// A regular meeting of the Council of the City of Lynchburg was held on the 13th day of December, 2011, at 5:00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. The following Members were present:

Present: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Absent: 0

// Mr. Chris Banta with Brown, Edwards & Company, the City's external auditor, presented a brief overview regarding the City's Comprehensive Annual Financial Report (CAFR) for fiscal year ending June 30, 2011. Mr. Banta concluded his presentation by stating that the few audit findings have been addressed by management. In response to Council questioning, Mr. Banta noted that they have seen some significant improvements in the Schools internal controls.

// During Roll Call Council Member Nelson recognized the Central Virginia Elite Football Team which is a program from the Hunton Randolph Community Center and will participate in the AAU National Youth Football Tournament in Orlando, Florida this week. All three age groups (7-8, 9-10 and 11-12 students) will participate in the tournament.

Council Member Cary highlighted the Brookville High School Football team for winning the State Championship in Division II and the Gretna High School Football team won the Division I State Championship.

Council Member Gillette complemented the Randolph College men's soccer team which will be participating in the ODA Sweet Sixteen Tournaments.

Council Member Perrow thanked the Fire Fighters and City staff for putting on another successful Christmas Parade on December 4th in downtown Lynchburg.

Vice Mayor Johnson stated he had three items: 1) Received a thank you card from the Bass Elementary School for reading to the students; 2) What a great opportunity for City Employees to participate in the City's Toastmaster Club and what a wonderful opportunity for employees to learn the importance of public speaking; and 3) He also mentioned the Central Virginia Elite Football Team as Council Member Nelson had said and what a wonderful opportunity for the City if they could bring back three championships.

Mayor Foster stated that the Mayor's Youth Council would be traveling to Washington, DC on Saturday, December 17th to tour the White House and other memorial places. Mayor Foster also stated that the Youth Council would be visiting Richmond when the General Assembly is in session is January.

// On motion of Council Member Cary, seconded by Council Member Nelson, Council by the following recorded vote elected to hold a closed meeting to consider appointments to Council-appointed Boards and Commissions, i.e., Social Services Advisory Board, Community Development Advisory Committee, Planning Commission, Community Services Board, Sister City Liaison, Lynchburg Regional Airport Commission, Towing Advisory Board, Region 2000 Greenways Alliance and Design Review Board; pursuant to Section 2.2-3711(A)(1), Code of Virginia (1950), as amended:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// The meeting was re-opened to the public.

// Council Member Helgeson made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The Motion was seconded by Council Member Cary, and Council by the following recorded vote adopted the motion:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// In the matter of Appointments, and on nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote appointed Kitty M. Hoover to serve on the Social Services Advisory Board to fill an unexpired term to expire September 30, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote re- appointed Michael Bedsworth, Alexander Duncan, Jr., Ceasor T. Johnson and Jeffery W. Schneider to serve another term on the Community Development Advisory Committee for terms to expire December 31, 2012:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote appointed Vicky Paige to serve a term on the Community Development Advisory Committee for a term to expire December 31, 2012:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote re-appointed James E. Coleman, Jr., Meriwether A. Sale and Gerard E. Swienton to serve another term on the Planning Commission for terms to expire December 31, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote appointed Hunsdon "H" Cary, III to serve on the Community Services Board for a term to expire December 31, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote re-appointed Stewart Hobbs to serve another term on the Lynchburg Regional Airport Commission for a term to expire December 31, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote appointed C. Lynch Christian, III to serve on the Lynchburg Regional Airport Commission for a term to expire December 31, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote re-appointed Randall S. Houck, Donald W. Irby, Blake E. Isley, III, Daniel J. Laslie and John McCorkhill to serve another term on the Towing Advisory Board for terms to expire December 31, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote appointed Mary Alex to serve on the Region 2000 Greenways Alliance for a term to expire December 31, 2012:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// On nomination of Vice Mayor Johnson, seconded by Council Member Helgeson, Council by the following recorded vote re-appointed Holly H. Frazier to serve another term on the Design Review Board for a term to expire December 31, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// City Council recessed the meeting at 6:00 p.m.

// City Council reconvened the meeting at 7:30 p.m.

The following Members were present:

Present: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Absent: 0

Council Member Perrow gave the Invocation; the Pledge of Allegiance was led by Boy Scout Troop 7 and Boy Scout Troop 180.

// Copies of the minutes of the November 22, 2011 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Gillette, seconded by Council Member Nelson, Council by the following recorded vote approved the minutes as presented:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// In the matter of CDBG/Home, a public hearing was held regarding City Council Report #5 regarding the reallocation of HOME Program funds and to approve the request from Lynchburg Neighborhood Development Foundation (LNDF) to reprogram funds from the HOME Program Year (PY) 2010 (Fiscal Year 2011) Tinbrdige Hill Single Family Development project to the LNDF Homeownership Development project. Melva Walker, Grants Manager, gave a summary of the request. There were two individuals to speak in favor of this request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Vice Mayor Johnson, seconded by Council Member Nelson, Council by the following recorded vote adopted Resolution #R-11-136, as presented, reallocating HOME Program funds and approving the request from Lynchburg Neighborhood Development Foundation (LNDF) to reprogram funds from the HOME Program Year (PY) 2010 (Fiscal Year 2011) Tinbrdige Hill Single Family Development project to the LNDF Homeownership Development project:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// In the matter of Public Works – General, a public hearing was held regarding City Council Report #6 regarding authorizing the second five-year extension of the lease of City property at Kemper Station to Greyhound Lines, Inc. Real Estate Manager Steve Lawson gave a brief summary of the request stating that Greyhound has requested a reduction in the rent and that staff does not feel that a reduction is appropriate but is comfortable with no rent increase for the first year of the new 5-year extension. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Perrow, Chair of the Physical Development Committee (PDC), stated that this matter came before the PDC and they recommended no changes be made to the lease. Council Member Perrow made a motion that the lease be maintained and continued in force. This motion does not require a second, and Council by the following recorded vote authorized the second five-year extension of the lease of City property at Kemper Station to Greyhound Lines, Inc. with no changes to the lease:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// In the matter of City Code/Public Works – General, City Council Report #7 was considered. Utilities Director Tim Mitchell gave a brief summary of the request. Council Member Gillette asked that in Sec. 16.3-7 the word "may" be changed to "shall." Council Member Perrow made a motion to adopt attachment #2 (owner/occupant) version of the stormwater utility ordinance, with the change made by Council Member Gillette and also with Council Member Nelson's addition in Sec. 16.3-11 adding the following sentence to the end of the paragraph. "Nothing herein shall be construed to authorize the director of utilities or his agent to enter or inspect the interior portions of any dwelling or structure situated on such property unless that inspection be reasonably necessary and directly related to verifying the presence and character of a stormwater control mitigation system or control measure that the owner of the property claims to be installed therein". Council Member Helgeson stated that he could not support this because he felt that this fee would be "revenue neutral" and "expense neutral" for the property owners, and Council by the following recorded vote adopted Ordinance #0-11-138, as amended, adding Chapter 16.3 – Stormwater Utilities to the City Code:

Ayes: Cary, Gillette, Johnson, Nelson, Perrow, Foster 6
Noes: Helgeson 1

// In the matter of Library – General, City Council Report # 8 was considered. On motion of Council Member Gillette, seconded by Council Member Cary, Council by the following recorded vote adopted Resolution #R-11-139, as presented, approving the revised Internet Safety Policy for the Lynchburg Public Library:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// In the matter of Community Development – General, City Council Report # 9 was considered. On motion of Council Member Perrow, seconded by Council Member Cary, Council by the following recorded vote adopted Resolution #R-11-140, as presented, affirming the consistency of the City's Comprehensive Plan with the requirements of Sec. 15.2-2223.1 of the Code of Virginia:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// In the matter of Police – Emergency Services, City Council Report # 10 was considered. On motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote adopted Resolution #R-11-141, as presented, authorizing the City Manager to sign the Region 2000 Emergency Communications Regional Cooperative Agreement:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7
Noes: 0

// In the matter of Schools, Resolution #R-11-132 amending the FY 2012 General Fund Budget and appropriating $1,047,695 for transfer to the School Operating Fund with resources from unexpended FY 2011 School Operating appropriations to fund a proposed bonus for City School employees, laid over from the November 22, 2011 meeting, was again presented and read. Council Member Nelson made a statement referencing his wife working for the school system and that he did not have a legal conflict of interest but did have a factual conflict of interest however, he felt that he could exercise unbiased decision-making and impartiality in voting on this matter. Vice Mayor Johnson made a motion to adopt this resolution which was seconded by Council Member Gillette. During discussion Council Member Helgeson reiterated his concerns stating that the ability to fund government for the City has declined; and the per capita income from 2007 to 2009 has dropped 19%. According to the VEA Salary Study, Lynchburg is no different than 99% of all school systems in

Virginia and looking at the salary study for Region 2000 the Lynchburg School staff is the highest paid in the region. If you look at the experienced teachers in Lynchburg, these teachers made more than all of the Region 2000 counterparts. Also, the housing study showed that back in 2000 one of twelve housing units were vacant, this now shows that one in eight or 12 ½ % of the units are vacant and further stated that he would not support this Resolution. Council by the following recorded vote adopted the Resolution:

Ayes: Cary, Gillette, Johnson, Nelson, Perrow, Foster 6

Noes: Helgeson 1

// The meeting was adjourned at 9:06 P.M.

Clerk of Council

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 10, 2012**			AGENDA ITEM NO.: 2
CONSENT: **X**	REGULAR:	WORK SESSION:	CLOSED SESSION: (Confidential)
ACTION: **X**		INFORMATION:	

<u>ITEM TITLE</u>: **Virginia Commission for the Arts FY 2012 Local Government Challenge Grant**

<u>RECOMMENDATION:</u>
Adopt a resolution to amend the FY 2012 City/Federal/State Aid Fund budget and appropriate $35,000, with resources of $5,000 from the Virginia Commission for the Arts FY 2012 Local Government Challenge Grant and $30,000 transferred from the FY 2012 General Fund budget, to provide funding for exhibitions, demonstrations, concerts, amenities and like activities as specified in the Arts & Cultural District ordinance.

<u>SUMMARY:</u>
The Virginia Commission for the Arts awards grant funding through the Local Government Challenge Grant program to independent town, city, and county governments for arts activities in the locality.

Grant funds will be used to supplement the $30,000 previously adopted by Council to fund Lynchburg Arts Project Grants, a competitive mini-grant program administered by the Office of Economic Development that is open to individuals, arts organizations, community groups, and arts-related businesses. Recipients of these grants are chosen on a first-come first-served basis; selected by a committee comprised of City staff, local artists, and members of arts organizations; and will be based on the merits of their project per the program guidelines.

The required local match is available in the Office of Economic Development's FY 2012 General Fund budget.

<u>PRIOR ACTION(S):</u>
Finance Committee December 13, 2011
City Council April 27, 2010 – Arts and Cultural District Ordinance adoption
City Council October 11, 2011 – $30,000 appropriated in the General Fund

<u>FISCAL IMPACT:</u>
None, the required local match is available in the FY 2012 General Fund budget.

<u>CONTACT(S):</u>
Marjette Upshur, Director of Economic Development, 455-4492
Brian Gleason, Economic Development Coordinator, 455-4493

<u>ATTACHMENT(S):</u>
Resolution

<u>REVIEWED BY:</u> lkp

RESOLUTION:

BE IT RESOLVED That the FY 2012 City/Federal/State Aid Fund budget is amended and $35,000 is appropriated, with resources of $5,000 from the Virginia Commission for the Arts FY 2012 Local Government Challenge Grant and $30,000 transferred from the FY 2012 General Fund budget, to provide funding for exhibitions, demonstrations, concerts, amenities and like activities as specified in the Arts & Cultural District ordinance.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

002L

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 10, 2012**			AGENDA ITEM NO.: 3
CONSENT: **X**	REGULAR:	WORK SESSION:	CLOSED SESSION: (Confidential)
ACTION: **X**		INFORMATION:	

ITEM TITLE: **Technology Trust Fund (TTF) Fees for the Office of the Circuit Court Clerk**

RECOMMENDATION:
Adopt a resolution to amend the FY 2012 General Fund budget and appropriate $46,463 with resources from the State Compensation Board, Technology Trust Fund fees to support information technology needs in the Office of the Circuit Court.

SUMMARY:
As required by the Code of Virginia, Section 17.1-279 – Additional fee to be assessed by circuit court clerks for information technology, "the clerk of each circuit court shall assess a $5 fee, known as the "Technology Trust Fund Fee," in each civil action, upon each instrument to be recorded in the deed books, and upon each judgment to be docketed in the judgment lien docket book. Such fee shall be deposited by the State Treasurer into a trust fund." Annually, a portion of this fee is returned to the local Office of the Circuit Court Clerk based on its information technology needs. These funds cannot be used to take the place of current funding supplied by the locality.

PRIOR ACTION(S):
Finance Committee, December 13, 2011

FISCAL IMPACT:
None

CONTACT(S):
Eugene C. Wingfield, Circuit Court Clerk, 455-2611

ATTACHMENT(S):
Resolution

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED that the FY 2012 General Fund budget is amended and $46,463 is appropriated with resources from the State Compensation Board, Technology Trust Fund fees to support information technology needs in the Office of the Circuit Court Clerk.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

001

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 10, 2012** AGENDA ITEM NO.: 4

CONSENT: REGULAR: **X** WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Conditional Use Permit (CUP) – Bed and Breakfast – 313-315 Madison Street**

RECOMMENDATION: Approval of the CUP petition.

SUMMARY: Ms. Bonnie Adams is petitioning for a CUP at 313-315 Madison Street to allow the conversion of a duplex into a bed and breakfast in an R-2, Low-Medium Density, Single-Family Residential District. The proposed bed and breakfast would allow for up to three (3) guest rooms. The Planning Commission recommended approval of the petition because:

- The petition agrees with the *Comprehensive Plan 2002-2020* which recommends a Traditional Residential use for the property.
- The petition agrees with the *Zoning Ordinance* which permits bed and breakfast uses in an R-2, Low-Medium Density Single-Family Residential District upon approval of a CUP by Council.

PRIOR ACTION(S):
December 14, 2011: Planning Division recommended approval of the CUP petition.

Planning Commission recommended approval (5-0, 1 abstention, Sale, 1 absent, Hannon) of the CUP petition.

FISCAL IMPACT: None

CONTACT(S): Tom Martin, City Planner - 455-3900
Kent White, Director of Community Development – 455-3900

ATTACHMENT(S):
- Resolution
- Planning Commission Report – December 14, 2011
- Planning Commission Minutes – December 14, 2011
- Vicinity Zoning Pattern
- Vicinity Future Land Use
- Watershed Location Map
- Concept Plan
- Property Photograph
- Speaker Signup Sheet

REVIEWED BY: lkp

RESOLUTION:

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO MS. BONNIE ADAMS TO ALLOW FOR THE CONVERSION OF A DUPLEX INTO A BED AND BREAKFAST IN AN R-2, LOW-MEDIUM DENSITY, SINGLE-FAMILY RESIDENTIAL DISTRICT.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the petition of Ms. Bonnie Adams for a conditional use permit to allow for the conversion of a duplex into a bed and breakfast in an R-2, Low-Medium Density, Single-Family Residential District, is hereby approved subject to the following conditions:

1. The property shall be developed in substantial compliance with the site plan received by Community Development on November 1, 2011.
2. The lot line between 313-315 Madison Street shall be vacated prior to operating the property as a bed and breakfast.
3. All lighting shall be glare shielded and non directional to prevent illumination beyond the property line.

Adopted:

Certified: ______________________________
Clerk of Council

005L

The Department of Community Development

City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: December 14, 2011
Re: **Conditional Use Permit (CUP) – Bed and Breakfast – 313-315 Madison Street**

I. PETITIONER

Ms. Bonnie L. Adams, 313 Madison Street, Lynchburg, VA 24504
Representative: Ms. Bonnie L. Adams, 313 Madison Street, Lynchburg, VA 24504

II. LOCATION

The subject properties comprise two hundred eighty-two thousandths of an acre (0.282) and are located at 313-315 Madison Street.
Property Owner: Ms. Bonnie L. Adams, 11556 Rolling Green Court, Apartment 100, Reston, VA 20191

III. PURPOSE

The purpose of the petition is to allow a bed and breakfast for up to three (3) guests in an R-2, Low-Medium Density, Single-Family Residential District.

IV. SUMMARY

- The *Comprehensive Plan 2002-2020's Future Land Use Map* (*FLUM*) recommends a Traditional Residential use for the area.
- Petition agrees with the *Zoning Ordinance* which allows a bed and breakfast with up to three (3) rooms in an R-2, Low-Medium Density, Single-Family Residential District upon approval of a CUP by Council.

<u>The Planning Division recommends approval of the CUP petition.</u>

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2002-2020* recommends a Traditional Residential use for the area. This land use category was applied to the City's older neighborhoods, generally constructed prior to WWII and before the City was zoned. The City's historic districts are located within these areas; and many of the houses, lot sizes and setbacks do not conform to the current zoning standards. Infill residential development in these neighborhoods should be designed to complement the style and type of housing located there. Traditional Residential areas may also include small retail, personal service, office or restaurant uses although their expansion is not recommended unless supported by a Neighborhood Conservation Plan **(pg. 5.6)**.

   The subject property is also in close proximity to the land area covered by the *Fifth Street Corridor Master Plan* adopted by Council on May 23, 2006. The overall vision of the plan is to provide a thriving business center in a beautiful setting of rehabilitated and new buildings with complementary streetscape and surrounded by attractive, safe and diverse neighborhoods **(pg. 3)**.

2. **Zoning.** The subject property was annexed into the City in 1852. The existing R-2, Low-Medium Density, Single-Family Residential District was established on July 13, 2004.

3. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances are needed for the development of the property as proposed.

4. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:

   - On May 8, 1990, Lynchburg City Council approved the CUP petition of Robert Sherman to operate a bed and breakfast in an R-3, Medium Density, Two-Family Residential District at 405 Madison Street.
   - On June 11, 1991, Lynchburg City Council approved the CUP petition of Tina Barringer to operate a bed and breakfast in an R-3, Medium Density, Two-Family Residential District at 215 Madison Street.
   - On May 12, 1992, Lynchburg City Council approved the CUP petition of the City of Lynchburg to allow the use of a one hundred six (106)-space parking area in an R-3, Medium Density, Two-Family Residential District at Lucado Place and Clay Street.
   - On April 12, 1994, Lynchburg City Council approved the CUP petition of Tina Barringer to increase the number of rooms in an existing bed and breakfast in an R-3, Medium Density, Two-Family Residential District at 215 Madison Street.
   - On July 13, 2004, Lynchburg City Council approved the rezoning of the Garland Hill Historic District from R-3, Medium Density, Two-Family Residential District to R-2, Low-Medium Density, Single-Family Residential District
   - On May 23, 2006, Lynchburg City Council adopted the *Fifth Street Corridor Master Plan*.
   - On September 12, 2006, Lynchburg City Council approved the CUP request of Centra Health to construct a parking lot in an R-3, Medium Density, Two-Family Residential District at 210, 214, 218 and 222 Federal Street.
   - On December 11, 2007, Lynchburg City Council approved the adoption of the Fifth Street Revitalization Corridor Overlay District and the rezoning of areas adjacent to Fifth Street from B-1, Limited Business District, B-5, General Business District, R-2, Low-Medium, Single-Family Residential District and R-3, Medium Density, Two-Family Residential District to B-6, Riverfront District.

5. **Site Description.** The subject property is two (2) tracts comprising two hundred eighty-two thousandths (0.282) of an acre located at 313-315 Madison Street. The property contains a two (2)-story wood frame, wood sided, six thousand two hundred (6,200) square foot duplex constructed in 1883.

6. **Proposed Use of Property.** The purpose of this petition is to allow the use of the property as an owner-occupied bed and breakfast with up to three (3) guest rooms.

7. **Traffic, Parking and Public Transit.** The project should have minimal impact upon the traffic conditions in the area. Section 35.1-25. Off-street parking and loading of the *Zoning Ordinance* requires one (1) space per residential unit and one (1) space for each quest room in a bed and breakfast. A total of four (4) spaces would be required for the use as proposed and a

total of four (4) spaces are available on the subject property. The *Zoning Ordinance* also provides that on-street parking located within one thousand (1,000) feet of the proposed use may be used to satisfy off-street parking requirements.

