

June 10, 2010

The Lincoln County Board of Commissioners met at 8:30 A.M. on June 10, 2010 with members Jason Melcher, David Gillespie, Dennis Weeldreyer and Dale Long present. Jim Schmidt was absent. The meeting was called to order by Vice Chairman Weeldreyer with the Pledge of Allegiance to the Flag. The Deputy Auditor was Clerk of the Board.

A motion by Melcher and seconded by Gillespie that the minutes of June 1, 2010 be approved. Motion carried.

Mileage logs for county vehicles were presented for May, 2010.

The Auditor's Account with the County Treasurer for the month ending May 31, 2010 was presented as follows: Total amount of deposits in banks \$383,003.96, Total amount of actual cash \$6,527.75 total amount of checks and drafts in treasurer's possession not exceeding three days \$123,464.60, total cash items \$398.90, Funds invested \$18,670,074.70, Total cash \$19,183,469.91.

The Register of Deeds Report of Fees for the month of May 2010 was presented in the amount of \$53,574.00.

Motion by Long and seconded by Gillespie to approve out of county travel for Chad Brown to travel to Lincoln, Nebraska June 14, 2010 through June 18, 2010 for a Fundamentals of Crime Scene Investigation course. Motion carried.

Motion by Long and seconded by to Gillespie approve out of county travel for Matt Kopecky to travel to Camp Dodge, Iowa July 26, 2010 through July 30, 2010 for a Fundamentals of Crime Scene Investigation course. Motion carried.

Motion by Long and seconded by Melcher to approve the Application for a Commercial Garbage Hauler/Recycling Collection License submitted by Northwest Sanitation of Hawarden, Iowa. Motion carried.

Motion by Long and seconded by Gillespie to approve the Application for a Fireworks Public Display Permit submitted by Tony Pemberton for a public display of fireworks on September 5, 2010 at the Life Light Fest Grounds, Worthing, SD. Motion carried.

Motion by Long and seconded by Melcher to release public defender lien, pursuant to (23A-40-14). Warrant #62592 ordered by the Court in PRO-08-14 in the amount of \$6,539.90. Motion carried.

Commissioner Schmidt arrived at the meeting at 9:00 am. Chair was turned over to him.

Bids were opened as published for the Lincoln County Airport Runway Rehabilitation Project No. 3-46-0078-09-2009. Bids were received as follows: Knife River, Sioux City, IA \$1,701,120.44; Dakota Contracting Corp, Sioux Falls, SD \$1,413,665.99; Buskerud Construction Inc, Sioux Falls, SD \$1,780,580.00; and D & G Concrete Construction Inc, Sioux Falls, SD \$1,720,556.61.

RESOLUTION; WHEREAS the bids for the Lincoln County Airport Runway Rehabilitation Project 3-46-0078-09-2009 were received and read, THEREFORE BE IT RESOLVED that the bids be tabled until June 22, 2010. Motion by Melcher and seconded by Weeldreyer. Roll call vote: Long, Aye; Melcher, Aye; Schmidt, Aye; Gillespie, Aye and Weeldreyer, Aye. Motion carried.

RESOLUTION: WHEREAS the Chairman is hereby authorized to execute the Grant Application for the Lincoln County Airport Runway Rehabilitation Project 3-46-0078-09-2009. Motion by Long and seconded by Weeldreyer. Roll call vote: Long, Aye; Melcher, Aye; Schmidt, Aye; Gillespie, Nay and Weeldreyer, Aye. Motion carried.

