The City of Lynchburg, Virginia

City Hall, 900 Church Street, Lynchburg, Virginia 24504
(434) 455-3968
Fax (434) 845-0711

Financial Services
Office of the Director

AGENDA ITEM #1

To: City Council

From: Donna Witt, Director of Financial Services Donna

CC: L. Kimball Payne, City Manager

Bonnie Svrcek, Deputy City Manager

Date: December 8, 2011

Re: FY 2011 Comprehensive Annual Financial Report and Related Reports

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In preparation for the upcoming presentation by Brown Edwards, LLC the following documents are enclosed for your review:

- FY 2011 Comprehensive Annual Financial Report (CAFR).
- Comments on Internal Control and Other Suggestions for Your Consideration
- Audit Committee Letter – Required Communication with those Charged with Governance
- Independent Auditor's Report on Comments and Suggestions – City of Lynchburg's Sheriff's Office
- Comments on Internal Control and Other Suggestions for Your Consideration – Lynchburg City Schools
- Audit Committee Letter – Required Communication with those Charged with Governance – Lynchburg City Schools

Representatives from Brown Edwards, LLC will be presenting this information in the December 13th work session.

Thank you.

Attachments (6) NOTE: These attachments were delivered to City Council on Thursday, December 1, 2011.

// A regular meeting of the Council of the City of Lynchburg was held on the 22nd day of November, 2011, at 1:00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. Council Member Nelson gave the Invocation, followed by the Pledge of Allegiance. The following Members were present:

Present: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6
Absent: Johnson 1

// Mayor Foster and Council Member Helgeson presented a Certificate of Recognition for Nurse Practitioner Week.

// Council Member Perrow made a motion seconded by Mayor Foster recognizing the Chamber of Commerce for receiving for the second year the prestigious 5-STAR Accreditation. Council by the following recorded vote adopted Resolution #R-11-131, as presented, recognizing the Chamber of Commerce on the prestigious 5 STAR Accreditation:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6
Noes: 0
Absent: Johnson 1

// Copies of the minutes of the November 3, 2011 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Perrow, seconded by Council Member Cary, Council by the following recorded vote approved the minutes as presented:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6
Noes: 0
Absent: Johnson 1

// Copies of the minutes of the November 8, 2011 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Perrow, seconded by Council Member Cary, Council by the following recorded vote approved the minutes as presented:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6
Noes: 0
Absent: Johnson 1

// In the matter of Police – General, Resolution #R-11-124 amending the FY 2012 City/Federal/State Aid Fund budget and appropriating $35,450, with $17,725 reimbursable from the Bulletproof Vest Partnership Program, to purchase 50 replacement bulletproof vests for law enforcement officers, laid over from the November 8, 2011 meeting, was again presented and read, and on motion of Council Member Perrow, seconded by Council Member Cary, Council by the following recorded vote adopted the Resolution:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6
Noes: 0
Absent: Johnson 1

// In the matter of Schools, City Council Report #4 was considered. Council Member Helgeson questioned whether Council Member Nelson had a conflict of interest in this matter because Council Member Nelson' s spouse worked for the school system. Council Member Nelson replied that the issue before Council raises a question as to whether or not he might have a technical or legal conflict of interest.

Council Member Nelson further stated that his understanding is that he does have a factual conflict of interest because his spouse is an employee within the group that might benefit from any decisions made today. That is not a legal conflict of interest and as long as he acknowledges that it would not impact his impartiality which he did at that time, then he would not be precluded. Council Member Nelson went on to say there is no question that there are a lot of issues here but he does feel that he is able to discern the pertinent issues from those that would impact his judgment and impartiality and he would show no bias in making a decision today and that he does intend to participate. Dr. Larry Massie, Interim Superintendent, made a brief presentation. Council Member Helgeson asked whether staff members that are exceptional get the same bonus as someone who barely shows up but is there. Dr. Massie said that all staff members, except part time employees, would get the same percentage. Council Member Cary made a motion to approve the request, seconded by Council Member Gillette. Council Member Helgeson stated that he would not be supporting this request because the economic picture that we are currently in, and looking at our income in the City of Lynchburg, we are getting poorer, high unemployment, the decline in retiree income and he does not believe that giving a bonus is a good picture. Our income is declining by 19%. Council Member Helgeson suggested he would be more inclined to look at this if it were not merely an across-the-board, completely same percentage for everybody, regardless of performance. The bonuses should be given to those that are doing the best job. Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-132, as presented, 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:

Ayes: Cary, Gillette, Nelson, Perrow, Foster	5
Noes: Helgeson	1
Absent: Johnson	1

// In the matter of City Code/Public Works – General, City Council Report #5 was considered. On motion of Council Member Perrow, seconded by Council Member Gillette, Council by the following recorded vote adopted Ordinance #0-11-133, as presented, amending the City Code relating to Public Streets that are closed to trucks within the City:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Registrar, City Council Report #6 was considered. Council received the Status Report on redistricting submission that had been prepared for the Justice Department. City Attorney Walter Erwin stated he had sent the City' s preclearance package to the Justice Department. The Justice Department requested additional information which has been sent to them and there does not appear to be any problem with these documents. Mr. Erwin further stated that during the redistricting process there was some discussion about changing Council election dates. The Virginia Code does not allow a locality to switch to a November election during an election year. Mr. Erwin went on to say if Council wishes to change the election dates and election years for the upcoming 2012 elections the change will have to be completed prior to the end of this year so Council would have to adopt the ordinance at the December 13 Council meeting. Also, any change in the election months and election years would also have to be submitted to the Justice Department for approval.

// In the matter of City Code/Public Works – Parking, City Council Report #7 was considered. Council Member Helgeson stated that the parking situation has not been handled very well, created some bad will, and from what the judges say the ordinance was poorly written and hopes that the ordinance doesn’ t get more convoluted than it already is. Council Member Helgeson further stated that voting against this ordinance does not mean he liked the old. On motion of Council Member Perrow, seconded by Council Member Nelson, Council by the following recorded vote adopted Ordinance #0-11-134, as presented, amending the City Code relating to Parking Restrictions in the City’ s Central Business District:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster	5
Noes: Helgeson	1
Absent: Johnson	1

// In the matter of Community Development – General, City Council Report # 8 was considered. On motion of Council Member Cary, seconded by Council Member Perrow, Council by the following recorded vote adopted Resolution #R-11-135, as presented, changing the name from “ Code Enforcement Task Force” to “ Community Code Compliance Team” :

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// During Roll Call Council Member Helgeson noted a sign at the Wards Road Bridge Opening was a big billboard about Lynchburg College. Also while traveling on Timberlake Road in Campbell County he noticed they had billboards that actually changed, the ones that have been seen in larger cities, ones that have one company and then 30 seconds later its another company. Council Member Helgeson further stated in reading Council’ s vision that says “ we want to be a leader in the region” , that he looked at that and thought Campbell County beat us to the punch. Council Member Helgeson stated that our Code does not allow that kind of sign but would like for Council to look into it and see how we can become a leader in the community and figure out a way to allow this. City Attorney Erwin said a change to the sign ordinance in the City Code would have to be made to allow for this change. Council Member Gillette stated the last couple of weeks coming up from the John Lynch Bridge and right at the Morrison Garden, he noticed on two occasions travelers coming the wrong way on a one way street. Council Member Gillette suggested because of the CSO project that the barrels or the signs on the bridge might be set up in a way that is not confusing to people, and he would like the City to look at the flow of traffic around the construction.