The property is served by Route 1A with a stop located approximately four hundred fifty (450) feet from the property at the intersection of Fifth and Madison Streets.

8. **Stormwater Management.** N/A

9. **Emergency Services:** The City Fire Marshal had no comments of concern related to the proposed use of the property. The City Police Department provided recommendations for lighting, no trespassing signs and other general security issues that will be considered by the petitioner.

10. **Impact.** The proposed bed and breakfast should have limited impact on the surrounding area and could support the vision and revitalization goals of the *Fifth Street Corridor Master Plan.* Section 35.1-73.1, Tourist homes or bed and breakfast of the *Zoning Ordinance* limits the number or rooms in an R-2, Low-Medium Density, Single-Family Residential District to three (3) and also requires that the primary use of the home remain as a residence. The two (2) parcels will need to be combined in order to use the property as a bed and breakfast. Once the properties are combined, the structure will no longer be permitted to be used as a duplex.

11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the conditional use permit on November 15, 2011. Comments related to the proposed use have or will be addressed prior to final site plan approval.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of Bonnie L. Adams for a conditional use permit at 313-315 Madison Street to allow a bed and breakfast with up to three (3) guest rooms subject to the following conditions:

1. **The property shall be developed in substantial compliance with the site plan received by Community Development on November 1, 2011.**
2. **The lot line between 313-315 Madison Street shall be vacated prior to operating the property as a bed and breakfast.**
3. **All lighting shall be glare shielded and non directional to prevent illumination beyond the property line.**

This matter is respectfully offered for your consideration.

William T. Martin

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Ms. Bonnie M. Svrcek, Deputy City Manager
Mr. Walter C. Erwin, City Attorney
Mr. Kent L. White, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia Kozerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Doug Saunders, Building Commissioner
Mr. Robert Fowler, Zoning Administrator
Mr. Jacob Dorman, Environmental Reviewer
Ms. Bonnie, L. Adams, Petitioner

VII. ATTACHMENTS

1. **Vicinity Zoning Pattern**
2. **Vicinity Proposed Land Use**
3. **Watershed Location Map**
4. **Concept Plan**
5. **Photo**

MINUTES OF THE DECEMBER 14, 2011 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED. THERE WAS NO SECOND MEETING IN DECEMBER):

b. Petition of Bonnie L. Adams for a conditional use permit at 313 and 315 Madison Street to allow a three (3)-room bed and breakfast in an R-2, Low-Medium Density Residential District.

Commissioner Sale indicated that he would be abstaining from this petition. Mr. Henry had the following comments for the commissioners. The *Comprehensive Plan* recommends a Traditional Residential use for this property. This land use category is applied to the City's older neighborhoods generally constructed prior to World War II. The City's historic districts are located in these areas and many of these houses, lots sizes and setbacks do not conform to the *Zoning Ordinance.* Infill residential in these neighborhoods should be designed to complement the style and type of housing located there. Traditional Residential areas may also contain light retail, personal service, office or restaurant uses.

The subject property is also in close proximity to the Fifth Street master plan area. The overall vision of the plan is to provide a thriving business center in a beautiful setting of rehabilitated and new buildings with complementary streetscape and surrounded by attractive, safe and diverse neighborhoods.

A total of four off-street parking spaces would be required for the bed and breakfast and there are currently four off-street parking spaces on the property. The *Zoning Ordinance* also allows that on-street parking located within one thousand feet of the proposed use may be used to satisfy the off-street parking requirements. The proposed use should have minimal impact on the surrounding area and could support the vision and revitalization goals of the Fifth Street master plan. The *Zoning Ordinance* limits the bed and breakfast to three guest rooms and also requires that its primary use remains as a residence. The two properties will need to be combined in order for it to be used as a bed and breakfast. Once they are combined, the properties can no longer be used as a duplex. Staff recommends approval of the conditional use permit application.

Mrs. Bonnie Adams was present to represent the petition. She commented that she has been renovating the property for seven years. It is currently fully renovated for the bed and breakfast. She will be operating the bed and breakfast for all guests but her primary focus will be as a place of respite for visiting ministers, seminary professors and missionaries coming to Lynchburg.

Mrs. Frances Calhoun was present to speak in favor of the petition. She lives at 400 Madison Street and is speaking on behalf of the Garland Hill Neighborhood Association as well as herself. She commented that there have been other bed and breakfasts in the neighborhood in the past and they have definitely been an asset. There have been visitors to the bed and breakfasts who have later relocated to Lynchburg and the historic districts. She and the association are fully in support of this petition.

Mr. Keith Anderson came forward to speak on behalf of the petitioner. He is a member of the Lynchburg School Board and a local pastor. He said he could vouch for Mrs. Adams both civically and as a responsible citizen. He feels that the bed and breakfast will add value to the neighborhood and is in keeping with the standard of excellence that we offer in Lynchburg. He thinks it will encourage others to be entrepreneurs and to open small businesses in Lynchburg.

Chair Hamilton asked for anyone else present who wished to speak in favor of the petition. No one came forward but there were others present that raised their hands in support of the petition. She asked for anyone present who wished to speak in opposition to the petition. No one came forward. She closed the public hearing portion of the petition.

Commissioner Hooper commented that this is a beautiful area of the City and that the bed and breakfast will be an asset to the neighborhood. Commissioner Coleman commented that he had served in this area for seven years and is very familiar with the property. He is fully in support of this petition. He is impressed with the people who have come out in support of the petition and that lets him know that there will be integrity with this project. Commissioner Barnes commented that there has been ample precedence set for bed and breakfasts in this area. The timing of this is good with the revitalization of Fifth Street and hopefully this will bring more people to the central city. Commissioner Swienton remarked that this gives us the opportunity to bring both business and people to the historic district and that is a win-win situation all the way around.

Commissioner Coleman made the following motion, which was seconded by Commissioner Hooper:

"That the Planning Commission recommends to City Council approval of Bonnie L. Adams for a conditional use permit at 313-315 Madison Street to allow a bed and breakfast with up to three (3) guest rooms subject to the following conditions:

1. The property shall be developed in substantial compliance with the site plan received by Community Development on November 1, 2011.

2. The lot line between 313-315 Madison Street shall be vacated prior to operating the property as a bed and breakfast.

3. All lighting shall be glare shielded and non-directional to prevent illumination beyond the property line."

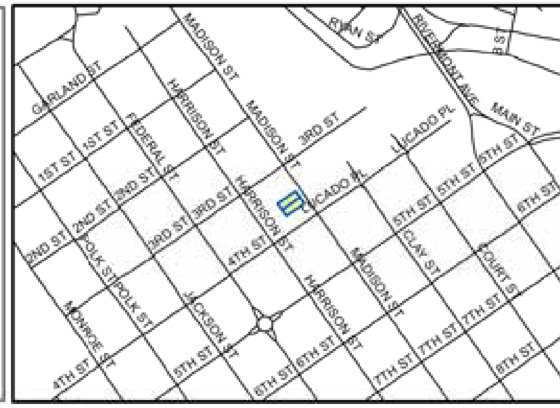
The motion passed by the following vote:

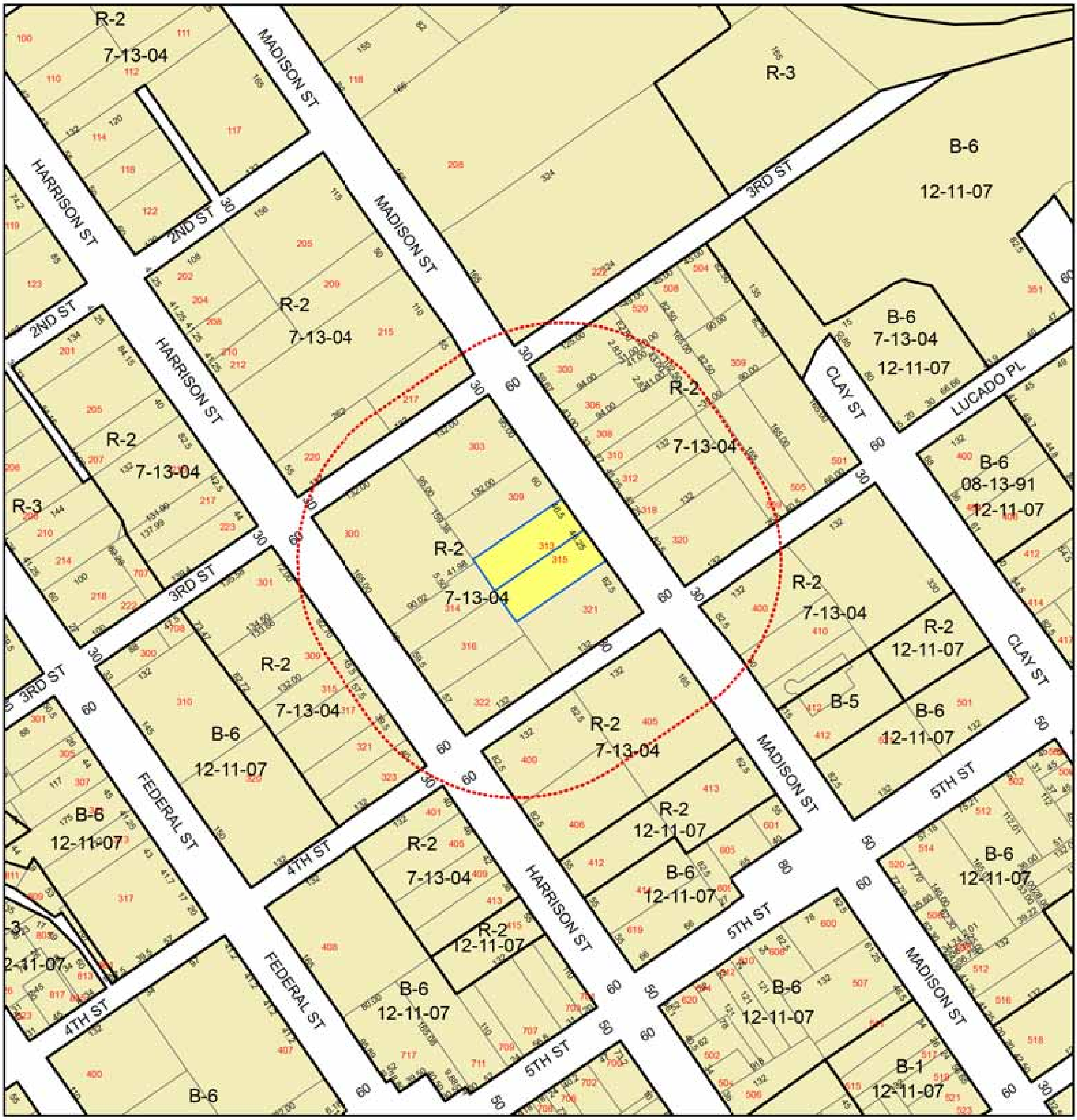
AYES:	Barnes, Hamilton, Hooper, Sale and Swienton	5
NOES:		0
ABSTENTIONS:	Sale	1
ABSENT:	Hannon	1

BED AND BREAKFAST
313 AND 315 MADISON STREET
Petitioner: Bonnie L. Adams
Vicinity Zoning Pattern Map

Subject Properties

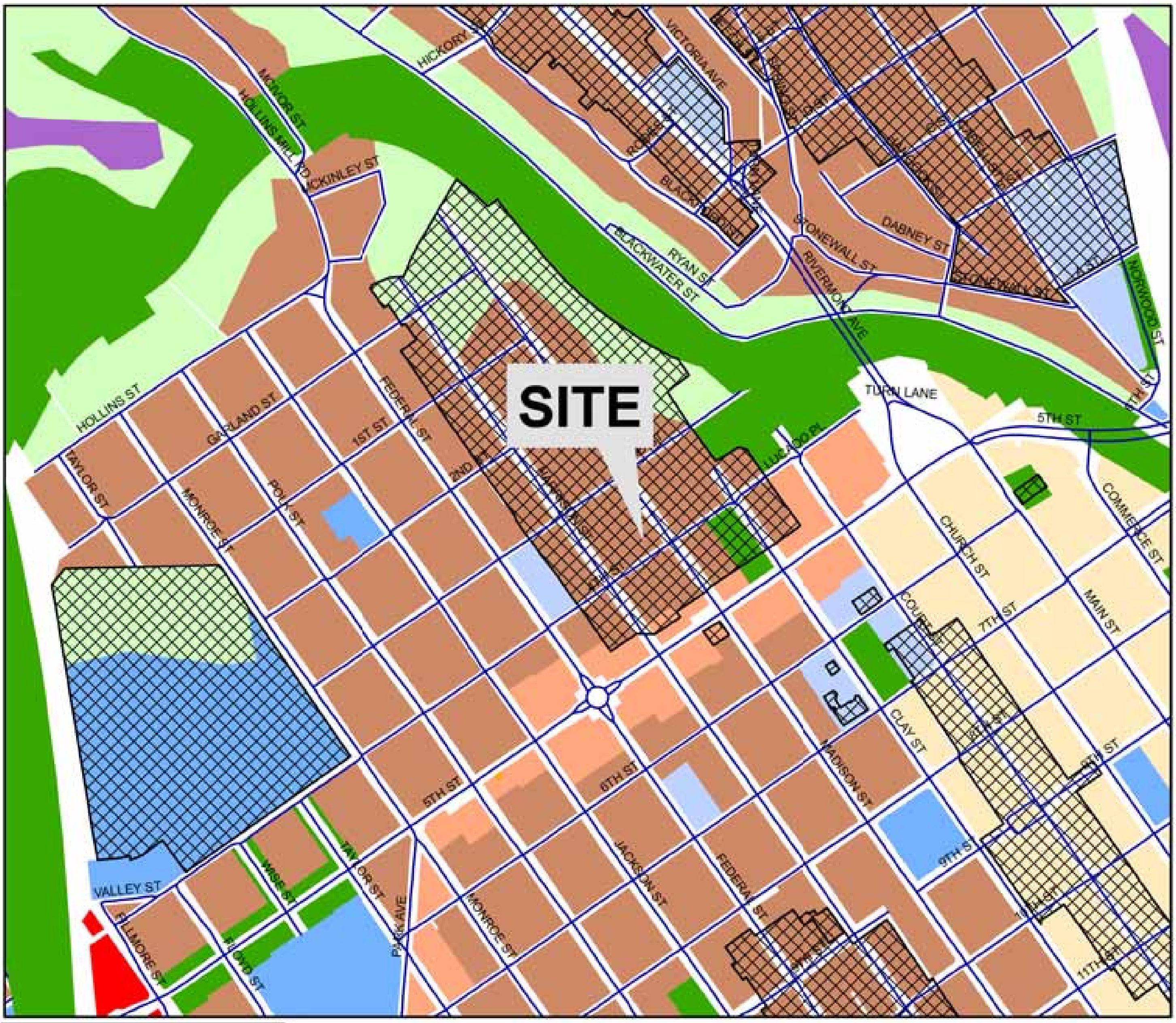
200 Foot Buffer





Bed and Breakfast 313-315 Madison Street Adjoining Owners

PIN	Owner	Local Address
02407007	ALICE L STUMP	317 HARRISON STREET
02407006	ALICE L STUMP	315 HARRISON STREET
02406002	ANNE W TAYLOR TRUSTEES & JOSEPH H JAMES IV TRUSTEES	303 MADISON STREET
02406005	BONNIE L ADAMS	315 MADISON STREET
02406004	BONNIE L ADAMS	313 MADISON STREET
02406006	CHRISTOPHER N & AMY R COHEN	321 MADISON STREET
02405014	DANIEL A KLINE	306 MADISON STREET
02406009	DIANE C NIXON	314 HARRISON STREET
02405010	ED MCCANN	318 MADISON STREET
02407008	EQUITY TRUST CO CUSTODIAN FBO HEIDI ALBERTSON & JADE TREE PROPERTIES LLC	321 HARRISON STREET
02405002	GARY J & NETTIE F KOEPENICK	520 3RD STREET
02405001	GARY J & NETTIE F KOEPENICK TRUSTEES OFGARY KOEPENICK REV TRUST	300 MADISON STREET
02405009	GLENN W & LINDA S SULLIVAN	320 MADISON STREET
02412001	HERMAN H & FRANCES B CALHOUN TRUSTEES UNDER THE CALHOUN	400 MADISON STREET
02405008	HERMAN H & FRANCES B CALHOUN TRUSTEES UNDER THE CALHOUN	509 LUCADO PLACE
02331005	HOSANNA HEIGHTS LLC C/O PAMELLA DENDTLER	222 MADISON STREET
02406003	JAMES A & LINDA C HARLEY	309 MADISON STREET
02407005	JAMES A & MONTINA F KOGER	309 HARRISON STREET
02405011	JEROME L & SONG Y PIONK	312 MADISON STREET
02405012	JOHN W & ROBIN E BATES	310 MADISON STREET
02406007	KAY E B LITTLE TRUSTEES	322 HARRISON STREET
02411002	LARRY E & ANNE MARIE CAYLOR	405 MADISON STREET
02412005	LYNCHBURG COVENANT FELLOWSHIP	410 MADISON STREET
02406001	M ANDERSON & FRANCES W SALE	300 HARRISON STREET
02405013	MICHAEL D HOLDREN	308 MADISON STREET
02411011	RALPH L WILSON JR	406 HARRISON STREET
02411001	RALPH L WILSON JR	400 HARRISON STREET
02407009	ROBERT MOUZAYCK	323 HARRISON STREET
02406008	SHEPPARD M KOLB	316 HARRISON STREET
02407003	THADDEUS A & JANE W DUNNAM	301 HARRISON STREET
02403005	THOMAS D LARKIN JR	217 MADISON STREET
02403006	WILLIE E & MINNIE C ANDERSON	220 HARRISON STREET
Petitioner	BONNIE L ADAMS	



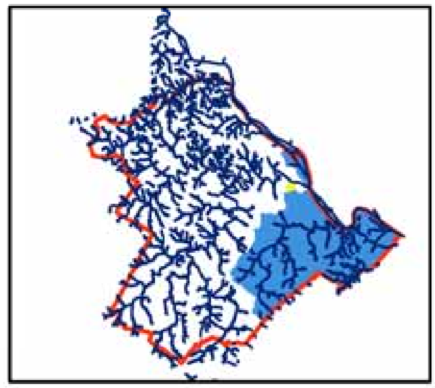
- LocalHistoricDistrict
- Traditional Residential
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Neighborhood Commercial
- Community Commercial
- Regional Commercial
- Employment 1
- Employment 2
- Office
- Institution
- Downtown
- Public Use
- Public Parks
- Resource Conservation
- Residential Mixed Use
- General Mixed Use
- Employment Mixed Use

