Salaries and Benefits up \$46,000 due to filling vacant positions, COL and health insurance.
Capital expense up \$87,000. Obligations and services up \$40,000. Debt Service down (\$161,000).
Fixed charges down (\$89,000). Supplies and inventory up \$31,000.

(5) Electric sales up \$260,000. Sales tax no longer a budget line (\$179,000.) GovDeals up \$8,000.
Gov Deals up \$8,000.

(6) Sales tax due to State no longer a budget line. Taxes collected and given directly to State. (\$177,000).

Salaries and Benefits up \$40,700 due to filling vacant positions, COL and health insurance.
Electric Cost down (\$162,000). Fixed Charges up \$104,000. Capital outlay up \$44,000.
Sales Tax paid down (\$177,000).

**CLOSED
SESSION**