Council Member Cary stated three items of concern: 1) Received a letter from a citizen regarding some concerns about the City and one being with the owners of dogs who understand the requirement that they pick up the dog waste in a proper way and bag it and then simply leave the bag. Somehow we need to get the word out to these pet owners that responsibility does not end with picking up the mess, it ends with disposing of it properly. 2) One person was bragging about how they have not purchased a garbage tag for two years and the City continues to pick up their garbage and no sign is ever put on saying you need to get a garbage tag. We are losing some revenue. 3) Going back to the discussion about the billboards, he thinks we have a good opportunity to improve on the little " Welcome to Lynchburg" sign that we have in the middle of Wards Road coming into the City. Council Member Cary would love to see an attractive " Welcome to Lynchburg" sign on the bridge as you enter the City and then as you leave the City on Wards Road towards Campbell County a sign saying " Come Back Soon" . He thinks it is a wonderful marketing opportunity and would love to see us pursue that. Council Member Nelson stated he wanted to thank his fellow Council Members for service and the effort and thoughtfulness put into all the issues, the City Administration and Staff for the faithful service they give and is just grateful for the opportunity to live in this great City. Council Member Perrow stated that he had been approached by a couple of citizens about crosswalks near the Hills Shopping Center and there are also mid-crosswalks that are dangerous, like at the Rivermont Baptist Church on Rivermont Avenue at the designated crosswalk, and there are people having trouble getting across from the bus stop at Virginia Baptist Hospital. Council Member Perrow further stated he is kind of curious how the system at City Hall is done, it seems to be effective and would it be appropriate to put that into high traffic count areas with mid-block crosswalks in other locations?

// The meeting was adjourned at 2:52 P.M.

Clerk of Council

// 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 ODAC Sweet 16 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 should 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: **December 13, 2011** AGENDA ITEM NO.: 5

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Public Hearing And Consideration Of Reprogramming HOME Program Funds**

RECOMMENDATION: Conduct a public hearing to receive input regarding the reallocation of HOME Program funds. 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.

SUMMARY: LNDF has requested the reallocation of $40,000 to the PY 2010 LNDF Homeownership Development Project for the construction of a single-family housing unit located at 347 Bell Street. Since the submittal of the original HOME Program application for funding of the Tinbridge Hill project, LNDF was unable to complete the acquisition of all of the lots planned for development in the Tinbridge Hill Neighborhood. In addition, the HOME subsidy amount needed for the development of one property in the Tinbridge Hill project has increased and, therefore, there are not sufficient funds to construct another new project at this time due to additional work required for the development of lots currently owned by LNDF.

By reallocating these funds for the construction of this housing unit LNDF will expend the remainder of the PY 2010 funds and assist an eligible borrower to purchase the house. This will also allow for the timely expenditure of the funds and meeting the national housing objective required by the U. S. Department of Housing and Urban Development for the HOME Program.

This matter is being presented to the public and City Council in accordance with what constitutes a substantial amendment in the Community Development Block Grant (CDBG) and HOME Program Citizen Participation Plan. This request constitutes a substantial amendment as the beneficiaries will not remain the same due to location of the proposed new construction housing unit outside of the Tinbridge Hill Neighborhood.

City staff has reviewed this request and recommends approval of the reprogramming of the HOME Program funds for the requested project.

PRIOR ACTION(S): Program Year 2010 (Fiscal Year 2011) CDBG and HOME Program Allocations – June 22, 2010

FISCAL IMPACT: None

CONTACT(S): Bonnie Svrcek, Deputy City Manager, 455-3990
Melva Walker, Grants Manager, Grants Administration Office, 455-3916

ATTACHMENT(S): Letter from LNDF dated November 21, 2011
Geographic information System (GIS) Property Map

REVIEWED BY: bms

RESOLUTION:
BE IT RESOLVED that $40,000 of Program Year 2010 (Fiscal Year 2011) HOME Program Lynchburg Neighborhood Development Foundation (LNDF) Tinbridge Hill Single Family Development project funds be reallocated to the Program Year 2010 (Fiscal Year 2011) LNDF Lynchburg Homeownership Development project.