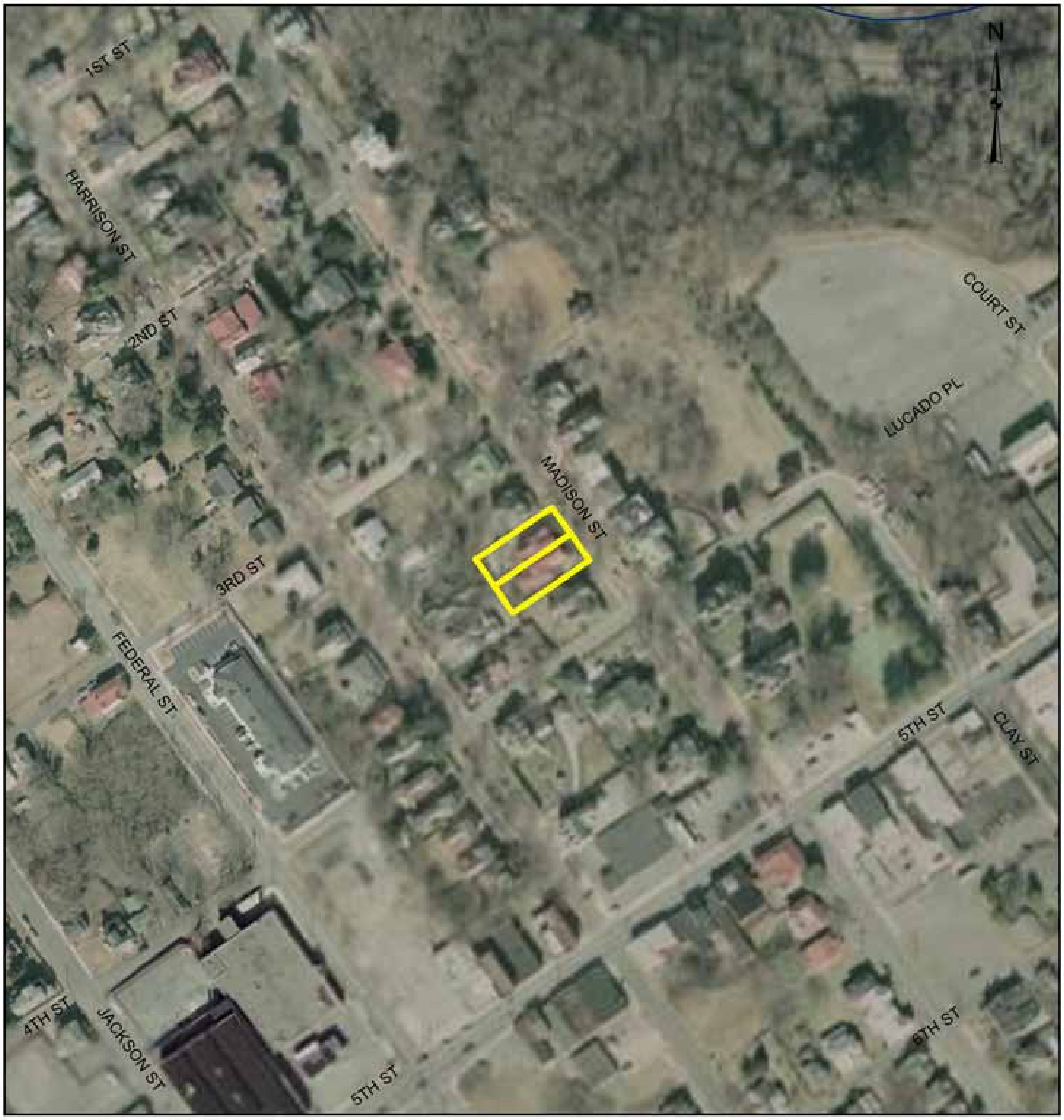
LAND USE MAP
BED AND BREAKFAST
313 AND 315 MADISON STREET
CONDITIONAL USE PERMIT

BED AND BREAKFAST
CONDITIONAL USE PERMIT
313 AND 315 MADISON STREET

Watershed Location Map

- Project Site
- Fishing Creek
- Corporate Limit





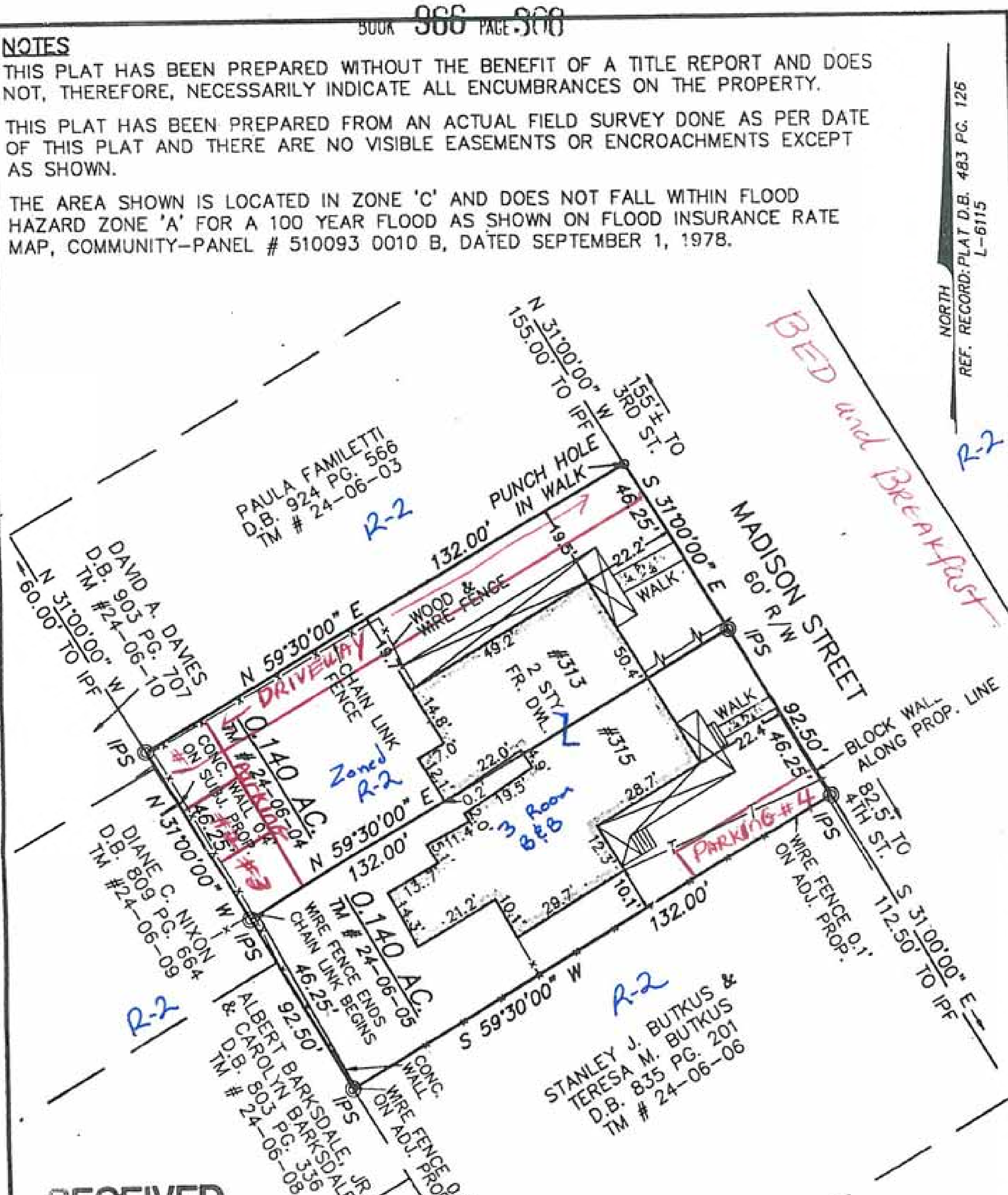
BOOK 966 PAGE 308

NOTES

THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT, THEREFORE, NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

THIS PLAT HAS BEEN PREPARED FROM AN ACTUAL FIELD SURVEY DONE AS PER DATE OF THIS PLAT AND THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS EXCEPT AS SHOWN.

THE AREA SHOWN IS LOCATED IN ZONE 'C' AND DOES NOT FALL WITHIN FLOOD HAZARD ZONE 'A' FOR A 100 YEAR FLOOD AS SHOWN ON FLOOD INSURANCE RATE MAP, COMMUNITY-PANEL # 510093 0010 B, DATED SEPTEMBER 1, 1978.



RECEIVED

NOV 01 2011

COMMUNITY DEVELOPMENT

SOURCE OF TITLE:

JERRY CROAN &
JUDY BAKER
D.B. 909 PG. 823

SURVEYED FOR:

RALPH L. WILSON

LEGEND

IPS IRON PIN SET
—/\/— OVERHEAD ELECTRIC
—T— OVERHEAD TELEPHONE
—x— FENCE
EDGE OF CONCRETE

COMMONWEALTH OF VIRGINIA
H. R. Terrell Jr.
HERVEY R. TERRELL, JR.
No. 1819
8/7/96
LAND SURVEYOR

Hurt & Proffitt, Inc.
ENGINEERING • SURVEYING • ENVIRONMENTAL • SITE PLANNING
MATERIALS TESTING • GEOTECHNICAL
2524 Langhorne Road
Lynchburg, Virginia 24501
(804)847-7796 FAX (804)847-0047

PLAT SHOWING RESURVEY OF
 # 313 & # 315 MADISON STREET
GARLAND HILL
CITY OF LYNCHBURG, VIRGINIA

30 15 0 30 600 GRAPHIC SCALE IN FEET	GL # 229-14-D2.4	Date: AUGUST 7, 1996
	Dr. By: JJB	Comm. #: 967408 — File #: L-6637

C:\DWGS\967408\BND

The site currently has no stormwater related issues and will see no increase in impervious area as a result of this project. Since there is no new impervious area and no existing stormwater problems, stormwater quantity and quality do not have to be addressed with this project.

The site currently conveys runoff in a manner typical of a single family residential property. No additional impervious area is proposed and no stormwater conveyance issues currently affect the site.

This parcel is shown to be in Floodzone "X" and out of the limits of the 100-year floodplain.

313 and 315 Madison Street

313 and 315 Madison Street

Conditional Use Permit Petition

December 14, 2011

PLEASE PRINT

NAME	ADDRESS	PHONE	IN FAVOR	IN OPPOSITION	NEUTRAL
FRANCES Crawford	400 Madison St.	845-4148	✓		
Bonnie Adams	313 Madison St	703-966-1032			
Keith Anderson	3413 Wilson Ave	944-5652			

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 10, 2012** AGENDA ITEM NO.: 5

CONSENT: REGULAR: **X** WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Conditional Use Permit (CUP) – Historic Diamond Hill Residence, LLC – 721 Court Street**

RECOMMENDATION: Approval of the CUP petition.

SUMMARY: Historic Diamond Hill Residence, LLC (Ms. Isabelle Duston) is petitioning for a CUP at 721 Court Street to add four (4) residential units to an existing office building in a B-1, Limited Business District. In addition to the four (4) apartment units, the petitioner will retain approximately five hundred (500) to six hundred (600) square feet of office space within the building. The Planning Commission recommended approval of the petition because:

- The petition agrees with the *Comprehensive Plan 2002-2020* which recommends a Downtown use for the property.
- The petition agrees with the *Zoning Ordinance* which permits residential uses of any density or type other than single-family detached dwellings in a B-1, Limited Business District upon approval of a CUP by Council.

PRIOR ACTION(S):
December 14, 2011: Planning Division recommended approval of the CUP petition.

Planning Commission recommended approval (6-0, 1 absent, Hannon) of the CUP petition.

FISCAL IMPACT: None

CONTACT(S): Tom Martin, City Planner - 455-3900
Kent White, Director of Community Development – 455-3900

ATTACHMENT(S):
- Resolution
- Planning Commission Report – December 14, 2011
- Planning Commission Minutes – December 14, 2011
- Vicinity Zoning Pattern
- Vicinity Future Land Use
- Watershed Location Map
- Concept Plan
- Narrative
- Parking Narrative
- Property Photograph
- Speaker Signup Sheet

REVIEWED BY: lkp

RESOLUTION:

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO HISTORIC DIAMOND HILL RESIDENCE, LLC TO ADD FOUR (4) RESIDENTIAL UNITS TO AN EXISTING OFFICE BUILDING IN A B-1, LIMITED BUSINESS DISTRICT.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the petition of Historic Diamond Hill Residence, LLC for a conditional use permit to add four (4) residential units to an existing office building in a B-1, Limited Business District, is hereby approved subject to the following conditions:

1. The property shall be developed for a maximum of four (4) apartment units in addition to an office use.
2. A total of five (5) parking spaces shall be maintained for the residential and office uses.

Adopted:

Certified: ______________________________
Clerk of Council

006L

The Department of Community Development

City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: December 14, 2011
Re: **Conditional Use Permit (CUP) – Historic Diamond Hill Residence, LLC – 721 Court Street**

I. PETITIONER

Ms. Isabelle Duston, Historic Diamond Hill Residence, LLC, 1640 Spotswood Place, Lynchburg, VA 24503
Representative: Mr. Robert Tunkel, 210 Cleveland Avenue, Lynchburg, VA 24503

II. LOCATION

The subject property is a tract of one hundred seventy four thousandths (0.174) of an acre located at 721 Court Street.
Property Owner: Angel Wings, LLC, 911 E. Jefferson Street, Charlottesville, VA 22902

III. PURPOSE

The purpose of the petition is to add four (4) residential units to an existing office building located at 721 Court Street.

IV. SUMMARY

- The *Comprehensive Plan 2002-2020's Future Land Use Map* (*FLUM*) recommends a Downtown use for the area.
- Petition agrees with the *Zoning Ordinance* which allows residential uses of any density or type other than a single-family detached dwelling in a B-1, Limited Business District upon approval of a conditional use permit by Council.

<u>The Planning Division recommends approval of the CUP petition.</u>

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2002-2020* recommends Downtown use for the property. Downtown uses are intended to include "a mix of retail, entertainment, restaurant, office, employment, residential, public, park, and institutional uses." **(pg 5.3-5.4)** The property is also located within the "Downtown and Riverfront Revitalization Area" as designated on the *Plan Framework Map.* The *Comprehensive Plan 2002-2020* also proclaims that the City should "extend the residential fabric from the historic neighborhoods into the heart of Downtown." (**pg 8.5**). The *Downtown and Riverfront Master Plan 2000,* "Court and Fifth Street Housing", states that new residential units should help complement existing church and residential uses that are found in the neighborhood.

2. **Zoning.** The subject property was annexed into the City in 1852. The existing B-1, Limited Business District was established on December 12, 1978.

3. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances are needed for the development of the property as proposed.

4. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:

   - On February 10, 1987, Lynchburg City Council approved the CUP petition of Holy Cross Catholic Church to construct an additional building and parking lot at 710-720 Clay Street in a R-2, Low-Medium Density Single-Family Residential District.
   - On June 14, 1994, Lynchburg City Council approved the rezoning petition of Joseph & Brenda Sanzone, to rezone twenty eight hundredths (0.28) of an acre at 707 Clay Street from R-2, Low-Medium Density Single-Family Residential District to B-1C, Limited Business District (Conditional) to allow for an addition to the building and additional parking.
   - On June 13, 1995 Lynchburg City Council approved the CUP petition of Holy Cross Catholic Church to construct a three-story multi-purpose addition at 710 Clay Street in an R-2, Low-Medium Density Single-Family Residential District.
   - On July 11, 2000, Lynchburg City Council approved the CUP petition of Central Virginia Community Services to allow for substance abuse counseling and treatment center at 620 Court Street in a B-1, Limited Business District.
   - On July 9, 2002, Lynchburg City Council approved the CUP petition of St. Paul's Episcopal Church, to allow for a child care facility for up to fifteen (15) children at 620 Madison Street in an R-2, Low-Medium Density Single-Family Residential District.
   - On October 14, 2003, Lynchburg City Council approved the CUO petition of St. Paul's Episcopal Church, to construct a parking lot at 612-616 Madison Street in a R-2, Low-Medium Density Single-Family Residential District.
   - On August 9, 2005, Lynchburg City Council approved the CUP petition of Lynchburg Daily Bread to construct a pantry and food preparation building addition at 721 Clay Street in a R-2, Low-Medium Density Single-Family Residential District.
   - On December 11, 2007, Lynchburg City Council approved the Fifth Street Revitalization Corridor Overlay District comprehensive rezoning, generally in the areas surrounding Fifth Street, from B-1, Limited Business District and B-5, General Business District to R-2, Low-Medium Density Single-Family Residential District, R-3, Medium Density Two-Family Residential District, R-4, Medium-High Density Multi-Family Residential District, and B-6, Riverfront Business District.
   - On January 12, 2010, Lynchburg City Council approved the CUP petition of Adama Faroh, LLC to allow for two (2) apartment units at 802 Court Street in a B-1, Limited Business District.
   - On July 12, 2011, Lynchburg City Council approved the CUP petition of KLM Properties, Inc., to allow for two (2) apartment units at 616 Court Street in a B-1, Limited Business District.

5. **Site Description.** The subject property is a tract of one hundred seventy four thousandths (0.174) of an acre located at 721 Court Street. The property contains a building constructed in

1883, which was previously used as a medical office and originally built as a single-family home. The property (Williams House) falls within the Court House Hill Historic District.

6. **Proposed Use of Property.** The purpose of this petition is to allow for the creation of four (4) apartment units. A portion of the building, approximately 500-600 square feet, will be retained for an office use by the petitioner.

7. **Traffic, Parking and Public Transit.** The project should have minimal impact upon the traffic conditions in the area. Section 35.1-25. Off-street parking and loading of the *Zoning Ordinance* requires one (1) space per residential unit and two (2) spaces per one thousand (1,000) square feet of office area. A total of five (5) spaces would be required for the uses as proposed. The petitioner has indicated that five (5) parking spaces will be leased within the Clay Street Parking Deck. The *Zoning Ordinance* also provides that on-street parking located within one thousand (1,000) feet of the proposed use may be used to satisfy off-street parking requirements.

   The property is served by Route 3D with a stop located at the intersection of Court and Eighth Streets, which is adjacent to the subject property.

   The leasing of off-street parking spaces, combined with available on-street parking spaces and the availability of mass transit to the property should be adequate for the uses as proposed.

8. **Stormwater Management.** N/A

9. **Emergency Services:** The City Fire Marshal and Police Department had no comments of concern with the project as proposed.

10. **Impact.** The proposed addition of four (4) apartment units to the existing vacant office building would have minimal impact on the surrounding area. There were no staff concerns regarding traffic, stormwater management or emergency services. The petitioner has verbally indicated that parking spaces will be leased in the Clay Street Parking Deck, which will satisfy off-street parking requirements. Although the property is located in the Court House Hill Historic District, the addition of the four (4) proposed apartment units will not require any exterior renovations. The addition of four (4) apartment units to the existing office building would be consistent with the private investment goal of the *Downtown and Riverfront Master Plan 2000.*

11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the conditional use permit petition on November 15, 2011. Comments related to the proposed use have or will be addressed prior to final site plan approval.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of the petition of Historic Diamond Hill Residence, LLC for a conditional use permit at 721 Court Street to add four (4) residential units to an existing office building.

1. **The property shall be developed for a maximum of four (4) apartment units in addition to an office use.**

2. **A total of five (5) parking spaces shall be maintained for the residential and office uses.**

This matter is respectfully offered for your consideration.

William T. Martin

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Ms. Bonnie M. Svrcek, Deputy City Manager
Mr. Walter C. Erwin, City Attorney
Mr. Kent L. White, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia Kozerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Doug Saunders, Building Commissioner
Mr. Robert Fowler, Zoning Administrator
Mr. Jacob Dorman, Environmental Reviewer
Ms. Isabelle Duston, Historic Diamond Hill Residence, LLC
Mr. Robert Tunkel, Historic Diamond Hill Residence, LLC

VII. ATTACHMENTS

1. **Vicinity Zoning Pattern**
2. **Vicinity Proposed Land Use**
3. **Watershed Location Map**
4. **Concept Plan**
5. **Narrative**
6. **Parking Narrative**
7. **Photo**

MINUTES OF THE DECEMBER 14, 2011 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED. THERE WAS NO SECOND MEETING IN DECEMBER):

a. **Petition of Historic Diamond Hill Residence, LLC for a conditional use permit at 721 Court Street to allow the addition of four (4) residential apartments to an existing building in a B-1, Limited Business District.**

Mr. Henry had the following comments for the commissioners. The building is vacant but was previously used as a medical office. The *Comprehensive Plan* recommends a downtown use for this property. Downtown uses are intended to include a mix of retail, entertainment, restaurant, office, employment, residential, public parks and institutional uses. The property is also located within the downtown and riverfront revitalization area. The *Comprehensive Plan* also mentions that the City should extend the residential fabric from historic neighborhoods into the heart of downtown.

The *Zoning Ordinance* requires five off-street parking spaces for the proposed use. The petitioner has indicated that five parking spaces will be leased at the Clay Street parking deck. The *Zoning Ordinance* also allows that on-street parking located within one thousand feet of the proposed use may be used to satisfy the off-street parking requirements. The combination of the available parking, the leased spaces and the availability of mass transit should be adequate for the proposed use.

The addition of four residential apartments to the existing building should have minimal impact on the surrounding area. There were no staff concerns regarding traffic, stormwater management or emergency services. Although the property is located in the Courthouse Hill historic district, there are no proposed exterior changes and, therefore, there is no historic review requirement. The addition of the four units would result in the fulfillment of the private investment goal of the downtown riverfront master plan. Therefore, staff recommends approval of the conditional use permit petition.