RESOLUTION: WHEREAS the Notice of Hearing was published for the renewal of Retailer (On/Off Sale) Malt Beverage Licenses NOW THEREFORE BE IT RESOLVED that the following renewals be approved for the 2010-2011 license period: - I-29 Fuels Inc, Worthing, SD, Replat of Fodness Tracts 1 and 2 in the Northeast Quarter (NE1/4) Tract 1 – 3.033 Ac. – Tract 2, in Section 19, Township 98 North, Range 50 West of the 5th P.M., Lincoln County, South Dakota; Lenkota County Club, Lennox, SD – part of Section 31, Township 99 North, Range 50 West of the 5th P.M., Lincoln County, South Dakota; Bakker Crossing Golf Course, Sioux Falls, SD – Bakker Crossing 1st Addition Lots 10 and 11, Block 5, Section 29, Township 100 North, Range 50 West of the 5th P.M., Lincoln County, South Dakota; Hungry's Restaurant Inc. dba Roadway Express Stop, Sioux Falls, SD – Lot 1 in the Southeast Quarter SE1/4 (Ex H2-3) and South 50 feet East 1007.10 feet of Mueller's Lot 2 in the Southeast Quarter (SE1/4) of Section 19, Township 100 North, Range 50 West of the 5th P.M., Lincoln County, South Dakota and Truck Towne, Inc., . Carlson Tract 2 situated in the South Half of the Southwest Quarter (S1/2SW1/4) of Section Thirty-One (31), Township Ninety-Six North (96N), Range Fifty (50), West of the 5th P.M., Lincoln County, South Dakota, less Lot 1, according to the recorded plat thereof. Motion by Gillespie and seconded by Melcher. All Commissioners voted "Aye".

The Hearing was held as published for the TERFA Recovery Zone Bonds.

RESOLUTION: RESOLUTION ALLOCATING RECOVERY ZONE FACILITY ALLOCATION, ACKNOWLEDGING RECOVERY ZONE DESIGNATION, AUTHORIZING THE ISSUANCE OF RECOVERY ZONE FACILITY REVENUE BONDS (NAU PROJECT) SERIES 2010, LINCOLN COUNTY, SOUTH DAKOTA, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000, TO PROVIDE FUNDS TO CONSTRUCT A 22,000 SQUARE FOOT COMMERCIAL BUILDING, APPROVING AND AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING TO THE BONDS; APPROVING AND AUTHORIZING THE EXECUTION OF THE DOCUMENTS AND THE BONDS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN RELATED DOCUMENTS.

WHEREAS, a public hearing was held this day providing an opportunity to hear public comment on the request by Craig Lloyd or designated company to be created ("Borrower"), for the issuance by the County of its bonds, in one or more series, in the maximum aggregate principal dollar amount of \$3,500,000 (the "Bonds") WHEREAS, the County Commission has heard comment and determines that it in the best interest of the County to issue the Bonds. BE IT RESOLVED by Lincoln County Commissioners, Lincoln County, South Dakota (the "County"), as follows: **Section**

1. Authority. The County is authorized pursuant to the Constitution and laws of the State of South Dakota, including South Dakota Codified Laws Section 7-18-16 and Chapter 9-54, as amended (the "Act"), in order to promote, stimulate and develop the general economic welfare and prosperity of said Lincoln County (the "County") and of the State of South Dakota (the "State") through the promotion and advancement of commercial and industrial development and to encourage and assist in the expansion of business in said County and State by providing greater employment opportunities, thus promoting the general welfare of the citizens of said County and State, it is necessary and advisable and in the best interest of said County and State to issue bonds for the purpose of providing funds to acquire, construct and equip a 22,000 square foot building that will be the primary site for National American University located at 5801 S. Corporate Place, Sioux Falls, Lincoln County, South Dakota (the "Project"). **Section 2. Authorization of Documents.** The County hereby declare a necessity and determines that it is desirable and expedient to and does hereby authorize the issuance of the bonds of the County pursuant to the Act to provide funds to enable Craig Lloyd (or designated company to be created) (the "Borrower") to construct and equip the Project. **Section 3. Documents.** The following documents collectively referred to as the "Documents" relating to the Bonds are hereby approved and shall be filed when in final form in the office of the County Auditor and open to public inspection: **A.**