Adopted:

Certified: ______________________________
Clerk of Council

187L

LYNCHBURG NEIGHBORHOOD DEVELOPMENT FOUNDATION
927 Church Street
Lynchburg, VA 24504

Phone (434) 846-6964
Fax (434) 846-6966

Laura N. Dupuy
Executive Director

November 21, 2011

Melva Walker
Grants Administrator
900 Church St.
Lynchburg, VA 24504

RECEIVED
NOV 22 2011
COMMUNITY DEVELOPMENT

RE: Tinbridge Hill Single Family Development
HOME 2010-11

Dear Melva:

Thank you for your response to our request to modify the above project and placing the item on the City Council calendar for a public hearing. We seek two modifications to the contract. The first will be to adjust the budget to develop 2 houses and the second is to direct HOME funds to 1 house in Tinbridge Hill and 1 house in another location. The reasons for these modifications are as follows.

1. Adjust budget to develop 2 houses
When we submitted the application in early 2010, we anticipated needing development subsidy of approximately $35,000 per house and prepared to build 3 houses. Since that time, we are seeing the gap in funds increasing. For example, we are in the middle of building a house in Tinbridge Hill and the subsidy need is in excess of $40,000. For this reason we are proposing to adjust the budget to address 2 new construction projects. The remaining funds will not be sufficient for another new construction project without additional funding. It could be used to conduct another, smaller development project. We are currently seeking additional development funds from other sources.

2. Adjust the location of subsidy
The available buildable lots in Tinbridge Hill are fewer than we believed at the time of the application. We did not obtain all the lots requested from the Lynchburg Redevelopment and Housing Authority and lots owned by LNDF in Tinbridge Hill require additional work that will delay construction. We currently have, and are building on the lot at 57 Jackson St. We have another property, located at 347 Bell St., on which we can build that would benefit from the HOME subsidy and assist an eligible borrower to purchase the house. We request directing $40,000 of the HOME funds to this project. Despite this timing issue, LNDF continues to be committed to Tinbridge Hill and we intend to continue single-family development there.

For the above reasons, LNDF wishes to modify our HOME contract and budget to reflect current conditions and available resources.

Sincerely,

Laura

Laura N. Dupuy

The City of Lynchburg, VA

Legend

Address

Street Labels

Corporate Limit

Vacation

Parcels

Legal Lot Line

Legal Lot Line

Vacated Right of Way

Feet

0 20 40 60 80

Title: 347 Bell Street

Date: 11/22/2011

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 13, 2011** AGENDA ITEM NO.: 6

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Extension of the Greyhound Lines, Inc. Lease of Property Located at 825 Kemper Street With Amended Terms**

RECOMMENDATION: Authorize the second five-year extension of the lease of City property at Kemper Station to Greyhound Lines, Inc. with a single 3% increase from the current rent for the duration of this final extension.

SUMMARY: Greyhound Lines, Inc. leases approximately 1800 square feet in Kemper Station for passenger service. The lease originated in 2001 and included a provision for two five-year extensions with a 3% increase in the rent for each year of the extension. The first extension was granted in 2006. The current rent is $1,159.28 a month.

Greyhound Lines, Inc. has asked that the City of Lynchburg reduce their rent for the second five-year extension. That request can be seen on the attachment.

Staff does not feel that a reduction of the rent is appropriate but is comfortable with a single 3% increase for the five-year extension.

PRIOR ACTION(S): PDC – December 13, 2011

FISCAL IMPACT: Minimal.

CONTACT(S): Steve Lawson, Real Estate Manager – 455-3945; Lee Newland, City Engineer – 455-3947; David Owen, Director of Public Works – 455-4469

ATTACHMENT(S): Resolution; Current Lease Agreement; Email from Greyhound Lines, Inc. requesting the City of Lynchburg to consider reducing the rent.

REVIEWED BY: lkp

RESOLUTION

WHEREAS, in 2001 the City entered into a lease agreement with Greyhound Lines, Inc. allowing Greyhound to lease 1,800 square feet of floor space at 825 Kemper Street; and

WHEREAS, the lease agreement was for an initial term of five years with the City and Greyhound Lines, Inc. having the option to extend the lease for two additional terms of five years each; and

WHEREAS, in 2006 the City and Greyhound Lines, Inc. agreed to extend the lease agreement for the first of the additional five year terms; and

WHEREAS, Greyhound Lines, Inc. the current five year extension of the lease will end on December 31, 2011 and Greyhound has requested that the City extend the lease agreement for the third and final five year term and instead of increasing the rent by 3% for each year of the renewal term as provided in the original lease agreement that the City agree to reduce the amount of the rent during such five year extension to a one-time 3% increase.