Mr. Robert Tunkel was present to represent the petition. He indicated that each apartment will have around 1,200 to 1,400 square feet of space and that there are plans to extensively renovate the interior of the building to accommodate the apartments.

Chair Hamilton asked for anyone else present who wished to speak in favor of the petition. No one came forward. She asked for anyone present who wished to speak in opposition to the petition. No one came forward. She closed the public hearing portion of the petition.

Chair Hamilton commented that she is thrilled to see some residential nesting in the area. Commissioner Sale commented that the residential occupancy of the building will be good for the building as well as a benefit to the neighborhood.

Commissioner Hooper made the following motion, which was seconded by Commissioner Barnes:

"That the Planning Commission recommends to City Council approval of the petition of Historic Diamond Hill Residence, LLC for a conditional use permit at 721 Court Street to add four (4) residential units to an existing office building.

1. **The property shall be developed for a maximum of four (4) apartment units in addition to an office use.**

2. **A total of five (5) parking spaces shall be maintained for the residential and office uses."**

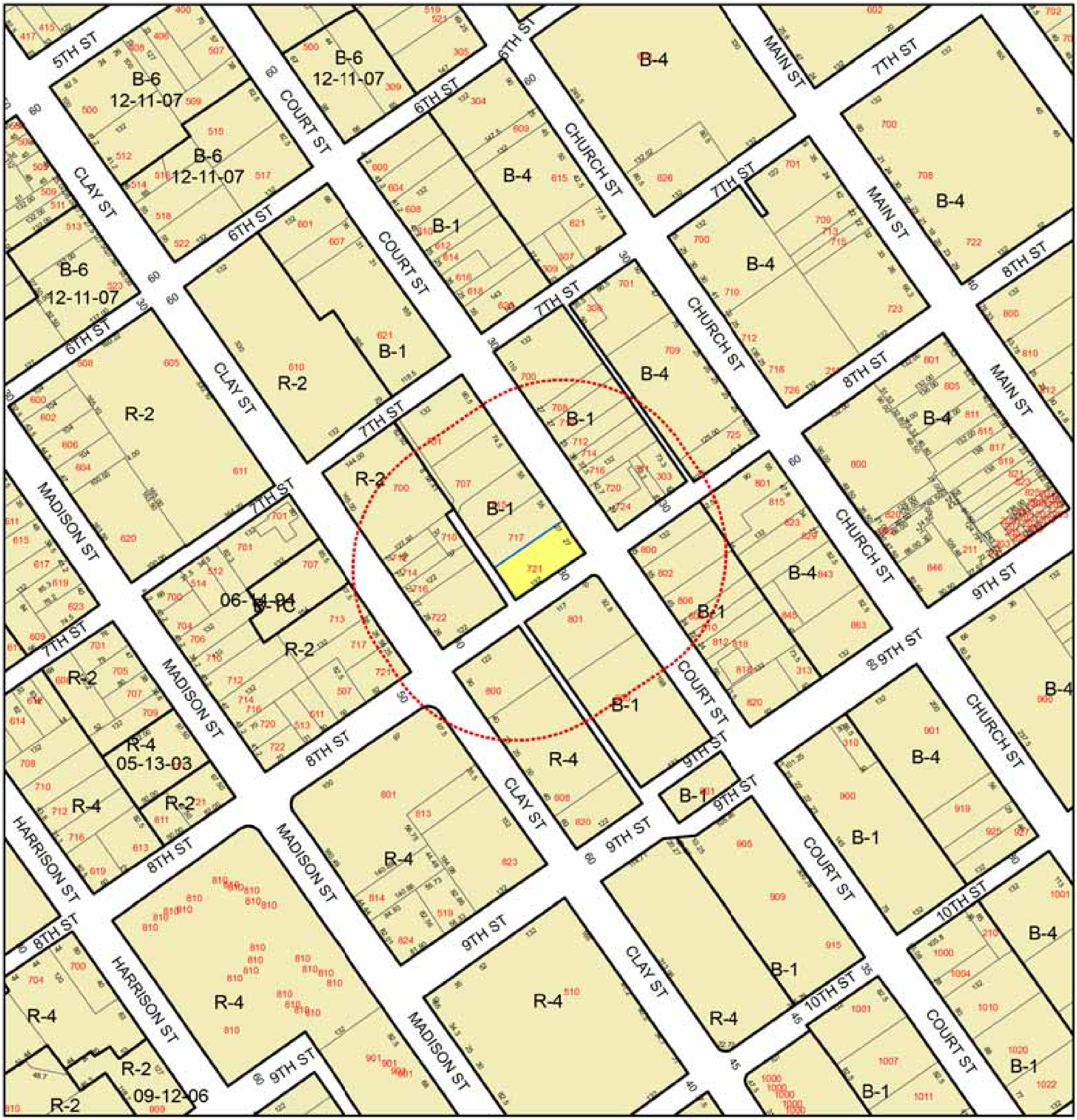
The motion passed by the following vote:

AYES:	Barnes, Coleman, Hamilton, Hooper, Sale and Swienton	6
NOES:		0
ABSTENTIONS:		0
ABSENT:	Hannon	1

721 COURT STREET
CONDITIONAL USE PERMIT
Petitoner: Historic Diamond Hill Residence, LLC
Vicinity Zoning Pattern Map

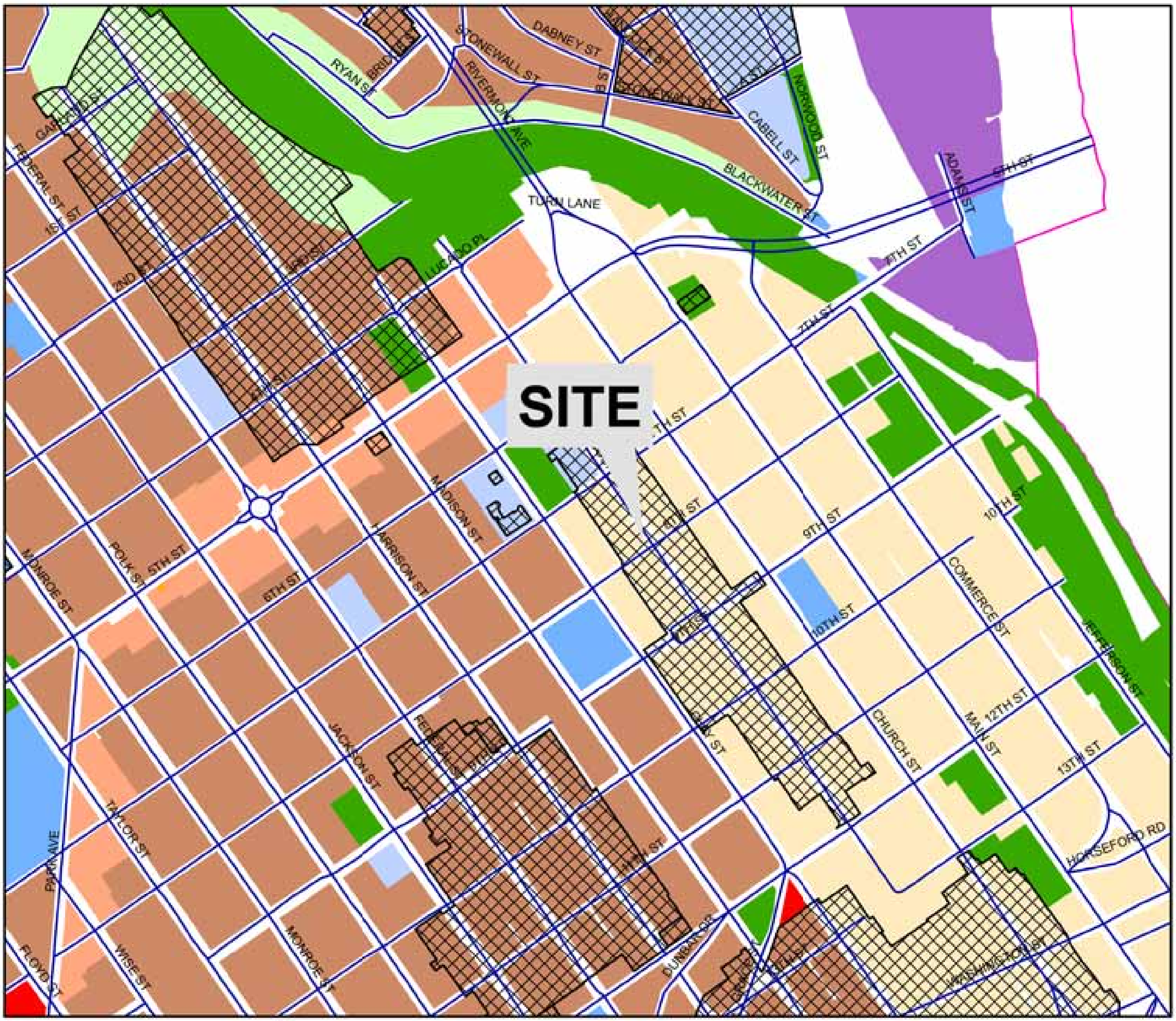
Subject Properties

200 Foot Buffer



HISTORIC DIAMOND HILL RESIDENCE, LLC ADJOINING OWNERS

PIN	Owner	Local Address
02446016	ADAMA FAROH LLC C/O KURT SCHULZ	802 COURT STREET
02435004	ALLIED ARTS LLC	709 CHURCH STREET
02435012	ALLIED ARTS LLC	724 COURT STREET
02435021	ALLIED ARTS LLC	311 8TH STREET
02435020	ALLIED ARTS LLC	303 8TH STREET
02435010	ALLIED ARTS LLC	725 CHURCH STREET
02436006	ANGEL WINGS LLC	721 COURT STREET
02435013	BALDWIN, MONROE G JR & HAMMER, C W & HOUCK, PETER W T/A WHP	720 COURT STREET
02436004	BELL, ALEXANDER W & CAROLYN W	715 COURT STREET
02436003	CENTRAL VIRGINIA COMMUNITY SERVICES BOARD	707 COURT STREET
02445003	CITY OF LYNCHBURG	805 COURT STREET
02446013	CITY OF LYNCHBURG	810 COURT STREET
02444001	CITY OF LYNCHBURG C/O STEVE LAWSON	801 CLAY STREET
02446014	CITY OF LYNCHBURG C/O STEVE LAWSON	808 COURT STREET
02446015	CITY OF LYNCHBURG C/O STREETEVE LAWSON	806 COURT STREET
02436002	COURT STREETREET UNITED METHODIST CH TRS	701 COURT STREET
02437006	HAMMER, CHARLES W & AARON, H CLARK	717 CLAY STREET
02437005	HEC PROPERTIES LLC	713 CLAY STREET
02435016	HOWARD, KILLIS T	712 COURT STREET
02446001	KOEPENICK, EDWARD III & KOEPENICK, LIBERTAD D TRUSTEES	800 COURT STREET
02446002	LMR PROPERTIES INC	801 CHURCH STREET
02437008	LYNCHBURG DAILY BREAD INC	721 CLAY STREET
02435001	MAYDAY INVESTMENTS LLC C/O SENTINEL PROPERTIES	700 COURT STREET
02436005	MCRORIE, WILLIAM E	717 COURT STREET
02435014	NELSON, JOHN R	716 COURT STREET
02435017	PERROW, EDGAR J T	710 COURT STREET
02435015	PERROW, EDGAR J T	714 COURT STREET
02435018	PERROW, EDGAR J T	708 COURT STREET
02436014	SULLIVAN, WALTER F THE MOST REV	710 CLAY STREET
02436008	SULLIVAN, WALTER F THE MOST REV C/O REV CHARLES E FERRY	722 CLAY STREET
02436011	SULLIVAN, WALTER F THE MOST REV C/O REV CHARLES E FERRY	716 CLAY STREET
02436012	SULLIVAN, WALTER F THE MOST REV C/O REV CHARLES E FERRY	714 CLAY STREET
02445005	SULLIVAN, WALTER F THE MOST REV C/O REV CHARLES E FERRY	808 CLAY STREET
02436013	SULLIVAN, WALTER F THE MOST REV C/O REV CHARLES E FERRY	712 CLAY STREET
02445001	SULLIVAN, WALTER F THE MOST REV C/O TRAFFIC ENGINEERING	800 CLAY STREET
02436001	SULLIVAN, WALTER F THE MOST REV HOLY CROSS CATHOLIC CHURCH	700 CLAY STREET
02445002	TRAETTINO, JOHN	801 COURT STREET
Petitioner	Historic Diamond Hill Residence, LLC	
Representative	Robert Tunkel	



LAND USE MAP
HSTORIC DIAMOND HILL RESIDENCE, LLC
721 COURT STREET
CONDITIONAL USE PERMIT

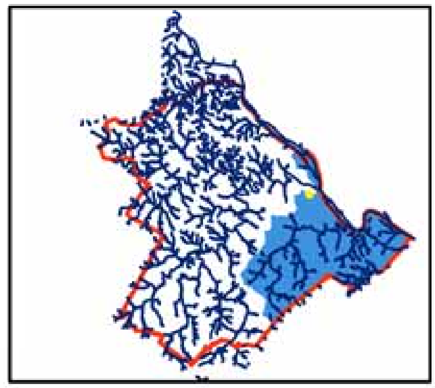
HISTORIC DIAMOND HILL RESIDENCE, LLC
CONDITIONAL USE PERMIT
721 COURT STREET

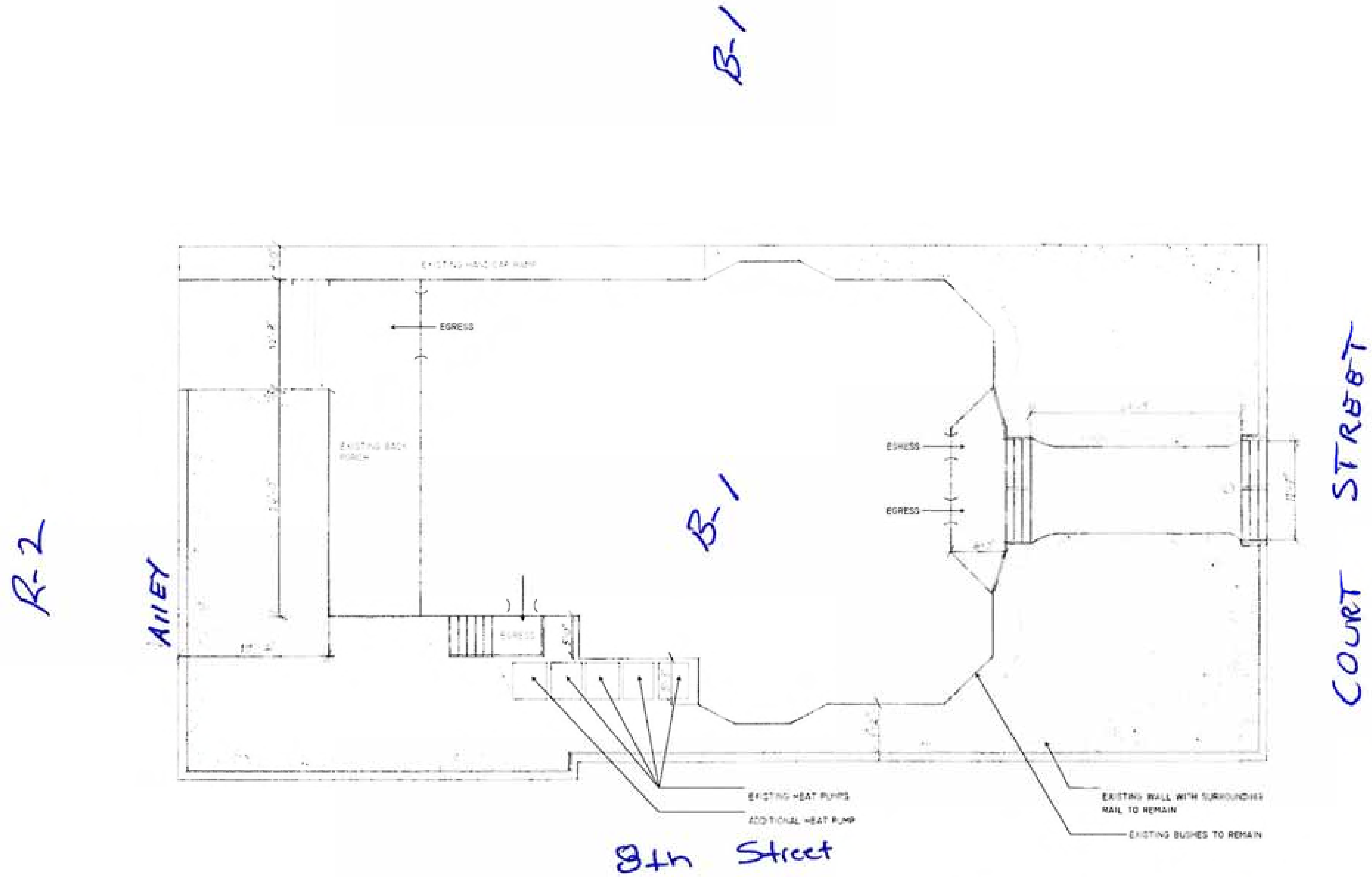
Watershed Location Map

Project Site

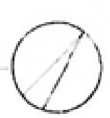
Fishing Creek

Corporate Limit





SITE PLAN
1/8" = 1'-0"



VICINITY PLAN

The site currently has no stormwater related issues and will see no increase in impervious area as a result of this project. Since there is no new impervious area and no existing stormwater problems, stormwater quantity and quality do not have to be addressed with this project.

The site currently conveys runoff typically associated with a home/residential parcel. The ground slopes toward 9th St. and no signficant site improvements are expected.

This parcel is shown to be in Floodzone "X" and out of the limits of the 100-year floodplain.

RECEIVED
NOV 01 2011
COMMUNITY DEVELOPMENT

EXISTING CONDITIONS
721 COURT STREET
LYNCHBURG, VIRGINIA

DRAWN BY: MARINA MICHAEL

SITE PLAN

Historic Diamond Hill
RESIDENCE
P.O. Box 3213 - Lynchburg VA 24503 - Cell (434) 851 0651

RECEIVED
NOV 01 2011
COMMUNITY
DEVELOPMENT

To: City of Lynchburg
Re: Conditional Use Permit for 721 Court Street

Purpose:

Historic Diamond Hill Residence LLC, a real estate company, is committed to the revitalization of downtown Lynchburg. H.D.H.R. currently owns and manages a building with 10 units, and it would like to pursue the same mission with a building located at 721 Court Street.

Currently, the building is zoned as business only, and it has been free of occupancy for the past 4 years.

H.D.H.R intends to restore the building with no changes to its architectural integrity allowing for 2 high quality apartments on each floor of the building. The back of the building, which was added in the late 20th century, will be kept as an office, and will be occupied by the owner's new technology business, Apps Of All Nations LLC.

Court Street is a beautiful street, which deserves to be fully enjoyed by its residents, who are true lovers of historic buildings and will enjoy the rich history and architectural treasures of Lynchburg.

Residents will have parking provided by the owner in the city parking lot located on Clay street.

Historic Diamond Hill
RESIDENCE
P.O. Box 3213 - Lynchburg VA 24503 - Cell (434) 851 0651

To: City of Lynchburg
Re: Conditional Use Permit for 721 Court Street

Parking Permit:

Historic Diamond Hill Residence LLC has reservations for 5 residential parking spaces on Clay Street.

The 5 parking spaces will be paid directly by H.D.H.R. and will be included in the tenant's rent to make sure that parking spaces are being used.

Permit numbers:

3-319

3-320

3-321

3-322

3-323

721 Court Street

721 Court Street

Conditional Use Permit Petition

December 14, 2011

PLEASE PRINT

NAME	ADDRESS	PHONE	IN FAVOR	IN OPPOSITION	NEUTRAL
Bob TurnRod	210 Cleveland	229 5389			

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 10, 2012** AGENDA ITEM NO.: 6

CONSENT: REGULAR: **X** WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Community Development Block Grant (CDBG) and HOME Programs – Public Hearing Regarding Housing and Non-Housing Goals for 2012-2013 Annual Action Plan and Adopt a Resolution Approving the Annual Action Plan Goals for 2012-2013**

RECOMMENDATION: Conduct a public hearing to receive citizen comments regarding the goals for the development of the 2012-2013 Annual Action Plan and adopt a resolution approving the goals.