Revenue Agreement. The Revenue Agreement or such other documents, (the "Revenue Agreement"), between the County and Borrower, whereby the Borrower agrees to provide amounts sufficient to pay, when due, the principal and interest on the Bonds. **B. Bonds.** The County shall issue, in an amount not to exceed \$3,500,000, Recovery Zone Facility Bonds, (NAU Project) Series 2010 (the "Bonds"), dated in 2010. The Bond form and the Bonds are, in all respects, hereby authorized, approved and confirmed, and the Chairman, County Auditor and other appropriate officials shall be and they are hereby authorized and directed to execute and seal the Bonds and to deliver the Bonds to the purchasers thereof, for and on behalf of the County, upon receipt of the purchase price, and to deposit the proceeds thereof in the manner provided for by the Revenue Agreement. **C. Bond Purchase Agreement.** The Bond Purchase Agreement (the "Bond Purchase Agreement") shall provide the terms of purchase of the Bonds. **Section 4. Limited Obligations and Pledge.** The Bonds, together with the interest thereon, shall be limited obligations of the County payable solely out of the payments, revenues and receipts received by the County pursuant to the Revenue Agreement, which payments, revenues and receipts are hereby pledged and assigned for the equal and ratable payments of the Bonds and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in the Revenue Agreement. The bonds and the interest thereon shall not constitute an indebtedness of the County within the meaning of Article XIII Section IV or any statutory limitation and shall not constitute or give rise to a pecuniary liability of the County or its officers, agents or employees, or a charge against the County's general credit or taxing power. **Section 5.**

Registration Records. The County, as registrar, shall keep registration records which shall set forth the name and registered address of the registered owner of the Bonds from time to time. Transfer of ownership of the Bonds shall be reflected in such registration records, as provided herein. The County shall comply with the provisions of Section 149 of the Internal Revenue Code.

Section 6. Authorization to Execute and Deliver. The Chairman, County Auditor, County

State's Attorney and other County officials shall be and they are hereby authorized to execute and deliver for and on behalf of the County any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized. **Section 7. Designation of Recovery Zone.** The City of Sioux Falls designated the entire City of Sioux Falls as a recovery zone as evidenced by 96-09 passed October 13, 2009, a certified copy of which is on file with the County Auditor and open to public inspection. In addition to such designation, the County incorporates the findings in the Harrisburg School District Recovery Zone Study to the Project. Such Project is in and is hereby designated a recovery zone **Section 8. Allocation of Recovery Zone Allocation.** The County does hereby suballocate \$3,500,000 of the Recovery Zone Facility Bond allocation to the Project. The County Auditor is directed to record said allocation in the records of the County regarding Recovery Zone Facility Bond allocations **Section 9. Designation as Recovery Zone Facility Bonds.** The County does hereby designate the Bonds as Recovery Zone Facility Bonds within the meaning of Section 1400U-3(b) of the Internal Revenue Code (the "Code"). **Section 10. Tax Matters.** The Bonds shall be treated as "Exempt Facility Bond" under sections 141 through 150 of the Code. The County covenants that 95% or more of the net proceeds of the Bonds will be used for recovery zone property and the Bonds will be issued prior to January 1, 2011. Motion by Melcher and seconded by Long. Roll call vote: Long, Aye; Melcher, Aye; Schmidt, Aye; Gillespie, Aye and Weeldreyer, Aye. Motion carried.

The second reading of the amendment to the 2009 Revised Lincoln County Zoning Ordinance for revising the regulations for temporary uses Section 12.10 was held.

Motion by Long and seconded by Melcher to incorporate changes proffered by Larry Nelson to the proposed amendment to the 2009 Revised Lincoln County Zoning Ordinance for revising the regulations for temporary uses, Section 12.10 with the exception of those proposed changes in C2 and D1.