NOW THEREFORE, BE IT RESOLVED that the Lynchburg City Council hereby approves the extension of the lease agreement between the City and Greyhound Lines, Inc. for the third and final five year term and agrees that the rent paid by Greyhound during such five year extension shall be limited to a one-time 3% increase.

BE IT FURTHER RESOLVED that the City Manager is authorized to execute a five year extension of the lease agreement on behalf of the City.

Adopted:

Certified: ______________________________
Clerk of Council

185L

LEASE AGREEMENT

LANDLORD:
Name CITY of LYNCHBURG
(a corporation, partnership, individual)
Address P. O. Box 60
City Lynchburg
State, Zip Virginia 24505

TENANT:
GREYHOUND LINES, INC.
a Delaware corporation
P. O. Box 660362
Dallas, Texas 75266-0362
Attn.: Real Estate Department

1. **DATE**. This Lease ("Lease") dated October 26, 2001 is for reference purposes only.

2. **PREMISES**. Landlord hereby leases to Tenant and Tenant hereby leases and takes from Landlord for the term, at the rental, and upon all the terms, covenants and conditions set forth herein, the following real property (the "Premises"):

[Choose and complete one]

_X_ comprising approximately 1,800 square feet of floor space as described or designated in the City of Lynchburg, State of Virginia, commonly known as 825 Kemper Street and as more particularly described in the site plan on Exhibit "A", attached hereto and incorporated herein for all purposes;

___ the land with all buildings and improvements located thereon in the City of ____________, County of ____________, State of ____________, commonly known as ____________________________ and as more particularly described by meter and bounds in Exhibit "A" attached hereto and incorporated herein for all purposes;

together with the continuous and uninterrupted right of access to and from the Premises, and, if applicable, the use by Tenant; its employees, invitees and customers of the common areas.

3. **TERM**. The term of this Lease ("Term") shall be five (5) years, commencing on January 1, 2002 ("Commencement Date") and extending through December 31, 2006, unless sooner terminated or extended pursuant to any provision hereof. Landlord and Tenant have the right to extend this Lease for two (2) five (5) year periods as described more particularly in Exhibit "B" attached hereto and incorporated herein for all purposes

4. **RENT**. Tenant shall pay to Landlord as rent for the use of the Premises equal monthly installments of One Thousand and 00/100 Dollars ($1,000.00), payable in advance, on or before the first day of each calendar month of the Term. Rent for any period less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable to Landlord at its address set forth above or to such other address as Landlord may designate by notice as provided herein.

5. **USE OF PREMISES**. The Premises shall be used by Tenant for the conduct of Tenant's business operations for and any other activities reasonably related thereto and for any other lawful purposes. If the Premises is less than all of Landlord's building or buildings in which the Premises is located, Landlord will not permit any remaining portion thereof to be occupied or used by any other intercity carrier that would adversely affect or reflect upon Tenant's business.

6. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF TITLE**. Landlord hereby represents, warrants and covenants to Tenant that as of the Commencement Date:

(a) Landlord is the sole owner in fee simple of the Premises and has full right, power and authority to grant the estate demised herein and to execute and perform all of the terms, provisions, covenants and agreements provided in this Lease;

(b) to the best of its knowledge, the Premises complies with all applicable zoning requirements, ordinances, regulations, and all applicable laws, affecting the Premises or required in Tenant's use of the Premises or common areas appurtenant to the Premises, including the Americans with Disabilities Act (or other laws affecting handicapped access) and any environmental impact or traffic studies or requirements; and

(c) the Premises does not contain any asbestos or Hazardous Materials (as defined in Section 22 herein) and Landlord is notin violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Premises including, but not limited to, soil and ground water condition, and that no previous occupant of the Premises has used, generated, manufactured, stored or disposed of on, under or about the Premises any Hazardous Materials.

