

AGREEMENT REGARDING ROAD OFF-SITE ROAD IMPROVEMENTS

(Rezoning Application R16-04)

This Agreement Regarding Road Off-Site Road Improvements (this “Agreement”), is entered into as of this ____ day of June, 2016, by and between the **TOWN OF HUNTERSVILLE** (the “Town”) and **LAKE NORMAN CHARTER SCHOOL, INC.** (“LNCS”).

Background

LNCS intends to purchase property located at tax parcels 01723306 and 01723312 (the “Property”) and construct an elementary school (the “Elementary School Project”).

In connection with Rezoning Application R16-04, and as requested by the Town, LNCS secured the services of Ramey Kemp & Associates to assess the potential impacts of the Elementary School Project on traffic in the surrounding area, and prepare a “Traffic Impact Study” (the “TIA”).

The TIA recommends construction of certain road improvements directly serving the driveways for the Elementary School Project (the “Driveway-Related Improvements”) and construction of certain off-site road improvements (hereinafter the “Off-Site Road Improvements”) as summarized on Exhibit A attached hereto and incorporated herein by reference.

The parties agree that the Off-Site Road Improvements will benefit the public and have agreed upon a reasonable and equitable plan for coordinating and paying for the Off-Site Road Improvements – specifically the Town has agreed to be responsible for the planning, design and construction of the Off-Site Road Improvements and LNCS has agreed to pay \$400,000 toward the cost of such Off-Site Road Improvements.

Agreement

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

1. **Purpose:** The purpose of this Agreement is to coordinate and fund the completion of the Off-Site Road Improvements for the benefit of the public. This Agreement is a part of and incorporated into Rezoning Application R16-04.
2. **Responsibilities of LNCS:** LNCS shall be responsible for the design, any needed right of way/easement acquisition and construction of the Driveway-Related

Improvements to be completed in connection with the development of Elementary School Project. LNCS shall contribute a total of Four Hundred Thousand Dollars (\$400,000) towards completion of the Offsite Off-Site Road Improvements (the "Contribution") in two installment payments to the Town as follows: LNCS agrees to make an installment payment of \$200,000 upon the closing for the purchase of the Property, expected to be summer 2016 (the date of closing referred to herein as the "Closing Date") and another installment payment of \$200,000 two years from the Closing Date.

3. Responsibilities of the Town: The Town shall be responsible for the design, any needed right of way/easement acquisition and construction of the Off-Site Road Improvements, to be completed in a commercially reasonable time, no later than five years from the date hereof. The Town furthermore agrees to be responsible for all remaining costs for the Off-Site Road Improvements in excess of the Contribution.
4. Duration: The responsibilities of LNCS pursuant to this Agreement shall be complete upon the full payment of the Contribution, and the responsibilities of the Town shall be complete upon the completion of the Off-Site Road Improvements.
5. Conditions Precedent: Each party's obligations under this agreement are fully conditioned upon LNCS's acquisition of the Property.
6. Default and Remedies: If either party shall fail to perform its obligations under this Agreement, the other party shall have and may exercise any rights and remedies available at law or in equity, including, without limitation, the right to require specific performance. Prior to exercising any such rights or remedies, a party shall provide written notice of default to the other and provide a minimum 30 days' opportunity for the defaulting party to cure any such default.
7. Notices: All notices required or permitted to be given hereunder shall be deemed given if emailed, hand delivered or faxed with a mailed copy to follow, or mailed in a sealed wrapper and deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, properly addressed as follows:

If to the Town: [insert]

If to LNCS: [insert]

Either party may change its notice address by giving written notice of the change to the other party in the manner specified above ten (10) days prior to the effective date of such change.

8. Miscellaneous.

- a. No Third Party Rights: This Agreement is entered into by and between the parties hereto for their exclusive benefit. The parties do not intend to create or establish by this Agreement any third-party beneficiary status or rights, and no such third-party shall be entitled to enforce any right of obligation or enjoy any benefit created or established by this Agreement.
- b. Binding Effect: This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.
- c. Applicable Law: This Agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.
- d. Entire Agreement: The terms and provisions set forth in this Agreement shall constitute the entire agreement between the Town and LNCS.
- e. Severability: The invalidity or unenforceability of any one or more phrases, sentences, clauses or provisions of this Agreement shall not affect the validity or enforceability of the remaining portion of this Agreement or any part hereof.
- f. Amendments: this Agreement may be amended only by written amendment duly executed by both the Town and LNCS.
- g. Statutory Required Notice; Charter School Indebtedness: No indebtedness of any kind incurred or created by LNCS shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of LNCS shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.
- h. Compliance with Laws: LNCS and the Town agree to comply with all laws in performance of the Agreement.
- i. Captions: The captions and headings set forth in this Agreement are for convenience of reference only and shall not be construed as part of this Agreement.
- j. Multiple Originals: This Agreement is executed in multiple originals, one of which is being retained by each of the parties hereto and each of which shall be deemed an original hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST: TOWN OF HUNTERSVILLE

By: _____

Title: _____

ATTEST: LAKE NORMAN CHARTER SCHOOL, INC.

By: _____
Title: _____
By: _____

EXHIBIT A