RESOLUTION: BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, SD:

Section 1. That Section 12.10 of the 2009 Revised Zoning Ordinance for Lincoln County, SD, is hereby amended to read as follows:

12.10 Temporary Uses.

- A. Intent. The requirements of this section are intended to provide for the regulation and permitting of uses and associated improvements on private property which have only a temporary duration and are not so recurring in nature as to constitute a permanent use. These requirements are not intended to regulate temporary uses on public property, including public rights-of-way.
- B. Permit Required. No person shall operate a temporary use without first obtaining a permit therefor from the Planning Commission as prescribed in this section. If an appeal is filed pursuant to Section 12.10(G), the Planning Director shall present the Planning Commission's decision to the Board of County Commissioners for review.
- C. Applications.
 - 1. Submission deadline. All applications for a temporary use permit shall be made at least 90 days prior to the proposed commencement date of the use.
 - 2. Temporary use plan. All temporary uses shall be subject to approval of a temporary use plan. The plan shall describe the nature and location of all temporary improvements and activities, the location of any permanent buildings intended to be used, the time period for which the temporary use permit is requested, and such other information in sufficient detail as the Planning Department determines is reasonably necessary to adequately review the application and to ensure the use will be conducted in a manner consistent with the requirements of this section.
- D. Standards for review. The following standards shall be used in determining the suitability and compatibility of a temporary use:
 - 1. The temporary use will have no unreasonable adverse effect on nearby properties or jeopardize public health, safety, and general welfare, and is compatible with the purpose and intent of this zoning ordinance and the specific zoning district in which it is located.
 - 2. The temporary use will not create hazardous traffic conditions or result in traffic in excess of the capacity of the roads serving the use.

3. The site is adequate to accommodate the proposed use, including the provision for on and off site parking.
 4. Adequate sanitation facilities will be available on the site.
 5. The time period and hours of operation for the temporary use are clearly specified.
 6. Provision is made for the removal, clean-up, and restoration of the site.
 7. The temporary use will not adversely impact the natural environment.
 8. The site is suitable for the proposed temporary use, considering flood hazard, drainage, soils, and other conditions which may constitute a danger to life, health or property.
 9. All temporary improvements and any permanent structures proposed to be used will comply with all applicable provisions of the county's building code.
- E. Planning Commission Hearing. Upon the filing of an application for a temporary use permit, the Planning Director shall set a date for public hearing on such requested temporary use, at which time and place the Lincoln County Planning Commission shall meet to consider the temporary use request.
1. Notification. The applicant must notify all property owners (inclusive of Contract for Deed buyers) of land laying within five hundred (500) feet, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with "Notice of Hearing" forms for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by registered mail no less than thirty (30) days prior to the public hearing on the requested temporary use held by the Planning Commission or the Board of County Commissioners on appeal. The "Notice of Hearing" forms shall include the time, date and location of the public hearing, a description of the proposed temporary use, the area of the temporary use site, and any other information needed to clearly convey the nature of the proposed temporary use. The applicant shall sign an affidavit certifying that the required mailing was completed and file copies of the registered mail receipts. The affidavit shall be provided to the Planning Department at least five (5) working days prior to the Planning Commission meeting.
 2. Signs. Sign(s) to be provided by the Office of Planning and Zoning shall be posted on or near the property at least ten days prior to the scheduled hearing.
 3. Action. The Planning Commission shall decide whether to grant the temporary use with such conditions and safeguards as are appropriate or to deny a temporary use. The decision of the Planning Commission shall be final unless an appeal is filed in accordance with Section 12.10 (G).
- F. Conditions of approval. Reasonable conditions may be required in connection with the approval of any temporary use permit which are deemed necessary to protect the public health, safety and welfare and the social and economic well being of those who will use the temporary use, residents and landowners immediately adjacent to the proposed use, and the community as a whole. Any condition imposed must be clearly specified in writing on the temporary use permit.
- G. Appeal of Planning Commission Decision. The decision rendered by the Planning Commission on a temporary use permit, the approval of the terms and conditions of the temporary use plan and the conditions and safeguards determined to be appropriate by the Planning Commission may be appealed to the Board of County Commissioners. The applicant or any other person aggrieved by the decision of the Planning Commission shall file a written appeal with the Office of Planning and Zoning within five working days of the Planning Commission decision. When an appeal is filed, the Planning Director shall present the Planning Commission's decision to the Board of County Commissioners for review. Notice of the meeting shall be given as required by Section 12.10 (E) (1). The Board shall vote to either uphold, overrule or amend the decision of the Planning Commission.
- H. Fee. A fee of \$250 shall accompany the application for a temporary use permit.
- I. Exemptions. The following uses shall not require a temporary use permit:
1. Estate or real estate sales involving the property or items from the property where the sale is held.
 2. Garage, yard or rummage sales provided:

- a. Sales last not longer than three (3) days.
 - b. Sales are held no more than twice yearly.
 - c. Sales are conducted on the owner's property or one of the owner's property in case of a multi-party sale.
3. Weddings, purely social parties or similar family events where the function or event involves the owner or lessor of the property and where no monetary consideration or fees for such use of the property or attendance is involved. Motion by Long and seconded by Melcher.

Motion by Long and seconded by Weeldreyer to support up to \$3,000.00 for culverts on a Springdale Twp road and to cap any further expenditures for the remaining of 2010. Roll call vote: Long, Aye; Melcher, Aye; Schmidt, Nay; Gillespie, Aye and Weeldreyer, Aye. Motion carried.

Motion by Long and seconded by Weeldreyer to approve the Application for Entrance onto County Highway No. 106 submitted by Arlys and Cheryl Olsen. Motion carried.

Motion by Melcher and seconded by Gillespie to approve the Application for Permit submitted by Midcommunications to locate within the right of way of Lincoln County Highway No. 123 in the Southeast Quarter (SW1/4) of Section 24, Township 100, Range 50. Motion carried.

Bids were presented as published for the Asphalt Paving Project Phase 2: Myrl & Roys Paving \$894,584.65; Dunnick Bros. \$876,262.10; and Asco-Asphalt Surfacing \$1,069,034.00.

Motion by Gillespie and seconded by Melcher to accept the low bid of Dunnick Bros. in the amount of \$876,262.10 for the 2010 Asphalt Paving Project Phase 2. Motion carried.

Motion by Gillespie and seconded by Long to split the cost for the appraisal and any other cost involved concerning the land at the airport to be swapped between Lincoln County and HWH with the exception of the platting of the two properties to be paid by HWH. Motion carried.

Dave Gillespie passed out copies of a Petition on the "White Bridge" requesting repairs and reopening of the bridge. No action was taken.

The Board recessed for lunch to return and canvass the Lincoln County Primary Election.

The following claims were approved:

General Fund: 4-H Club Leaders, storage \$360; A & B Pure Water Online, coffee/water \$153.03; Athey Court Reporting, grand jury proceedings \$62; Avera McKennan Hospital, mental health holds \$4,488; prisoner care \$1,395.78; Avera University Psych, MI hosp admit \$186.97; Beresford Comm Ambulance, funeral home transport \$194.70; David Bergendahl, grand jury proceedings \$673.10; Berreau Law Office, pub def contract/fees \$21,483.76; Best Business Products, copier maint contract \$113.36; Best Western Ramkota Inn, lodging \$163.98; Deborah Block, travel expenses \$215.44; Shelly Britt, travel expenses \$117.52; Brown & Saenger, supplies \$36.87; Don Burma, travel expenses \$45; City of Canton, utilities \$578.86; Century Business Products, copier maint/lease pymt \$349.95; Don Cole, mowing \$150; Countryside Convenience, fuel \$263.42; Donna K Dietrich, MI board \$139.14; Eric Eneboe, mileage \$190.55; ESRI, maintenance \$5,237.53; David Gillespie, mileage \$85.68; Haisch Pharmacy, supplies \$70.70; Jackie Harrison, travel expenses \$45; Ronda Headrick, mileage \$304.88; Independent Publishing, publishing \$579.27; Interstate Office Pro, supplies \$107.64; Dr Leo J Kadehjian, professional services \$550; KB's True Value, supplies \$21.16; Knology, phone usage \$1,406.54; Nelva Kooistra, MI board \$15; Landscape Garden Centers, lawn maint \$1,250; Dale Long, mileage/supplies \$109.35; MCPC Inc, supplies \$580.26; Medical X-Ray Center, county assistance \$107.81; Miller Funeral Home, county assistance \$2,500; Minnehaha Co Human Services, monthly poor relief \$5,098; Minnehaha Co Regional JDC, child care \$6,440; Minnehaha Co Treasurer, blood draws \$625; Irene Ness, supplies \$10.58; Novak Sanitary Service, garbage & recycling \$176.50; Office Elements, copier maint \$150.95; Scott Peters, MI board \$573; Peterson/Stuart/Rumpca, pub def contract \$8,000; Ramada Mitchell, lodging \$912.45; Tonya Rasmussen, travel expenses \$117.52; Cathy Rehfuss, MI board \$15; Rural Route 1 Services, mats \$84.45; Sanford Health, blood draw \$69; Sanford Home Health, Hepatitis B shots \$342; Sanford Laboratories, county assistance \$3.71; SD Dept of Public Safety, boiler inspection \$120; SD State Treasurer, alcohol/drug tests \$1,393; animal damage control \$1,585.15; mentally handicapped \$1,260; Sioux Empire Auto Serv, service vehicle \$50; Sioux Falls Two-Way Radio, supplies \$70.94; Sioux Valley News, publishing/supplies \$974.57; Southeastern Electric, county assistance \$311.48; Southridge Apts, county assistance \$500; Sturdevant's Auto Parts, repairs \$95.99; Sunshine Foods, supplies \$42.75; City of Tea, county assistance \$134.60; US Bank, travel expenses \$1,116.98; Sharon VanDeStroet, travel expenses \$45; VanDiest Supply Co, supplies \$2,856.60; Verizon Wireless, usage charges \$215.05; Volunteers of America, shelter care beds \$3,100; Wheelchair Express, MI transport \$185; Workplace technology center, MSP mail service \$64.75; Ross Wright, mileage \$37; Xcel Energy, county assistance \$89.23; utilities \$5,235.71.

Road Fund: A & B Pure Water Online, coffee/water \$6.12; A-OX Welding Supply, supplies \$24.19; Bierschbach Equip, supplies \$ 2,828; Boyer Trucks, repairs \$907.12; Brock White Const Materials, rentals \$3,000; Bubba's Quality Auto Parts, supplies \$55.41; Bumblebee-Gibson, apply dust control \$32,702.34; City Of Canton, utilities \$211.53; Cole Petroleum, diesel fuel \$16,262.25; Concrete Materials, asphalt \$42,961.60; Farm Gas, propane \$71.25; Great Plains Int'l, repairs \$809.03; Hoffman Oil, repairs \$233.29; Knology, phone usage \$166.58; Lawson Products, repairs \$235.01; Master Blaster, repairs \$332.22; Northern Truck Equip, equip/repairs \$7,277.66; SD Dept of Trans, Hudson bridge \$9,933.26; Sturdevant's Auto Parts, supplies/repairs \$527.50; Xcel Energy, utilities \$274.84.

E911 Communication Fund: Ecowater, water/rent/supplies \$73.60; Knology, phone usage \$144.61; Qwest, phone usage \$88.25; Xcel Energy, radio repeater-Hsbg \$12.59.

Emergency Management Fund: Knology, phone usage \$81.88; Verizon Wireless, usage charges \$43.01.

Solid Waste Fund: Independent Publishing, ad \$224; Knology, phone usage \$.70; Sanford Home Health, Hepatitis B shots \$114; Sioux Valley News, ad \$144; South Lincoln Rural Water, water \$28; Verizon Wireless, usage charges \$33.92.

Airport Fund: EAA Chapter 289, rent \$354.97 Knology, phone usage \$.70

The Board adjourned until 8:30 A.M. on June 22, 2010.

Lincoln County Board of Commissioners

Jim Schmidt, Chairman

Attest: _____
Kathy Bonnema, Deputy Auditor

Approved _____