7. **QUIET ENJOYMENT**. Landlord covenants and agrees that so long as Tenant observes and performs all of the agreements and covenants required of it hereunder, Tenant shall peaceable and quietly have, hold and enjoy the Premises for the Term without any encumbrance, interference or hindrance by Landlord. If Tenant's use of the Premises is limited or denied through rezoning, environmental impact edict, or other action of any public or quasi-public agency or governmental authority, this Lease, at the sole option of Tenant, shall terminate as of the effective date of such action and the rent applying to the unexpired portion of the Term will abate.

8. **UTILITIES.** Tenant shall pay its proportionate share of the gas, electrical, sewer and water charges. Tenant's proportionate share is 17% as determined by the pro-rata square footage of the Premises as compared to the total square footage of the building.

9. **ASSIGNMENT AND SUBLETTING**. Tenant shall not have the right to assign this Lease, or sublease all or a part of the Premises for any lawful purpose, without the prior consent of Landlord, consent not to be unreasonably withheld, to any person or entity at any time and from time to time. If Tenant subleases all or a part of the Premises, Tenant agrees to remain primarily liable for the payment of rent for the remaining term of this Lease. Landlord acknowledges that the Tenant uses a commissioned agent in the operation of its business.

10. **ALTERATIONS, IMPROVEMENTS AND ADDITIONS.** Tenant, with Landlord's consent, may make any alterations, improvements, or additions in, on or about the Premises, which Tenant may deem necessary or desirable, except for structural repairs and maintenance, which are the sole obligation of Landlord. Tenant, at its option, may remove such alterations, improvements, or additions made by it in, on or about the Premises. Tenant's personal property and its trade fixtures, including all machinery, equipment and furnishings, shall remain the property of Tenant and may be removed by Tenant. Any personal property, trade fixtures, alterations, improvements, or additions not removed by Tenant within thirty (30) days after the end of the Term shall automatically become the property of Landlord. Tenant shall repair any material damage to the Premises caused by Tenant's removal of its personal property, trade fixtures, alterations, improvements, or additions, but Tenant shall have no obligation to remove such items from the Premises at any time. Landlord shall, at its sole expense, make any alterations, improvements or additions to the Premises (structural or non-structural) that may be required on account of any existing or future laws of any governmental authority, except alterations, improvements or additions to the Premises as may be required solely by reason of the nature of Tenant's business.

11. **REPAIRS AND MAINTENANCE.** Tenant shall make ordinary interior repairs and replace light bulbs and broken glass in the Premises. Landlord shall maintain and promptly make all exterior repairs and common area maintenance, all repairs, replacements or retro-fitting of a permanent character (including, but not limited to, components in the air conditioning, boiler and heating systems, HVAC system, sprinkler system, gas lines, electrical and plumbing fixtures and hot water systems, including heaters), and all floors and floor surfaces, driveways, parking lots, bus docks, wall, roof (including water tightness), foundation, footings, Building Systems (as herein defined) and structural repairs, support systems, strengthenings, alterations, reconstruction, or additions necessitated by reason of lapse of time, weakness or decay, insect infestation, or damage to or destruction of the Premises, or to any part thereof, or which may, at any time, be required by any governmental or public authority, except for any damage caused solely by Tenant's negligence. The "Building Systems" shall be construed as the building utility elements essential for Tenant's use and occupancy of the Premises including, but not limited to, such systems as are not readily accessible to Tenant, such as underground water, sewer, electric and other utility lines and maintenance services related to the Premises except janitorial and trash removal in Tenant's exclusive space. Tenant shall surrender the Premises in as good order, repair and condition as the same were in the commencement of the Term, damage by fire and items covered by extended coverage insurance, unavoidable casualty, reasonable wear and tear, alterations, improvements and additions made by Tenant and Landlord's failure to repair excepted.