SUMMARY: The U. S. Department of Housing and Urban Development (HUD) requires state and local governments, which receive federal community development funds, to prepare a Consolidated Plan. The Consolidated Plan for Lynchburg was approved in October 2010 and covers the period from July 1, 2010 through June 30, 2015. This plan outlines the City's needs, goals, and objectives for community development (both housing and non-housing areas). HUD requires CDBG and HOME entitlement communities to review these goals on an annual basis. City Council is seeking the input of citizens and other interested parties regarding the approved goals. A 15-day public comment period to receive citizen input regarding these goals was initiated on December 23, 2011 through a legal notice published in *The News and Advance.*

Specifically at this public hearing, the public is invited to comment on the approved goals regarding the City's housing and non-housing community development needs common to low- and moderate-income households and neighborhoods in Lynchburg. The Consolidated Plan goals for 2011-2015 are attached to this report.

PRIOR ACTION(S): January 25, 2011 – City Council approval of the revised 2011-2015 Consolidated Plan Goals for the 2011-2012 Annual Action Plan

FISCAL IMPACT: None

CONTACT(S): Bonnie Svrcek, Deputy City Manager - 455-3987
Melva Walker, Grants Manager – 455-3916

ATTACHMENT(S): 2011-2015 Consolidated Plan Goals as approved by City Council
Resolution

REVIEWED BY: lkp

Adopted 2011-2015 CONSOLIDATED PLAN GOALS

The goals listed below are intended to provide broad guidance in the allocation of Community Development Block Grant (CDBG) funds granted to the City by the United States Department of Housing and Urban Development for the five years beginning July 1, 2010 and ending June 30, 2015. The Community Development Advisory Committee (CDAC) supports the allocation of funds to achieve measurable results for both public and non-public services.

The primary objective of the CDBG program is to continue to develop viable urban communities through decent housing, suitable living environments and expanded economic opportunities for low- and moderate-income persons; the City of Lynchburg supports assisting individuals with disabilities, substance abuse or addiction, persons with AIDS, persons that are homeless, and elderly persons.

Housing Goals

1. Increase the number of owner-occupied units.

2. Rehabilitate substandard housing units. Emphasis is to be placed on programs that require an investment of funds and/or labor on the part of the owner commensurate with the owner's resources.

3. Support initiatives to increase permanent affordable rental and housing ownership opportunities.

4. Promote programs that assist eligible individuals in retaining their homes.

Non-Housing Goals

1. Eliminate neighborhood deterioration, blight and blighting influences.

2. Support the organized efforts in neighborhoods to leverage their resources to improve and sustain community livability and services.

3. Support economic development efforts which will expand job opportunities and retention.

4. Promote activities which support the healthy development of the City's at-risk youth, adults and families.

Prepared by the Community Development Advisory Committee, November 6, 2009
Revised by the Community Development Advisory Committee, January 7, 2010
Revised and adopted by City Council, January 26, 2010
Revised and adopted by City Council, January 25, 2011

RESOLUTION:

BE IT RESOLVED that City Council approves the Community Development Block Grant (CDBG) 2011-2015 goals for the 2012-2013 Annual Action Plan.

Adopted:

Certified: ______________________________
Clerk of Council

004L

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 10, 2012**			AGENDA ITEM NO.: 7
CONSENT:	REGULAR: **X**	WORK SESSION:	CLOSED SESSION: (Confidential)
ACTION: **X**		INFORMATION:	

ITEM TITLE: **Funding for Services Provided by the Lynchburg Neighborhood Development Foundation**

RECOMMENDATION: Adopt a resolution to amend the FY 2012 General Fund budget and appropriate $14,520 with resources from the General Fund Reserve for Contingencies to provide the Lynchburg Neighborhood Development Foundation with funding for Fifth Street Community Development Corporation activities and case management and supportive services for the City's Shelter Plus Care Program.

SUMMARY: As part of the September 27, 2011 discussion of a resolution to fund an agreement with Lynchburg Neighborhood Development Foundation (LNDF), City Council directed (1) staff to define specific needs of the Department of Community Development, and; (2) define deliverables LNDF can provide to address items the Department of Community Development does not have the resources to accomplish. Staff reviewed the Neighborhood and Housing goals of the *Comprehensive Plan 2002-2020*, the City's Master Plans and the Consolidated Plan goals, and identified the following priority initiative the City cannot wholly address due to staffing capacity: Fifth Street 5-Year Action Plan - Provide consulting with the Fifth Street Community Development Corporation (CDC) for the acquisition and rehabilitation of properties in the CDC target area as defined in the *Fifth Street Corridor Master Plan*: $6,520.

In addition, LNDF provides the ongoing management of the City's Shelter Plus Care Program. This involves providing case management and supportive services for clients served by this program. Council may recall this grant funded program serves citizens who have moved from transitional to permanent housing and is part of the City's federally mandated continuum of care. As a recipient of Community Development Block Grant funds, the City is required to address housing and homeless issues and reduce homelessness. The Shelter Plus Care Program is included in the City's Annual Action Plan as evidence of its commitment to reducing the local homeless population. In the past, LNDF absorbed the cost of managing this program in its $25,000 allocation from the City. LNDF's cost of managing this program for the City is $8,000 (see attached). Based on discussion with staff from the City's Department of Social Services (DSS), capacity does not exist among City staff to manage this program; DSS staff noted that contracting with LNDF is more cost effective than adding staff to the City to perform case management and supportive services

Finally, LNDF can certainly offer other housing-related services to the City that staff cannot provide; however, it is not appropriate to identify such services until the housing conversation is completed and specific needs are assessed.

PRIOR ACTION(S):

December 13, 2011: Finance Committee

September 27, 2011: City Council considered a resolution to amend the FY 2012 General Fund budget with $25,000 in resources from the General Fund Reserve for Contingencies to fund an agreement with LNDF.

FISCAL IMPACT: $14,520 from the FY 2012 General Fund Reserve for Contingencies

CONTACT(S): Kent White, Director of Community Development, 455-3900
Bonnie Svrcek, Deputy City Manager, 455-3990

ATTACHMENT(S): Resolution
Letter of Request from LNDF
City Council Agenda Item Summary – September 27, 2011

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED that the FY 2012 General Fund budget is amended and $14,520 is appropriated with resources from the General Fund Reserve for Contingencies to provide the Lynchburg Neighborhood Development Foundation with funding for Fifth Street Community Development Corporation activities and case management and supportive services for the City’s Shelter Plus Care Program.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

003L

LYNCHBURG NEIGHBORHOOD DEVELOPMENT FOUNDATION
927 Church Street
Lynchburg, VA 24504

Phone (804) 846-6964
Fax (804) 846-6966

Laura N. Dupuy
Executive Director

November 9, 2011

Bonnie Svrcek, Deputy City Manager
900 Church St.
Lynchburg, VA 24504

RE: Shelter Plus Care Program
Tasks and LNDF costs

Dear Bonnie:

As requested, I am providing a list of the tasks associated with operating the Shelter Plus Care Program for consideration in the deliverables provided by LNDF to the City.

As you know, there is an amount of the grant that can go to administrative tasks but that is extremely limited to certain types of work and does not nearly cover all that is involved in managing the program. In addition, supportive services are provided by LNDF. We currently contract with an individual case manager who has contributed the bulk of her time to this project. We would be glad to better compensate her and our staff for our work on this program.

Let me know if you need more information.

Sincerely,

Laura

Laura N. Dupuy

Enc.

LYNCHBURG NEIGHBORHOOD DEVELOPMENT FOUNDATION
927 Church Street
Lynchburg, VA 24504

Phone (804) 846-6964 | Laura N. Dupuy
Fax (804) 846-6966 | Executive Director

Shelter Plus Care

Program description:
The program will provide Tenant-based Rental Assistance (TRA) which provides eligible participants financial assistance to pay rent for a reasonably priced, appropriately sized apartment or home. Grant funds from the U.S. Dept. of Housing and Urban Development (HUD) are available to assist a minimum of 10 households in the Lynchburg area per year. Participation in the program is conditioned on continuing appropriate services, such as counseling, medications, and rehabilitative programs. Services must be designed to meet the needs created by their disabilities and the circumstances leading to homeless.

Activities involved in program operations

Housing

- Identify and cultivate participating private landlords
- Communicate with participant tenants
- Address landlord and tenant complaints
- Prepare and execute leases and services agreements
- Document participant files and input into HMIS
- Prepare Annual Progress Reports
- Conduct annual re-certifications
- Prepare annual renewal grant submission (Exhibit 2)
- Regularly inspect homes for compliance with program and lease

Supportive Services

- Intake and screen for homeless eligibility
- Prepare and update individual service plans
- Regular site visit and client consultations
- Coordinate with client service providers
- Document client file and evaluate against service plan
- Collect and document in-kind match for program (100%)

Administrative Activities

- Receive new participants in program
- Provide Housing information and search assistance
- Determine participant income and rent contributions
- Inspect units for HQS compliance
- Process Rent payments to landlords

grant provides up to 8% ($4,000+/-) for administrative tasks only.

Housing and supportive services activities require .25 FTE or $8,000 per year.
(FTE for this position would have salary at $28,000 + employer costs to total $32,000). This does not account for any facility or overhead costs.

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **September 27, 2011** AGENDA ITEM NO.: 1

CONSENT: REGULAR: WORK SESSION: **X** CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Agreement for Services with the Lynchburg Neighborhood Development Foundation**

RECOMMENDATION: Adopt a resolution to amend the FY 2012 Adopted Budget and appropriate $25,000 with resources from the Reserve for General Fund Contingencies to fund the attached agreement with the Lynchburg Neighborhood Development Foundation (LNDF).

SUMMARY: Since 1999, the City of Lynchburg has had a contractual relationship with LNDF to provide consultative services in the areas of affordable housing development and financing, community development financing, and neighborhood development. Council deferred continued funding under the 1999 agreement during its consideration of the FY 2012 Adopted Budget pending further information regarding the services provided by LNDF.

LNDF has provided a conduit for the City in meeting the housing goals outlined in the Council adopted 2010 Consolidated Plan required by the Department of Housing and Urban Development. These goals include:

1. Increase the number of owner occupied units;
2. Rehabilitate substandard housing units. Emphasis is to be placed on programs that require an investment of funds and/or labor on the part of the owner commensurate with the owner's resources;
3. Support initiatives to increase permanent affordable rental and housing ownership opportunities;
4. Support programs that assist individuals in retaining their homes in challenging economic times.

LNDF is the convener of the Lynchburg Housing Partners, a group of non-governmental organizations (NGO) that facilitate the provision of affordable housing for citizens. Most recently, LNDF, on behalf of the City, facilitated a $5,000 grant award from Housing Virginia to fund the first City-wide “Lynchburg is Listening: A Housing Conversation” to be held on Monday, October 10, 2011.

LNDF provides the City with services and relationships and capacity that does not exist internally. Examples of LNDF work product under the 1999 agreement are attached. This outsourcing of services helps ensure that the City is meeting the housing goals adopted by City Council as part of the HUD mandated 2010 Consolidated Plan and furthers the goals outlined in the Neighborhoods & Housing chapter of the *Comprehensive Plan 2002-2020*.

In order to memorialize the relationship between LNDF and the City the attached agreement has been prepared. This is similar to the agreement in place since 1999. At that time, Council considered the agreement to be a contract.

Contract approval and funding under a contract can be approved by a simple majority of Council (4 affirmative votes).

If Council does not wish to enter into a new contractual arrangement with LNDF but still wishes to consider funding LNDF activities, approval of the appropriation would require a supermajority (5 affirmative votes).

PRIOR ACTION(S): Annual funding of agreement for services with LNDF in the amount of $25,000 since 1999. (FY 2011 funding was in the amount of $16,247 due to extenuating circumstances.)

FISCAL IMPACT: $25,000 appropriation from the Reserve for General Fund Contingencies

CONTACT(S): Bonnie Svrcek, Deputy City Manager, 455-3987

ATTACHMENT(S): Examples of LNDF Work Product; Proposed Agreement between LNDF and the City of Lynchburg; Proposed Resolution

REVIEWED BY: lkp

Attachment

Examples of LNDF Work Product **(as stated in prior agreement with the City)**

The following are examples of activity undertaken by LNDF according to the 1999 agreement:

LNDF has worked with the City in a variety of activities to include: assisting with the development of the Consolidated Plans for 1995, 2000, 2005, and 2010; coordinating partners and operating a successful Lead Hazard Control program from 1998 – 2004; contributing to the creation and development of neighborhood-based projects and programs such as Weed & Seed, and other neighborhood development activities; convening housing providers for specific housing-related projects; implementing the development and transfer of publicly-owned blighted properties to private control and productive use through multi-family, single-family, and community development real estate projects; and

LNDF has served the City by providing other unique services such as:

- Identifying/developing access to new and useful community development financing programs and tools such as new market tax credits and Neighborhood Stabilization Program as well as innovative techniques for using existing resources; bringing intermediaries and their financing programs to Lynchburg – including Local Initiatives Support Corporation (LISC), the National Equity Fund (NEF) and Virginia Community Development Corporation (VCDC);
- Assisting and supporting the City's Community Development Department plans and priorities such as revitalization of the Fifth St. corridor, Tinbridge Hill and the residential neighborhoods surrounding the downtown. Working with the City on housing planning and other community development policy issues – e.g. The current housing study supported by the Housing VA grant;
- Providing technical assistance and support at no cost to organizations attempting to launch community development projects or planning efforts – Virginia University of Lynchburg (Historic Black College and University program- HBCU), the Warehouse Arts project (Green Street), Lynchburg College neighborhood-building efforts, giving opportunities to area students to engage in community planning efforts;
- Providing access to multiple resources, both human and financial for the purpose of building relationships with necessary institutions, agencies and individuals, thereby furthering City housing and community development goals.

AGREEMENT

This AGREEMENT made and dated this 27th day of September 2011, by and between the City of Lynchburg, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the "City," and the Lynchburg Neighborhood Development Foundation, Inc., a Virginia corporation, hereinafter referred to as "LNDF."

WHEREAS, LNDF is dedicated to promoting and creating affordable housing and community development within the City and has developed expertise in real estate development and finance; and

WHEREAS, the City has identified unique services and activities that LNDF can provide in the fields of real estate development, equity investment financing, and access to public and private professional expertise and services essential to advancing/implementing the goals and objectives envisioned in several community development planning efforts, including but not limited to the Comprehensive Plan, the 2010 Consolidated Plan, various neighborhood plans and efforts, and,

WHEREAS, the City and its citizens receive value from LNDF's relationships, expertise and activities as stated in a prior Agreement documenting the relationship between LNDF and the City, dated July 1, 1999; and,

WHEREAS, the City and LNDF intend to create this new agreement to reflect current and future activities and services.

NOW, THEREFORE for and in consideration of the mutual covenants and conditions contained herein, the City and LNDF agree and covenant as follows:

<u>Services by LNDF</u>

Annually, starting with the fiscal year 2011-2012, LNDF agrees to provide the following services and activities within the City:

(1) LNDF will provide consultative services to both public and private sector persons, groups and agencies, providing expertise in the area of affordable housing development and financing, real estate development, and community development financing as well as the establishment of limited liability entities. LNDF will continue to assist in the development of a housing forum in which housing and community development needs will be identified and the appropriate resources will be sought to address identified needs.

(2) LNDF will continue its efforts to attract resources into the City, through existing and new partnerships with persons and institutions throughout the Commonwealth in order to advance the housing and community development goals of the City. In this activity, LNDF will provide access to real estate development and financing resources, professionals, and strategies in the public and private sectors.

(3) LNDF will continue to form and facilitate collaborative projects comprised of the various non-profit organizations serving housing and neighborhood services within the City. In this activity, LNDF will continue to convene the Lynchburg Housing Partners and co-convene the Central Virginia Homeless and Housing Coalition.

(4) LNDF will continue to act as liaison and partner with the City and its departments in the development of plans and strategies intended to build the assets of the City's many and distinct neighborhoods. In this activity, LNDF will continue its work with the Tinbridge Hill Sustainable Neighborhood pilot program and with the Fifth St. Community Development Corporation for long-term revitalization.

(5) LNDF will engage in such other services and activities that are requested in order to assist in the development of safe and affordable housing and improving neighborhood conditions within the City (see attachment) and in such manner as to further and to implement the City's Comprehensive Plan, the Consolidated Plan, and the vision articulated in the Sustainable City Initiative.

(6) LNDF will provide a resort of services rendered at least twice a year to the City Manager.

<u>Payment by City</u>

In order to assist LNDF in providing the services and activities described above the City agrees to pay a fee in the amount of $25,000 each year for three years.

<u>Term of Agreement</u>

This agreement shall be for the term of three years, beginning July 1, 2011, and ending June 30, 2014, renewable upon successful performance and acceptance of written reports and such conditions as are mutually agreeable to the City and LNDF. Renewal of this agreement is contingent upon the appropriation of funds by the City Council.

WITNESS the following signatures and seals all as of the day and year first above written.

City of Lynchburg

By ______________________________
City Manager

Lynchburg Neighborhood Development
Foundation

By ________________________________

Attachment

<u>Examples of LNDF Work Product</u> (as stated in prior agreement with the City)

The following are examples of activity undertaken by LNDF according to the 1999 agreement:

LNDF has worked with the City in a variety of activities to include: assisting with the development of the Consolidated Plans for 1995, 2000, 2005, and 2010; coordinating partners and operating a successful Lead Hazard Control program from 1998 – 2004; contributing to the creation and development of neighborhood-based projects and programs such as Weed & Seed, and other neighborhood development activities; convening housing providers for specific housing-related projects; implementing the development and transfer of publicly-owned blighted properties to private control and productive use through multi-family, single-family, and community development real estate projects; and

LNDF has served the City by providing other unique services such as:

- Identifying/developing access to new and useful community development financing programs and tools such as new market tax credits and Neighborhood Stabilization Program as well as innovative techniques for using existing resources; bringing intermediaries and their financing programs to Lynchburg – including Local Initiatives Support Corporation (LISC), the National Equity Fund (NEF) and Virginia Community Development Corporation (VCDC);
- Assisting and supporting the City's Community Development Department plans and priorities such as revitalization of the Fifth St. corridor, Tinbridge Hill and the residential neighborhoods surrounding the downtown. Working with the City on housing planning and other community development policy issues – e.g. The current housing study supported by the Housing VA grant;
- Providing technical assistance and support at no cost to organizations attempting to launch community development projects or planning efforts – Virginia University of Lynchburg (Historic Black College and University program- HBCU), the Warehouse Arts project (Green Street), Lynchburg College neighborhood-building efforts, giving opportunities to area students to engage in community planning efforts;
- Providing access to multiple resources, both human and financial for the purpose of building relationships with necessary institutions, agencies and individuals, thereby furthering City housing and community development goals.

Resolution:

BE IT RESOLVED That the FY 2012 General Fund budget is amended and $25,000 is appropriated with resources from the General Fund Reserve for Contingencies to the Lynchburg Neighborhood Development Foundation.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

141L

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **January 10, 2012** AGENDA ITEM NO.: 8

CONSENT: REGULAR: **X** WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Second Amendment to the Region 2000 Services Authority Member Use Agreement**

RECOMMENDATION: Adopt a resolution authorizing the City Manager to sign the Second Amendment to the Region 2000 Services Authority Member Use Agreement.

SUMMARY: When the Region 2000 Services Authority was formed in 2008, the plan was to use the Lynchburg landfill as the region's landfill until it was at capacity. That has occurred, and the Lynchburg landfill will close sometime in spring 2012, with the exception that Lynchburg residents may continue to use the Lynchburg landfill as a dropoff location for Lynchburg residents at the City's expense.

The Authority will transfer operations at that point to the existing landfill in Campbell County. In 2008, the Authority and the member jurisdictions agreed to purchase the entire Campbell County landfill, including that portion that was already closed. This closed portion of the landfill was divided from the new portion of the landfill by a stream, and is unlined. It was also the subject of a lawsuit by a neighboring landowner, who claimed that it was polluting his property, which resulted in a jury verdict against the County which is currently on appeal to the Virginia Supreme Court.

For the above reasons, the Authority did not want to purchase the closed portion of the landfill, even though under the Member Use Agreement Campbell County agreed to retain responsibility for the environmental issues relative to the closed landfill. However, because the Department of Environmental Quality included both portions of the landfill under one permit, the Authority had to buy both portions of the landfill.

In the last few months, however, DEQ has agreed to split the permits into two. One permit would be a new permit for the portion of the landfill the Authority will use, and the other permit for the closed portion of the landfill would remain in the name of the County. Because of the environmental liability issues, this is greatly preferable to the Authority.

The purpose of this Amendment to the Service Agreement is to make clear that the Authority will not be purchasing the closed portion of the Campbell landfill. The provisions in Section 3 of the Amendment deal with several issues between the Authority and the County concerning the operation of the portion of the Campbell landfill that the Authority will own. These have been approved, along with the Amendment, by the Authority Board, which consists of the City Managers and County Administrators of the five jurisdictions making up the Authority Board.

Attached is a copy of the Member Use Agreement annotated to show the changes enacted by the First Amendment. In summary, the First Amendment did the following:

1. Added Appomattox County as a Member Jurisdiction,
2. Clarified the definition of "excess revenues" to conform to the RW Beck Financial Analysis description,
3. Confirmed the delay in the actual conveyance of the Campbell County landfill due to the pending litigation, but at the same time, confirming that the Authority will operate and maintain the Campbell Facility beginning July 1, 2008,
4. Acknowledged Appomattox County's intent to utilize its existing landfill until closure occurs (expected in 2009) and
5. Made minor changes that dealt with an upcoming tax exempt bond issuance.

PRIOR ACTION(S): Council approved the original Member Use Agreement on July 7, 2007 and the First Amendment on May 27, 2008.

FISCAL IMPACT: None

CONTACT(S): Kimball Payne, 455-3990; Dave Owen, 455-4469

ATTACHMENT(S): Original Member Use Agreement with First Amendment; Second Amendment to the Region 2000 Services Authority Member Use Agreement; Resolution

REVIEWED BY: lkp

SECOND AMENDMENT TO THE
REGION 2000 SERVICES AUTHORITY
MEMBER USE AGREEMENT

THIS SECOND AMENDMENT to the Region 2000 Services Authority Member Use Agreement is entered into this ______ day of _____________, 2011 by and among the Region 2000 Services Authority (the "Authority"), a public body politic and corporate, organized under the laws of the Commonwealth of Virginia, and the County of Campbell, Virginia ("Campbell"),the County of Appomattox ("Appomattox"), the County of Nelson, Virginia ("Nelson"), the City of Lynchburg, Virginia ("Lynchburg") and the City of Bedford, Virginia ("Bedford"), each a political subdivision of the Commonwealth of Virginia (collectively the "Member Jurisdictions").

WHEREAS, the Authority and the Member Jurisdictions entered into a Use Agreement on January 31, 2008 and adopted a First Amendment to the Use Agreement on June 20, 2008 (both collectively referred to as the "Use Agreement"); and

WHEREAS, the Use Agreement stated that the Authority would purchase the entire Campbell landfill (the "Campbell Facility) which consisted of the active landfill site and the closed landfill site, due to the fact that the entire Campbell landfill was covered by one Department of Environmental Quality ("DEQ") permit; and

WHEREAS, DEQ has agreed to separate the permits, which allows the Authority to only purchase the active landfill site with Campbell continuing to be responsible for the closed portion of the landfill.

NOW THEREFORE, the parties agree to amend the Use Agreement as follows:

In Article II, Definitions, the definition of Campbell Facility is amended to read as follows:

> "Campbell Facility" means the solid waste disposal facility, including all improvements thereto and subject to all easements, as shown on a plat entitled "Plat of Subdivision and Lot Line Adjustments, Campbell County Properties" prepared by Draper Aden Associates dated February 22, 2011 and last revised November 29, 2011 and that is to be conveyed to the Authority for the Authority to own and operate subject to the terms of this Agreement and as permitted by DEQ. The Campbell Facility shall not include the closed portion of the Campbell landfill, commonly known as Phase II and old Phase II under existing permit number 28.

1. In Section 3.1, the closing date for the purchase by the Authority of the Campbell Facility shall be changed from July 1, 2008 to the later of the date that this Amendment is approved by all of the parties or the date DEQ indicates its approval of separate permits for the closed Campbell landfill and the Campbell Facility.

2. In Section 3.2, the reference to the Authority's maintenance responsibility for the closed portion of the Campbell landfill is deleted.

3. The following new subparagraphs shall be added after paragraph (2) in section 3.2: (3) Access to the Campbell Facility to be retained and that portion to be conveyed to the Region is by way of Livestock Road, which ends state maintenance at the entrance to the Facility. Thereafter there is an existing road running generally east/west at the boundary of the area to be retained by Campbell and through the property to be conveyed to the Authority. There are also proposed new roads which will be constructed by the Authority after acquisition of the Campbell Facility and it is agreed that this entire road system, both existing and such as may be constructed in the future, will be used by both parties for ingress and egress to and from any portion of the

properties which they own, including the firing range to be constructed on Campbell property to the northeast of the Authority's property. The Authority agrees to maintain this road in its entirety in a good and sufficient state of repair including maintenance of the existing culvert in the area between Phase II and Phase III and replacement of that culvert from time to time, should the same become necessary.

4. The Authority agrees to provide water and sewer easements across property owned by it as may be necessary to enable water and sewer lines to be constructed to Campbell's property upon which it intends to construct a firing range.

5. The Authority will be installing a sewer force main to discharge leachate and water from the Authority's facilities into the Campbell County Utilities and Service Authority treatment system. The Authority will provide appropriate easements for Campbell to connect to this force main for purposes of disposal of the effluent from its groundwater extraction and treatment system and Campbell and the Authority will monitor the amount of liquids going into that main so as not to impair the Authority's use of that main. Campbell will pay an annual maintenance fee for its use of the force main based on construction costs and percentage of capacity used.

6. The Authority will provide an easement to discharge leachate from the retained Phase II into the existing leachate tank, as well as to discharge groundwater from the sump currently in operation on Phase II to the leachate tank or sewer force main.

7. The Authority will grant Campbell an easement for any necessary monitoring and extraction wells, together with water and electrical conduits in connection with the remediation, if necessary, of cobalt exceedences which have been detected in property to the south of the Phase II.

8. The parties will grant cross easements each to the other for the installation of all necessary utilities along the access road, as well as other properties owned by either of the parties so that all parties will have adequate space for the installation of all necessary utilities including, but not limited to, potable and non-potable water, sewer and electricity.

9. The Authority will provide an easement for Campbell to have access to all existing and any necessary future monitoring wells, so Campbell may fully comply with the remediation and post closure requirements of the Department of Environmental Quality, this to include, but not be limited to, monitoring well 1-B and any other monitoring or extraction wells or any gas probes which may be located on property being conveyed to the Authority.

10. The parties anticipate that a sound buffering wall will be constructed on property to be retained by Campbell along the southern boundary of the facilities. Campbell will grant the Authority an easement to construct and maintain this wall and Campbell will have access to any boundary probes or monitoring or extraction wells which may be to the south side of the wall once it is constructed.

11. It is anticipated that at some point the Campbell Facility which is being purchased by the Authority will be filled and subject to closure and post closure monitoring. At the termination of the post closure monitoring period the Authority may choose to continue to use shop facilities or other improvements constructed on the land and so long as it is continuing to use those facilities it will maintain the roads and utilities. Once the facility is closed and no longer in use by the Authority, the Authority agrees that it will take whatever steps are necessary to reconvey the roads and water, sewer and electrical and other associated easements to Campbell, which will thereafter maintain the same for so long as is necessary for its own purposes. These roads and other utilities will be conveyed to Campbell in good condition.

12. The parties hereto agree that all will share any data required by any regulatory authority or necessary in the operation and maintenance of the Authority's facility or the property being retained by Campbell reasonable format and within a reasonable time after request by any other party.

13. Other than the above amendments, the Use Agreement shall remain as previously agreed to by the parties.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be signed as of the date written above.

CAMPBELL COUNTY, VIRGINIA

By: ______________________________

APPOMATTOX COUNTY, VIRGINIA

By: ________________________________

NELSON COUNTY, VIRGINIA

By: ________________________________

CITY OF LYNCHBURG, VIRGINIA

By: ________________________________

CITY OF BEDFORD, VIRGINIA

By: ________________________________

RESOLUTION

WHEREAS, Appomattox County, Campbell County, Nelson County, the City of Bedford and the City of Lynchburg formed the Region 2000 Services Authority in 2008 to own and operate a regional landfill, initially using the Lynchburg landfill and subsequently the Campbell landfill, which will begin operation as the regional landfill in 2012; and

WHEREAS, the five jurisdictions and the Authority adopted the Region 2000 Services Authority Member Use Agreement on January 31, 2008 and adopted the First Amendment to the Agreement on June 20, 2008; and

WHEREAS, the Authority agreed to purchase the Campbell landfill from Campbell County, which landfill was defined as the entire Campbell County landfill, including the closed unlined portion; and

WHEREAS, the Authority would prefer not to purchase the closed unlined portion of the Campbell County landfill, which is now possible because the Department of Environmental Quality has agreed to split the permit and issue one permit for the closed portion of the landfill that would remain the property of Campbell County and one permit for the portion that will be owned by the Authority, which is agreeable to Campbell County; and

WHEREAS, this necessitates a change in the Member Use Agreement.

NOW THEREFORE, BE IT RESOLVED by the City Council of Lynchburg that the Second Amendment to the Region 2000 Services Authority Member Use Agreement attached to this Resolution is hereby approved, and the City Manager is authorized to sign such Amendment on behalf of the City.

Adopted:

Certified: ______________________________
Clerk of Council

007L

~~9/11/07~~

FIRST AMENDMENT TO THE
REGION 2000 SERVICES AUTHORITY
MEMBER USE AGREEMENT

THIS USE AGREEMENT is dated as of the ____ day of ________, ~~2007~~2008, by and among the Region 2000 Services Authority **(“Authority”)**, a public body politic and corporate, organized under the laws of the Commonwealth of Virginia, and the County of Campbell, Virginia **(“Campbell”)**, the County of Nelson, Virginia **(“Nelson”)**, the County of Appomattox **(“Appomattox”)**, the City of Lynchburg, Virginia **(“Lynchburg”)** and the City of Bedford, Virginia **(“Bedford”)**, each a political subdivision of the Commonwealth of Virginia **(collectively the “Member Jurisdictions”)**.

RECITATIONS:

R-1 The Member Jurisdictions have created the Authority by adopting concurrent resolutions containing Articles of Incorporation.

R-2 Lynchburg and Campbell each independently own and operate a solid waste disposal landfill, one located in each jurisdiction.

R-3 Nelson does not own or operate a currently active solid waste disposal landfill. Bedford and Appomattox currently ~~owns and operates a landfill~~ own and operate landfills which will not be owned by the Authority.

R-4 After extensive study and analysis, the Member Jurisdictions have determined that it would be more economical and efficient to form a regional authority to own and operate the separate landfills identified in R-2 in a single, coordinated manner and to otherwise provide for solid waste disposal on a regional basis as provided for in this Agreement.

R-5 The Member Jurisdictions and the Authority have negotiated terms on which Lynchburg and Campbell will convey title to ~~their solid waste landfill Facilities~~ the Lynchburg Facility and the Campbell Facility (each as defined herein), respectively, to the Authority, and also transfer to the Authority all improvements thereto, equipment, permits, and other documentation that is related to ownership and operation of the ~~Facilities~~Campbell Facility and the Lynchburg Facility, and terms by which the Authority will operate the Facilities (as defined herein) for the benefit of the Member Jurisdictions.

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That for and in consideration of the mutual and reciprocal benefits inuring to the parties hereunder, and in further consideration of the duties imposed upon the parties hereby, the parties covenant and agree as follows:

ARTICLE I

DEFINITIONS

Unless otherwise defined, each capitalized term in this Agreement shall have the meaning set forth below.

"Acceptable Waste" means non-hazardous "municipal solid waste," "industrial waste," ~~-~~"agricultural waste," and "construction waste," as defined in the Virginia Solid Waste Management Regulations, currently 9 VAC 20-80, *et seq.* **("Regulations")**, as may be amended from time to time, and such other wastes as the Authority shall agree in writing to accept from time to time, subject to such limitations and exclusions as are imposed by Applicable Law, or as identified in ~~the~~any applicable permit, and excluding all Unacceptable Wastes.

"Act" means the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2, Code of Virginia, 1950, as now in effect or as hereafter amended.

"Annual Budget" means the annual budget of the Authority as described in Section 5.10.

"Annual Deficit" means any actual deficit at the end of a Fiscal Year consisting of an excess of actual Operating Costs over actual Operating Revenues for such Fiscal Year incurred by the Authority~~ acting pursuant to an Annual Budget and any amendments~~.

"Applicable Law" means any law, regulation, requirement (including but not limited to permit and governmental approval requirements) or order of any local, state or federal agency, court or other governmental body, applicable from time to time to the acquisition, design, construction, equipping, testing, start-up, financing, ownership, possession or operation (including but not limited to closure and post-closure operations) of any of the Facilities or the performance of any obligations under any agreement entered into in connection therewith.

"Articles of Incorporation" means the Articles of Incorporation of the Authority as they may be amended from time to time.

"Authority Board" means the Board of the Authority as set forth in the Articles of Incorporation.

"Authority Default" means any of the events of default described in Section 6.2.

"Authority Director" means an individual appointed by the Authority to manage the operations of the Authority, subject to the control and direction of the Authority Board.

"Bonds" means any bonds (as defined in the Act) issued by the Authority to finance the acquisition, construction and equipping of the Facilities, including any bonds issued to refund such bonds, but shall not include Subordinate Bonds.

"Business" means a commercial establishment, other than a Private Hauler, operating in a Member Jurisdiction.

"Bylaws" means the Bylaws of the Authority, as they may be amended from time to time.

"Campbell Facility" means the solid waste disposal landfill, including all improvements thereto, subject to DEQ permit number 285 that ~~was~~is separately owned and operated by Campbell prior to the creation of the Authority, and that is to be subsequently conveyed to the Authority for the Authority to own and operate subject to the terms of this Agreement and as permitted by DEQ.

"Capital Expenditure" means any single expenditure intended to benefit the Facilities, and which will be amortized over more than one (1) Fiscal Year, or is for such dollar amount as may be established by the Authority Board.

"DEQ" means the Virginia Department of Environmental Quality, or its successor agency.

"Debt Service Payments" means the payments of principal, premium, if any, and interest required to be made by the Authority by the terms of any Bonds or Subordinate Bonds. ~~It shall also include any payments to Member Jurisdictions that have advanced funding to the Authority.~~

"Designated Hauler" means any business entity other than a Member Jurisdiction (1) which is entitled to deliver Acceptable Waste to the Facility on behalf of a Member Jurisdiction for a fee paid by the Member Jurisdiction, (2) which collects Acceptable Waste pursuant to a contract with or franchise from the Member Jurisdiction and is designated ~~to the Authority~~in writing as such by the Member Jurisdiction ~~in writing~~, or (3) which collects Acceptable Waste from a town located in one of the counties which is a Member Jurisdiction and which is designated in writing as such by the Member Jurisdiction.

"Event of Default" means any of the events of default set forth in Section 6.2 and 6.3.

"Excess Revenue" means the sum of the incremental difference between the revenue contribution of the existing Lynchburg and Campbell contracts and market rate customers (all private haulers) beyond the cost of service disposal fee. Excess Revenue will be distributed to Lynchburg and Campbell , respectively, based on the amount of Facility air space contributed, respectively to the Authority. The amount of excess revenue will depend upon the cost of service rate each year. ~~tipping fee per ton charged to each Private Hauler and the tipping fee per ton charged to the Member Jurisdictions multiplied by each Private Hauler's total tonnage delivered to the regional landfills Facilities during a fiscal year~~Fiscal Year~~.~~

~~"Facility" or "Facilities" means the solid waste disposal landfills, including all improvements thereto, that were separately owned and operated by Lynchburg and Campbell, respectively, prior to the creation of the Authority, and that are to be subsequently conveyed to the Authority for the Authority to own and operate subject to the terms of this Agreement and as permitted by DEQ. The landfills shall be referred to as the "Lynchburg Facility" (DEQ permit numbers 273 and 558), or the "Campbell Facility" (DEQ permit number 285), respectively, if the context requires such specificity, otherwise the use of "Facility" or "Facilities" includes both landfills owned and operated by the Authority, and any improvements thereto.~~ "Facility" or "Facilities" means the Campbell Facility, the Lynchburg Facility, any improvements, additions, extensions and replacements thereto and any other facilities hereinafter operated by the Authority related to solid waste disposal. A plat showing the boundaries of each of the Facilities to be transferred to the Authority is attached hereto as Exhibit A. Campbell and Lynchburg shall be responsible for preparing the plats. The Lynchburg Facility and the Campbell Facility include closed landfills which will be transferred to the Authority, but will remain the financial responsibility of Lynchburg and Campbell respectively. The area of the closed landfills will be shown on **Exhibit A**.

"Financial Assurance" means the ability to satisfy DEQ, as required by law and in accordance with one or more financial mechanisms set forth in DEQ regulations, that the Authority has sufficient financial ability to fund closure and post-closure activities at the Facilities as ~~defined~~required by DEQ.

"Fiscal Year" means the period from July 1 of one year to June 30 of the next year.

"Hazardous Waste" means "hazardous waste" as defined in the Code of Virginia and as more specifically defined in the Virginia Hazardous Waste Management Regulations, currently 9 VAC 20-60, *et seq*, as may be amended from time to time.

"Indenture" means any indenture of trust, trust agreement or similar agreement, including any supplement, modification or amendment thereto, entered into between the Authority ~~had~~and a corporate trustee, pursuant to which Bonds are issued.

"Lynchburg Facility" means the solid waste disposal landfill, including all improvements thereto, subject to DEQ permit numbers 273 and 558 that are separately

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owned and operated by Lynchburg prior to the creation of the Authority, for the Authority to own and operate subject to the terms of this Agreement and as permitted by DEQ.

"Member Jurisdiction" means the initial localities that enter into this Agreement, and any additional localities that subsequently enter into this Agreement as members of the Authority.

"Member Jurisdiction Default" means any of the events of default described in Section 6.3.

~~"Indenture" means any Indenture of Trust entered into between the Authority and a corporate trustee, pursuant to which the Bonds are issued.~~

"Operating Costs" means all actual costs of the Authority ~~property~~ properly allocable to acquiring, constructing, equipping, maintaining and operating the Facilities as set forth in the Annual Budget, including, but not limited to:

(1) Salaries and fringe benefits of employees;

(2) Utilities, fuel, equipment (including but not limited to trucks and heavy equipment) tools and supplies;

(3) All costs incurred for engineering services, and other services, which may include design, permitting, operation, testing, monitoring, closure, post-closure and corrective action;

(4) All costs for compliance with all permit conditions and compliance with Applicable Law, including costs for treatment and disposal of leachate or materials inappropriately disposed or delivered to the Facilities;

(5) Debt Service Payments;

(6) All costs incurred for legal services, which may include zoning, permitting, financing, issues related to the operation of the Facilities, and defense of claims brought against the Authority;

(7) Insurance costs and the costs of bonds, letters of credit, escrows or other ~~financial assurance~~Financial Assurance or allowance for environmental monitoring and assurance, closure, post-closure or property value guarantees, or for compliance with Applicable Law;

(8) Capital Expenditures necessary for compliance with Applicable Law, Capital Expenditures necessary for normal maintenance and reasonable periodic expansion of improvements to the Facilities,

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and Capital Expenditures incurred in connection with Uncontrollable Circumstances;

(9) Purchase and maintenance costs of equipment and maintenance of the Facilities;

(10) All accounting and bookkeeping fees and charges;

(11) All costs associated with uncollectible accounts;

(12) All amounts required to be paid by the Authority to create funds required by an Indenture, or to replenish deficits in any such funds;

(13) Any fees fines or costs which may be imposed by the ~~Virginia Department of Environmental Quality (“~~DEQ~~”),~~ or any other federal, state or local agency or department having jurisdiction, whether intermittently or on an annual basis.

(14) Any payments made to Virginia’s Region 2000 Local Government Council or other governmental entity for services provided to the Authority.

(15) Amounts paid to reserve accounts created by the Authority to maintain such accounts at required levels.

“Operating Revenues” means all income and revenues derived by the Authority from the ownership or operation of the Facilities, but excluding any payments of a Member Jurisdiction’s Pro Rata Share.

“Private Hauler” means any person (other than a Member Jurisdiction or a Designated Hauler) who collects waste from within the Member Jurisdiction’s boundaries and who disposes of Acceptable Waste at the Facilities.

“Pro Rata Share” means each Member Jurisdiction’s share of the Annual Deficit, which shall be a fraction of the Annual Deficit determined as follows: the numerator shall be the total tons of Acceptable Waste which was delivered to the Facilities by that Member Jurisdiction and its Designated Haulers, Private Haulers, Businesses and Residents in the Fiscal Year (or partial Fiscal Year, for the first year of operation, if applicable) in which the Annual Deficit occurred; the denominator shall be the total tons of Acceptable Waste which was delivered to the Facilities by all Member Jurisdictions and their Designated Haulers, Private Haulers, Businesses and Residents in the Fiscal Year (or partial Fiscal Year, for the first year of operation, if applicable) in which the Annual Deficit occurred.

“Resident(s)” means a person residing in a Member Jurisdiction.

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"Start-Up Date" means the date that ~~title~~the Authority commences operation of a Facility (which is expected to ~~the Facilities is transferred to the Authority~~be July 1, 2008).

"Subordinate Bonds" means bonds, notes or other evidence of indebtedness of the Authority secured by a pledge or revenues expressly made subordinate to the pledge of revenues to secure payment of the Bonds.

"Tipping Fee" means the fee payable to the Authority for the disposal of Acceptable Waste.

"Unacceptable Waste" means all waste other than Acceptable Waste.

"Uncontrollable Circumstance" means any event or condition, whether affecting the Facilities, any Member Jurisdiction or the Authority, that interferes with the acquisition, design, construction, equipping, start-up, operation, ownership or possession of the Facilities or other performance required hereunder, if such event or condition is beyond the reasonable control, and not the result of willful action of the party relying thereon as justification for any nonperformance including but not limited to an act of God, storm, flood, landslide, earthquake, fire or other casualty, war blockade, insurrection, riot, the order or judgment of any local, state, or federal court, administrative agency or governmental officer or body (other than such an officer or body of the party relying thereon), a strike, lockout or other similar labor action.

ARTICLE II

TERM OF AGREEMENT

Section 2.1. Term.

This Agreement shall become effective upon its execution by authorized officers of all Member Jurisdictions and the Authority, subject to the terms and conditions contained herein, and shall be effective for a term of fifty (50) years, commencing on the date hereof, unless further extended pursuant to the provisions of the Act, provided that this Agreement shall in any event continue until adequate closure and post-closure obligations and responsibilities with respect to the Facilities have been met, and provided further that as long as any Bonds or other debt of the Authority remains outstanding, this Agreement cannot be terminated.

Section 2.2. Amendments.

The Authority and Member Jurisdictions covenant and agree that except as stated herein the terms, conditions and requirements contained in this Agreement shall apply equally to each Member Jurisdiction, and further covenant and agree that this Agreement shall not be amended or changed in any way without the consent of the Authority and the consent of the governing body of each Member Jurisdiction.

ARTICLE III

FACILITY PURCHASE AND OPERATION

Section 3.1. Facility Purchase.

(1) The Authority agrees to purchase the ~~Facilities~~Campbell Facility and the Lynchburg Facility, respectively, including the respective real estate, access rights, designated buildings, equipment and rolling stock from ~~the County of~~ Campbell and ~~the City of~~ Lynchburg, and those Member Jurisdictions agree to sell the ~~Facilities~~Campbell Facility and the Lynchburg Facility, respectively, including the respective designated buildings, equipment and rolling stock, to the Authority. The closing on such purchase shall take place on or about July 1, 2008, assuming the Authority has sufficient funding in place to complete the purchase and that the Authority has been able to obtain title insurance indicating that the localities own the property in fee simple and that there are no objections to the title. The localities agree to transfer the property with a Special Warranty Deed. The closing on the purchase of the real estate and improvements portion of the Campbell Facility may be deferred, at the option of the Authority, until conclusion of certain pending litigation related to the closed portion of the Campbell Facility. In the event of such delay, the Authority will enter into an agreement with Campbell relating to the maintenance and operation of the Campbell Facility until such purchase.

The purchase price for ~~each~~the Campbell Facility and the Lynchburg Facility, respectively, shall be based on a calculation of the net assets and liabilities of each of ~~the~~ those Facilities as determined in an independent assessment by R. W. Beck, Inc. The assets include the site improvements, the landfill capacity and land, the buildings, the equipment and rolling stock, and the closure and post-closure reserve funds that Lynchburg and Campbell agree to transfer to the Authority. The liabilities include the ~~outstanding debt that Lynchburg and Campbell currently have on the Facilities, and the~~ cost of closure and post-closure for the portion of the Facilities that have been used prior to transfer. An estimate of the assets and liabilities, and the net amount to be paid to Lynchburg and/or Campbell, or the net amount that Lynchburg and/or Campbell agree to pay to the Authority, are set forth in **Exhibit B**. A final determination of net assets and liabilities, and the amount to be paid to or paid by Lynchburg and Campbell, respectively, will be ~~made~~ further estimated as of the date of closing of each such purchase by R. W. Beck, Inc. using the same methodology and will reflect arms-length transactions between the Authority and Campbell and the Authority and Lynchburg, respectively. The final amounts will be approved by the Authority Board.

(2) The Authority ~~may~~ intends to purchase the Facilities through the issuance of any debt instrument legally available to the Authority, including, but not limited to the

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issuance of Bonds~~ and entering into a contract with one or more of the Member Jurisdictions willing to advance the funding for a portion of such purchase or the entire purchase~~.

Section 3.2. Facility Operation.

(1) Subject to the provisions of this Section and subject to the transfer of title to the ~~Facilities from~~ Campbell Facility and the Lynchburg Facility, respectively, to the Authority as provided in Section 3.1, the Authority agrees that it will equip, operate and maintain the Facilities. The Authority further agrees to use its best efforts to obtain the necessary permits and approvals required under Applicable Law to equip, operate and maintain the Facilities. This includes the maintenance of the closed landfills in Campbell and Lynchburg, respectively, the cost of which shall be paid annually to the Authority by Campbell and Lynchburg, respectively.

(2) The Authority shall construct and maintain at its expense any improvements and buildings necessary for the operation of the Facilities and shall furnish all labor, tools, and equipment necessary to operate the Facilities, in accordance with Applicable Law.

Section 3.3. Use of Facilities.

Use and operation of the Facilities shall be conducted in compliance with the terms and conditions of any permit lawfully issued by the appropriate locality, and such permits as are issued by DEQ, whether issued or amended before or after the effective date hereof.

Section 3.4. Use of Facilities Following Closure.

Following the closure of each of the Facilities, the Member Jurisdiction that previously owned the Facility shall have the right to use such Facility for recreational purposes or other use approved by the Authority, subject to an ~~Agreement~~ agreement with the Authority whereby the Member Jurisdiction accepts responsibility for any liability associated with such use.

Section 3.5 Operation of Facilities.

All of the operations, management and fiscal services of the Authority shall be provided through contractual arrangements through the Virginia's Region 2000 Local Government Council.

ARTICLE IV

OBLIGATIONS RELATING TO DELIVERY AND ACCEPTANCE OF WASTE

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Section 4.1. Acceptance of Waste by Authority.

(1) Beginning on the Start-Up Date and continuing throughout the term of this Agreement, the Authority agrees to accept and dispose of Acceptable Waste delivered by Member Jurisdictions, Designated Haulers, Private Haulers, Businesses and Residents in accordance with the terms of this Agreement, for the useful life of the Facilities.

(2) To the extent permitted by law, each Member Jurisdiction hereby covenants that all Acceptable Waste generated in its political jurisdiction, and over which each Member has control, shall be delivered to the Facilities for disposal pursuant to the Facility Schedule developed pursuant to Section 4.1(3). Sludge, household hazardous waste and recyclable materials may be disposed of separately by the Member Jurisdictions. Bedford's ~~County may use its~~~~County's~~ existing landfill may be used for construction and demolition debris from ~~City~~Bedford Residents and Businesses and as emergency backup for the transfer station operated by ~~the City~~Bedford. Appomattox's existing landfill may be used by Appomattox until closed, which is expected in 2009.

(3) The Member Jurisdictions agree that concurrent use of ~~both landfills~~ the Campbell Facility and the Lynchburg Facility is not intended nor is it the most efficient allocation of the Authority's resources. Therefore, the Campbell Facility will be subject to interim closure while the Lynchburg Facility will remain in operation as the primary recipient of Acceptable Waste. Pursuant to this understanding and prior to the Start-Up Date, the Authority shall develop a schedule designating when ~~each Facility (Lynchburg Facility, and~~ the Campbell Facility~~)~~ and the Lynchburg Facility will each be in active operation, when each will be in interim closure and permanently closed, and directing each Member Jurisdiction's Acceptable Waste to the appropriate landfill in accordance with this schedule. The schedule shall be reviewed and amended from time to time as deemed appropriate by the Authority.

(4) The Authority may, but is not required to, receive Acceptable Waste from outside the Member Jurisdictions.

Section 4.2. Operating Rules.

The Authority shall promulgate specific rules and procedures for the use and operation of the Facilities, which shall be deemed a part of this Agreement following notice to Member Jurisdictions of such rules. The rules and procedures may be modified by the Authority from time to time upon notice to Member Jurisdictions from the Authority. A copy of such operating rules shall be available at the offices of the Authority upon request. The Member Jurisdictions agree to be bound by such rules and procedures. The rules may include fines for attempts to dispose or disposal, of Unacceptable Waste at the Facilities and procedures for banning Designated Haulers, Private Haulers, Businesses, Residents and any other persons who violate the rules from using the Facilities. The Authority and Member Jurisdictions agree that such rules and procedures shall not be inconsistent with this Agreement.

Section 4.3. Use of Facilities by Member Jurisdictions.

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The Authority and Member Jurisdictions agree that no person or entity shall be permitted to utilize the Facilities except pursuant to the general terms and conditions of this Agreement.

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Section 4.4. Title to Acceptable and Unacceptable Waste.

(1) Upon the Authority's acceptance of any Acceptable Waste, the Authority shall acquire title to such Acceptable Waste.

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(2) The Authority shall never be deemed to have acquired title to Unacceptable Waste unless it specifically represents that it is aware the waste is Unacceptable Waste and it is specifically taking title to the same. Inoperability of the Authority's scales shall not affect the transfer of title.

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(3) In the event of any dispute concerning title to any waste, the Member Jurisdiction which disputes the Authority's position shall have the burden of proof. If the Authority denies its title to any waste, the dissenting Member Jurisdiction must prove that the title thereto was duly transferred to the Authority. If the Authority asserts a claim of title to any waste, the dissenting Member Jurisdiction must prove that the title thereto was not duly transferred to the Authority.

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Section 4.5. Disposal of Unacceptable Waste.

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(1) If, prior to the disposal thereof, the Authority determines that any waste delivered to a Facility is Unacceptable Waste, the Unacceptable Waste will not be disposed of at the Facility.

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(2) If after the disposal thereof, the Authority determines that any waste disposed of at a Facility is Unacceptable Waste, the disposing party shall cause the Unacceptable Waste, and any material contaminated by such Unacceptable Waste, to be promptly removed and properly disposed of at its own expense, and if the party so responsible for disposal fails to promptly effect such removal and disposition, the Authority may do so, in which event the party so responsible for disposal shall be liable to the Authority for all costs incurred by it. Such costs shall include direct and indirect costs of removal, overhead, fines, penalties, and any loss or liability incurred as a result of the improper disposal of such U~~unlawful u~~nacceptable ~~waste~~Waste. If the disposing party fails to pay the amount determined as aforesaid within thirty (30) days from the date the Authority sends its invoice, the Authority shall have the right to pursue collection through any lawful means, and shall have the right to recover all costs incurred by it in such collection, including reasonable attorney's fees.

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(3) If the Authority has the ability to do so, the Authority shall afford the disposing party the opportunity to defend itself against any proposed imposition of fine or penalty, or any claim brought on the basis of liability resulting from the alleged disposal of Unacceptable Waste.

Section 4.6. Recycling and Solid Waste Management Plan.

The Authority will be responsible for preparing the Solid Waste Management Plan for the Member Jurisdictions for submission to the Virginia Department of Environmental Quality. The Authority will also assist the Member Jurisdictions in preparing and submitting all reports required by state law or DEQ regarding recycling, including reporting from Businesses and shall have the authority to operate such recycling programs as approved by the Authority Board.

Section 4.7. Litter Control. The Authority shall use its best efforts to keep the roads leading into ~~each of the Facilities~~any Facility free from litter.

ARTICLE V

TIPPING FEES; OTHER CHARGES

Section 5.1. Tipping Fees.

(a) From and after the Start-Up Date, the Authority shall charge Tipping Fees for Acceptable Waste delivered to any of the Facilities and accepted by the Authority for disposal at a Facility's landfill, and for other services rendered by the Authority. The Tipping Fees shall be established by ~~July~~ March 1 of each year (other than the initial year, which will be established by June 1 of such year) and an estimate shall be provided to the Member Jurisdictions by February 1 for budget purposes. Subject to the terms and conditions of this Agreement, the Authority and Member Jurisdictions recognize and agree that there may be separate schedules of Tipping Fees, which schedules may include the following: (i) Member Jurisdictions; (ii) Designated Haulers; (iii) Private Haulers; (iv) Business and (v) Residents. Member Jurisdictions shall be responsible for payment of any Tipping Fees incurred by a Designated Hauler of each Member Jurisdiction. The Authority shall establish its Tipping Fees for any given Fiscal Year in an amount (based upon the Authority's projection of total tonnage for the upcoming Fiscal Year) that will provide Operating Revenues at a minimum sufficient to pay (1) all Operating Costs (excluding Debt Service Payments) less existing surplus funds above a reasonable operating reserve established by the Authority that are available to pay such Operating Costs, plus (2) 1.15 times any Debt Service Payments due in the upcoming Fiscal Year or any higher coverage level required in connection with any of the Authority's outstanding Bonds ~~other than Bonds issued as subordinate indebtedness~~ plus (3) 1.0 times any Debt Service Payments due in the upcoming Fiscal Year with respect to ~~subordinate indebtedness.~~Subordinate Bonds. Once so established, the Tipping Fees may be adjusted from time to time during a Fiscal Year to correct an error in calculation or projections of tonnage or to prevent a default in the payment of the principal of, or the premium, if any, or interest on, any Bonds of the Authority, but a minimum of sixty (60) days' notice of any proposed increase in the Tipping Fees must be provided to the Member Jurisdictions and their Designated Haulers. In addition, notwithstanding any contrary provision of this Agreement, the Authority shall revise its charges as often as may be necessary so as to produce revenues sufficient at all times to pay the Operating Costs and Debt Service Payments, unless other funds are available for such purposes.

~~(b)~~ (b) The Authority shall set the Tipping Fees for Private Haulers on a cost – plus methodology, which will allow the Authority to recover the cost of service as well as to allow the Authority to create a capital or other reserve fund or to reimburse the Member Jurisdictions for their capital and other costs. The Authority may set varying fees for Private Haulers based on factors such as annual tonnage disposed, character of the waste and multi-year contracts.

(c) The Authority shall determine what charges, if any, shall apply to Businesses and Residents using the Facilities.

Section 5.2. Payments.

(1) All amounts payable hereunder shall be invoiced on a monthly basis unless otherwise indicated. Amounts invoiced shall be due thirty (30) days after the date of receipt of the invoice. Invoices shall be deemed received three (3) days after being placed in the U.S. Mail, postage prepaid. Each such invoice shall set forth the information relevant to a determination of the total amount due, as shown on such invoice. Initially, Member Jurisdictions will pay their respective Tipping Fees six (6) months in advance on July 15, 2008 and January 15, 2009, in order to provide sufficient cash flow funds for the Authority's initial year of operation. Such prepaid amounts shall be based on estimates to be determined by the Authority by June~~ne~~ 15, 2008 and December 15~~December 1~~, 2008~~8~~,~~.~~ respectively.

(2) The Authority shall maintain separate records for the amounts payable by each Member Jurisdiction for its own disposal and for disposal by its Designated Haulers.

Section 5.3. Charges for Deliveries Outside Normal Hours and Other Charges

The Authority shall have no duty to accept waste at times other than a Facility's normal hours of operation, but it may establish such charges for "late" deliveries as it deems appropriate to the extent permitted by Applicable Law. In addition, the Authority may establish charges for any other services provided by the Authority.

Section 5.4. Late Payment.

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(1) Any amount payable under this Agreement by Member Jurisdictions, Designated Haulers or Private Haulers that is not paid when due in accordance with this Agreement shall bear interest compounded monthly at the lesser of the following: one and one-half percent (1.5%) for any calendar month, or portion of a calendar month, in which there is an unpaid balance, or, if lower, the highest interest rate allowed by law.

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(2) The Authority may pursue collection of delinquent accounts through any means available to it, and the Authority shall be entitled to recover from the non-paying party all costs of collection incurred by it, including reasonable attorney's fees.

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Section 5.5. Duty to Pay Amount Invoiced During Pendency of Dispute.

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If any Member Jurisdiction disputes ~~that~~ the amount of an invoice presented to it by the Authority, such Member Jurisdiction shall nevertheless pay the Authority the amount so invoiced. Once such dispute is resolved, if the resolution requires a reimbursement by the Authority for overpayment by such Member Jurisdiction, the Authority shall forthwith refund such overpayment.

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Section 5.6. Uniform Charges to Member Jurisdictions.

The Tipping Fees charged to Member Jurisdictions shall be uniform, so that no Member Jurisdiction may be charged more for a classification of waste than ~~in~~ any other Member Jurisdiction.

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Section 5.7. "Moral Obligation" to Pay Rata Share of Annual Deficit.

(1) Once the Authority determines an Annual Deficit, it shall invoice each Member Jurisdiction for its Pro Rata Share thereof. Each ~~such~~ Member Jurisdiction shall have a "moral obligation" to appropriate its Pro Rata Share of such Annual Deficit and remit payment thereof to the Authority within sixty (60) days from the date it receives such invoice. Invoices shall be deemed received three (3) days after being placed in the U.S. Mail, postage prepaid.

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(2) The obligation of each Member Jurisdiction to make payment of its Pro Rata Share under this Section shall be subject to, and contingent upon appropriations being made for such purpose by each governing body of the Member Jurisdiction, which governing body shall have a "moral obligation," but not a legally enforceable obligation, to make such appropriations; provided, however, that within thirty (30) days after receipt of such notice the chief administrative officer of each Member Jurisdiction shall present such invoice for payment to such Member Jurisdiction's governing body. Nothing in this Section or this Agreement shall constitute a pledge of the full faith and credit of any Member Jurisdiction under any provisions of its charter or the Constitution, or statutes of Virginia, or a bond or debt of any Member Jurisdiction within the meaning of any provision of the Constitution, or statues of Virginia, or such Member Jurisdiction's

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charter. Subject to the provisions of this Section, the obligation of each Member Jurisdiction to make payments under this Agreement and to observe and perform all other covenants and agreements under this Agreement is unconditional, irrespective of any rights of set-off, recoupment, or counterclaim that any Member Jurisdiction may have, jointly or individually, against the Authority. Each Member Jurisdiction shall notify the Authority promptly after such meeting as to whether the amount so requested was appropriated. If a governing body shall fail to make such appropriation, the chief administrative officer of such Member Jurisdiction shall give written notice to the governing body of the consequences of such failure to appropriate. The current governing body of each Member Jurisdiction, while recognizing that it is not empowered to make any binding commitment to make such appropriations, hereby states its intent to make such appropriations upon request of the Authority and hereby recommends that future governing bodies of the Member Jurisdiction do likewise.

If, as a result of failure of the governing body of any Member Jurisdiction to appropriate monies to make payment of that Member Jurisdiction's Pro Rata Share, such Member Jurisdiction fails to make payment of such Pro Rata Share as set forth in Section 5.7(1) above, the Authority may refuse to allow disposal of Acceptable Waste from such Member Jurisdiction and from designated Haulers, Private Haulers and Residents of such member Jurisdiction. Upon payment by such Member Jurisdiction of such Pro Rata Share, the Authority shall commence disposing of Acceptable Waste from such Member and from Designated Haulers, Private Haulers and Residents of such Member Jurisdictions.

Section 5.8. Member Jurisdictions' Obligation to Pay Costs of Closure, Post-Closure, Corrective Action and Environmental Liability.

(a) Each Member Jurisdiction shall be required to contribute to costs budgeted or incurred for closure, post-closure and corrective action, or an additional charge for services provided by each Facility. The contribution of each such Member Jurisdiction shall be a fraction of the total cost, determined as follows: the numerator shall be the total tons of Acceptable Waste which ~~has~~have been delivered to each Facility by that Member Jurisdiction and its Designated Haulers from the Start-Up Date through the date of the computation; the denominator shall be the total tons of Acceptable Waste which ~~has~~have been delivered to each Facility by all Member ~~Jurisdiction~~ Jurisdictions and their Designated Haulers from the Start-Up Date through the date of the computation. The fractions so determined shall be recomputed annually once the audited financial statement for the Authority is available after the conclusion of each Fiscal Year. Notwithstanding the above, Lynchburg and Campbell shall be responsible, respectively, for the closure, post-closure, and corrective action costs for that portion of the Lynchburg Facility and the Campbell Facility, respectively, that contain landfills that were closed prior to the ~~Effective Date of this Agreement~~transfer of such Facility to the Authority. Lynchburg and Campbell agree to indemnify and hold harmless the other Member Jurisdictions from any costs and/or liabilities associated with the closed portions of the Lynchburg and Campbell Facilities, respectively, and to pay any costs incurred by the Authority relative to the closed portions.

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~~(a)~~

(b)– At the time the Authority closes all or part of a Facility and begins post-closure care, the Authority will conduct a ~~f~~Financial true-up to determine if the amount set aside for closure and post-closure is sufficient to cover actual costs. For example, assume the closure cost for the portion of the Facility was estimated to be $2.0 million ~~dollars~~ at the time of closure. If the actual cost is $2.2 million dollars, the M~~m~~ember Jurisdiction would be responsible for the difference of $200,000. If the actual cost were $1.8 million~~ dollars~~, the Member Jurisdiction would receive a refund or credit of $200,000. Any interest income earned on closure and post-closure reserves will be used for closure and post closure activities for the Facility to which such funds relate and will be taken into account in the financial true-up determination.

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(c) Each Member Jurisdiction that operated a closed landfill, or portion of a Facility that was closed prior to the transfer of such Facility, which has been transferred to the Authority shall be responsible for all costs and liability associated with any environmental liability at that closed landfill or portion thereof. For the portions of the landfills that are being transferred to the Authority which have been used by the Member Jurisdiction prior to being transferred but are not closed, a determination will be made at the Start-Up Date as to what percentage of the total capacity of each landfill has been used by the Member Jurisdiction transferring the landfill prior to that date by R.W. Beck, Inc. Subsequently, once such landfill is permanently closed, a capacity true-up determination will be made by the Authority. The Authority and the Member Jurisdiction shall be responsible for all costs and liability associated with any environmental liability for such landfill on the basis of such percentage of capacity, unless it can be determined by ~~Agreement~~agreement of the Member Jurisdiction and the Authority that the source of the environmental liability can be established to have been placed in the landfill either prior to the ~~Start-Up Date (and~~ transfer of such closed landfill (in which case the liability shall be that of the Member Jurisdiction) or after the ~~Start-Up Date and~~ transfer of such closed landfill (in which case the liability shall be that of the Authority). For cells constructed after the ~~Start-Up Date and~~ transfer of such closed landfill, the costs associated with environmental liability shall be the responsibility of the Authority.

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Section 5.9. Books and Records.

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The Authority shall be responsible for the maintenance of all books, records and accounts necessary to record all matters affecting the Tipping Fees or other amounts payable by or to Member Jurisdictions and the Authority under this Agreement. All such books, records and accounts shall be maintained in accordance with generally accepted accounting principles, shall accurately, fairly and in reasonable detail reflect all the Authority's dealings and transactions under this Agreement and shall be sufficient to enable those dealings and transactions to be audited in accordance with generally accepted accounting principles. Within one hundred twenty (120) days after the close of each Fiscal Year, or, if later, within thirty (30) days after the date the annual report is available, the Authority shall deliver to each Member Jurisdiction an annual report accompanied by a certificate of an independent certified public accountant, including,

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among other things, a statement of the financial position of Authority at the end of such Fiscal Year, –a statement of Operating Revenues and Operating Costs under this Agreement, and the amount, if any, of the Annual Deficit. All such books, records and accounts shall be available for inspection and photocopying by any Member Jurisdiction on reasonable notice so that it can verify Tipping Fees or other amounts payable under this Agreement. All such books, records and accounts shall be kept by the Authority for at least six years (or any longer period required by Applicable Law).

Section 5.10. Budget.

On or before each March 1, the Authority shall (a) adopt its Annual Budget for the ensuing Fiscal Year, which shall include, without limitation, projected Operating Costs and Operating Revenues, taking into account Tipping Fees established in accordance with Sections 5.1 and 5.6; and (b) provide to each Member Jurisdiction the Annual Budget and Tipping Fees that will be charged to it for the ensuing Fiscal Year; but subject to periodic changes to said Tipping Fees as provided for herein.

Section 5.11. Excess Revenue.

In the event there is Excess Revenue at the end of a Fiscal Year, the Authority Board may vote to distribute some or all of such Excess Revenue to Lynchburg and Campbell, respectively, based on the basis of the relative percentage of available air space each Facility had at the ~~Start-Up Date~~date of transfer. The determination of available air space may be recalculated after transfer if the Authority is able to make use of more available air space for any reason. In the event of such recalculation, the Authority will determine an appropriate financial true-up or change in calculation of Excess Revenue based on such recalculation.

ARTICLE VI

DEFAULT AND TERMINATION

Section 6.1. Remedies for Default.

(1) In the event of the breach by any party of an obligation under this Agreement, the right to recover damages or to be reimbursed will ordinarily constitute an adequate remedy. Therefore no party may terminate its obligations under this Agreement for cause for any breach except as provided in Section 6.4.

(2) Once any payment due from a Member Jurisdiction is delinquent as defined herein, the Authority may refuse to accept Acceptable Waste from such Member Jurisdiction and from Designated Haulers, Private Haulers and Residents of such Member Jurisdiction. Upon payment by such Member Jurisdiction of all amounts due from it, the Authority shall commence disposing of Acceptable Waste from such Member

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Jurisdiction and from Designated Haulers, Private Haulers and Residents of such Member Jurisdiction.

(3) The parties hereto acknowledge that in the event of any Event of Default the non-defaulting party(s) shall be entitled to recover, to the extent proven, all of its (their) respective damages, including incidental and consequential damages, caused by such Event of Default. The parties hereto agree that damages for any such Event of Default may include, without limitation: (i) amounts payable under this Agreement (including, without limitation, Tipping Fees); (ii) lost revenues and damages under any contract unable to be performed or realized, in whole or in part, by reason of such Event of Default; (iii) accelerated amounts if required under any contract or agreement as a result of an Event of Default specified in Section 6.3(~~a~~1); (iv) interest at the rate described in Section 5.4(1) from the date of payment on any amounts borrowed or required to be advanced in connection with such Event of Default, including interest on amounts paid to mitigate damages or prevent a default from arising under any agreement relating to the Facilities or their operations; (v) increased Operating Costs, and (vi) reimbursement for all reasonable expenses and costs, including the fees and expenses of its counsel, incurred in connection with any proceeding brought to recover such damages or to enforce the provisions of this Agreement. To the extent permitted by Applicable Law, the parties hereto hereby waive the right to trial by jury in any action or proceeding brought to enforce, construe or recover damages for any breach of this Agreement.

Section 6.2. Events of Default by Authority.

Each of the following shall constitute an Event of Default by the Authority ("Authority Default").

(1) The Authority's persistent or repeated failure or refusal substantially to fulfill any of its material obligations to any Member Jurisdiction in accordance with this Agreement unless such failure or refusal shall be excused or justified by an Uncontrollable Circumstance or a default by a Member Jurisdiction hereunder; provided, however, that no such failure or refusal shall constitute an Authority Default unless and until:

(a) such Member Jurisdiction has given written notice to the Authority stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exist that will, unless corrected, constitute a material breach of this Agreement by the Authority and that will in its opinion give the Member Jurisdiction a right to terminate its obligations to the Authority under this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and

(b) the Authority has neither corrected such default nor initiated reasonable steps to correct it within a reasonable period of time (which shall in any event be not less than thirty (30) days from the date of receipt of the notice given pursuant to clause (a) of this Section); provided that if Authority has commenced to take reasonable steps to correct such default within such reasonable period of time, it shall not constitute an Authority Event of Default for as long as the Authority is continuing to take reasonable steps to correct it; or

(2) An order or decree shall be entered, with the Authority's consent or acquiescence, appointing a receiver or receivers of the Facilities or any part thereof or of the revenues of the Authority, or if such order or decree, having been entered without the Authority's consent or acquiescence, shall not be vacated or discharged or stayed on appeal within sixty (60) days after its entry, or any proceeding shall be instituted, with the Authority's consent or acquiescence, for the purpose of effecting a compromise between the Authority and its creditors, or for the purpose of adjusting such creditors' claims pursuant to any federal or state statute now or hereafter enacted, or if the Authority makes an assignment for the benefit of its creditor or admits in writing its inability to pay its debts generally as they become due.

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Section 6.3. Events of Default by Member Jurisdictions.

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Each of the following shall constitute an Event of Default by a Member Jurisdiction **("Member Jurisdiction Default")**.

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(1) The failure by a Member Jurisdiction to pay any amount under this Agreement within sixty (60) days after receipt of written invoice therefor; provided that failure to pay such Member Jurisdiction's Pro Rata Share as a result of failure of the governing body of such Member Jurisdiction to appropriate the necessary monies shall not constitute a Member Jurisdiction Default; or

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(2) The failure or refusal by a Member Jurisdiction to fulfill any of its obligations to the Authority in accordance with this Agreement unless such failure or refusal is excused or justified by an Uncontrollable Circumstance, provided that no such failure or refusal shall constitute an Event of Default unless and until:

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(a) the Authority has given prior written notice to such Member Jurisdiction stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exist which will, unless corrected, constitute a material breach of this Agreement on the part of the Member Jurisdiction and which will in its opinion give the Authority a right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and

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(b) such Member Jurisdiction has neither corrected such default, nor initiated reasonable steps to correct it, within five (5) business days from the date of the notice given pursuant to paragraph (2)(a) of

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this Section (or within such longer period of time as is necessary and reasonable under the circumstances); provided that if such Member Jurisdiction is continuing to take reasonable steps to correct it, unless such default creates an emergency situation which may endanger the continued operation of the Facility, in which case an Event of Default shall be deemed to have occurred if such default is not corrected within ten (10) days or less.

Section 6.4. Termination on Default.

To the extent permitted by Applicable Law, and subject to the provisions of Section 2.1 hereof, upon the occurrence of an Authority Default, any Member Jurisdiction, after giving written notice to all parties, may terminate this Agreement, and any rights hereunder, with respect to itself and any Designated Haulers of such Member Jurisdiction. The termination of this Agreement by any Member Jurisdiction shall not terminate this Agreement as to any other Member Jurisdiction. The proper exercise of the right of termination shall be in addition to, and not in substitution for, such other remedies, whether damages or otherwise, of the party exercising the right of termination.

Subject to the terms and conditions of this Agreement, if any Member Jurisdiction fails to pay its Tipping Fees, Pro Rata Share, closure costs, post-closure costs or corrective action costs, such Member Jurisdiction shall remain liable for such amounts, (subject to appropriation for Pro Rata Share), and shall continue to be bound by the terms of this Agreement which provide for such payments, even after the lawful termination hereof by such Member Jurisdiction.

Section 6.5. Survival of Certain Rights and Obligations.

No termination of this Agreement shall limit or otherwise affect the rights and obligations of any party that have accrued before the date of such termination. Additionally, all obligations of Member Jurisdictions with regard to any Unacceptable Waste shall survive the termination of this Agreement

ARTICLE VII

MISCELLANEOUS

Section 7.1. Entire Agreement; Modification.

This Agreement represents the entire agreement between the Member Jurisdictions and the Authority and supersedes all prior negotiations, representations or agreements, either written or oral.

Section 7.2. Assignment.

No assignment of this Agreement, or any right occurring under this Agreement, shall be made in whole or part by any Member Jurisdiction without the Authority's express written consent.

Section 7.3. Partnership.

Nothing herein shall be construed to constitute a joint venture between the Authority and any Member Jurisdiction or the formation of a partnership.

Section 7.4. Severability of Invalid Provisions.

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

Section 7.5. Notices.

All notices, certificates, requests or other communications under this Agreement must be in writing and will be deemed given, unless otherwise required, when either mailed by first-class U.S. Mail, postage prepaid, or delivered by hand, to the address set forth below:

If to Authority:	Region 2000 Services Authority Executive Director 828 Main Street – 12th Floor Lynchburg, VA 24504
If to Appomattox	Appomattox County, Virginia Aileen T. Ferguson County Administrator P.O. Box 863 Appomattox, VA 24522
If to Campbell	Campbell County, Virginia R. David Laurrell County Administrator P.O. Box 100 Rustburg, VA 24588
If to Nelson	Nelson County, Virginia Stephen A. Carter

	County Administrator P.O. Box 336 Lovingston, VA 22949
If to City of Bedford	Bedford, Virginia Charles Kolakowski City Manager P.O. Box 807 Bedford, VA 24523
If to City of Lynchburg	Lynchburg, Virginia L. Kimball Payne, III City Manager 900 Church Street Lynchburg, VA 24504

The parties may by notice given under this Section designate such other addresses as they may deem appropriate for the receipt of notices under this Agreement. If, by reason of the suspension of or irregularities in regular mail service, it is impractical to mail notice of any event when notice is required to be given, then any manner of giving notice which is satisfactory to the intended recipient will be deemed to be sufficient.

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Section 7.6. Representations As to Ability to Perform

The Authority is not a party to any legal, administrative, arbitration or other proceeding or controversy pending, or, to the best of the Authority's knowledge threatened, which would materially adversely affect the Authority's ability to perform under this Agreement. Each Member Jurisdiction represents as to itself that it is not a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of its knowledge, threatened, which would materially and adversely affect its ability to perform under this Agreement.

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Section 7.7. Further Documents and Data.

The parties to this Agreement will execute and deliver all documents and perform all further acts that may be reasonably necessary to perform the obligations and consummate the transactions contemplated by this Agreement.

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Section 7.8. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, will be an original, and the counterparts taken together will constitute one and the same instrument.

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Section 7.9. Tax Exemption Covenant.

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(1) The Authority may issue ~~Notes and~~ Bonds and Subordinate ~~B~~bonds and otherwise incur financial obligations **(together, the "Obligations")** in a manner such that ~~their~~ the interest on any of such Obligations is excludable from gross income for federal income tax purposes under Section 103 (a) and related provisions of the Internal Revenue Code of 1986, as amended, and applicable rules and regulations. The Authority and each Member Jurisdiction agree that after the ~~Notes and Bonds~~Obligations have been issued, they will not take any action or omit to take any action which would adversely affect such exclusion, which includes, but is not limited to, restricting the expenditure of funds set aside for Financial Assurance (including the interest thereon) for Financial Assurance expenses only and expressly not pledging any such funds toward payment of or as security for such tax-exempt Obligations.

(2) Pursuant to Section 15c2-12(b) of regulations issued by the Securities and Exchange Commission, as may be amended from time to time, the Authority and Member Jurisdictions may be required to agree with owners of ~~the Notes and Bonds~~Obligations, for as long as such ~~obligations~~ Obligations are outstanding, to supply certain national securities information repositories with (1) annually certain and statistical information, and (2) periodically, notification of certain specified material events affecting the Authority, the Member Jurisdictions and such obligations. The particulars of this ongoing disclosure requirement will be set forth in one or more of an indenture, loan agreement or continuing disclosure agreement~~.~~ or similar agreement. Each Member Jurisdiction agrees to cooperate with the Authority in fulfilling this requirement, including providing the Authority with timely notice of the occurrence of any of the specified events which are material to its operations and ~~herby~~hereby authorizes ~~it~~its County Administrator or City Manger to execute and deliver any agreement considered necessary or appropriate evidence of such Member Jurisdiction's continuing disclosure undertaking.

Section 7.10 Litigation.

The parties agree that any litigation involving this Agreement or the operation of the Authority shall be brought only in the Circuit Court or District Court for one of the Member Jurisdictions.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be signed as of the date above written.

[SEE ATTACHED SIGNATURE PAGES]

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On behalf of the Region 2000 Services Authority, the undersigned certifies his intent that his signature, affixed below constitutes valid execution of the First Amendment to the Region 2000 Service ~~a~~ Authority Member Use Agreement dated this ____ day of __________, ~~2007~~2008, by and among the Region 2000 Services Authority, the County of Appomattox, the County of Campbell, the County of Nelson, the City of Bedford and the City of Lynchburg, which Member Use Agreement consists of ___ pages.

REGION 2000 SERVICES AUTHORITY

By: ______________________________________

Title _____________________________________

ATTEST:

____
Clerk

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On behalf of the County of ~~Campbell~~Appomattox, the undersigned certifies his intent that his signature, affixed below constitutes valid execution of the First Amendment to the Region 2000 Services Authority Member Use Agreement dated this ____ day of _________, ~~2007~~2008, by and among the Region 2000 Services Authority, the County of Appomattox, the County of Campbell, the County of Nelson, the City of Bedford and the City of Lynchburg, which Member Use Agreement consists of ___ pages.

COUNTY OF APPOMATTOX, VIRGINIA

By: ________________________________

Chairman

Board of Supervisors

ATTEST:

____

Clerk

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On behalf of the County of Campbell, the undersigned certifies his intent that his signature, affixed below constitutes valid execution of the First Amendment to the Region 2000 Services Authority Member Use Agreement dated this ____ day of _________, 2008, by and among the Region 2000 Services Authority, the County of Appomattox, the County of Campbell, the County of Nelson, the City of Bedford and the City of Lynchburg, which Member Use Agreement consists of ___ pages.

COUNTY OF CAMPBELL, VIRGINIA

By: ___________________________________
Chairman
Board of Supervisors

ATTEST:

____
Clerk

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On behalf of the County of Nelson, Virginia, the undersigned certifies his intent that his signature, affixed below constitutes valid execution of the First Amendment to the Region 2000 Services Authority Member Use Agreement dated this ____ day of __________, ~~2007~~2008, by and among the Region 2000 Services Authority, the County of Appomattox, the County of Campbell, the County of Nelson, the City of Bedford and the City of Lynchburg, which Member Use Agreement consists of ___ pages.

COUNTY OF NELSON, VIRGINIA

By: ____________________________________
Chairman
Board of Supervisors

ATTEST:

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Clerk

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On behalf of the City of Bedford, Virginia, the undersigned certifies his intent that his signature, affixed below and duly attested by the Clerk of City Council, constitutes valid execution of the First Amendment to the Region 2000 Services Authority Member Use Agreement dated as of ________________, ~~2007~~2008, by and among the Region 2000 Services Authority, the County of Appomattox, the County of Campbell, the County of Nelson, the City of Bedford and the City of Lynchburg, which Member Use Agreement consists of ___ pages.

CITY OF BEDFORD, VIRGINIA

By: ________________________________
Mayor

ATTEST: ___________________________
Clerk

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On behalf of the City of Lynchburg, Virginia, the undersigned certifies his intend that his signature, affixed below and duly attested by the Clerk of City Council, constitutes valid execution of the First Amendment to the Region 2000 Services Authority Member Use Agreement dated as of ___________________, ~~2007~~2008, by and among the Region 2000 Services Authority, the County of Appomattox, the County of Campbell, the County of Nelson, the City of Bedford and the City of Lynchburg, Virginia, which Member Use Agreement consists of ___ pages.

CITY OF LYNCHBURG, VIRGINIA

By: ________________________________
Mayor

ATTEST:

____
Clerk

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