12. **TAXES.** Landlord, during the Term, shall pay promptly when due, all general ad valorem real estate taxes and assessments, if any, which may be imposed upon the Premises. Tenant shall pay all taxes assessed against and levied upon Tenant's trade fixtures, and all other personal property of Tenant contained in the Premises. As used herein, the term "real estate tax" includes any form of tax,

assessment, license and permit fees, rent tax, income tax, franchise tax, levy, penalty, or tax imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement district thereof or any public or quasi-public agency or governmental authority, upon any legal or equitable interest of Landlord in the Premises, upon Landlord's right to rent or business of leasing the Premises, or upon Tenant's use or occupancy of the Premises.

13. **INSURANCE.** Landlord shall maintain throughout the Term, at its sole cost and expense, a policy or policies of against loss or damage to the structure only in the amount of the full replacement cost thereof, against any perils included within the classifications of fire, vandalism, explosion, malicious mischief, special extended perils ("all risk") and any risk covered by the so-called Extended Coverage Endorsement (including leasehold improvements). Tenant shall have coverage for its personal property and tenant improvements. Tenant shall maintain, at its sole cost and expense, a comprehensive general liability policy including coverage of contractual liability as respects this Lease, providing a combined single limit of liability of not less than $1,000,000 per occurrence. Tenant shall furnish a certificate of insurance evidencing the aforesaid coverage upon Landlord's written request. Landlord shall maintain public liability insurance for any common areas. Notwithstanding any provision herein to the contrary, Tenant may satisfy its insurance obligations hereunder by self-insuring any or all of its insurance liabilities and Tenant shall, upon Landlord's request, furnish certificates evidencing such coverage.

(a) Tenant will deposit with Landlord an insurance certificate, which Tenant is required to maintain, on or before the Commencement Date and a new certificate shall be deposited with Landlord not less than thirty (30) days before the expiration or termination of the policy then in effect. Said insurance shall name the Landlord as an additional insured.

14. **INDEMNITY.** Except as otherwise agreed herein, each party agrees to indemnify and save the other party harmless to the extent allowed by law from any and all claims, demands, costs and expenses of every kind whatsoever, including reasonable attorney's fees for the defense thereof, arising from the indemnifying party's wrongful act or negligence in or about the Premises. In case of any action or proceeding brought against either party by reason of any such claim, upon notice from such party, the indemnifying party covenants to defend such action or proceeding by counsel reasonably satisfactory to the other party, unless such action or proceeding alleges the joining or concurring wrongful act or negligence of both parties, in which case both parties shall share equally in the defense of such action or proceedings.

15. **DAMAGE OR DESTRUCTION.** In the event the demised premises are damaged by fire, the elements, unavoidable accidents or other casualty and by reason of any such occurrence, the demised premises shall be rendered untenantable in an amount greater than forty (40%) percent, Landlord, at its option, shall have the right either (a) terminate this Lease as of the date of such destruction by giving written notice to Tenant within thirty (30) days of such date, or (b) repair and restore the premises to as good as condition or a better condition as that existing immediately prior to said occurrence and this Lease shall not terminate, except that the rent shall abate for that period of time when said demised premises are untenantable for the purpose of this Lease. In the event Landlord elects to repair or in the event the building is rendered less than forty (40%) percent untenantable, then such repairs shall be completed within ninety (90) days of the date of such occurrence unless delays are caused by Acts of God or unavoidable circumstances. In the event such repairs are not so completed, Tenant may terminate this Lease at the end of the 90 day period. If Landlord elects to repair the demised premises as herein provided, Tenant shall repair or replace its inventory, trade fixtures, furniture, furnishing, floor and wall coverings, plate glass windows and doors, special equipment and other items of construction and personal property of Tenant necessary for the operation of business in accordance with the terms and conditions of the Lease Agreement. To the extent such damage (not covered customarily by ordinary repairs and maintenance) or destruction is not covered by Landlord's insurance proceeds, the Tenant shall be liable to Landlord for damage to the Premises caused by the Tenant, its officers, agents, and employees.

16. **CONDEMNATION.** If all the Premises or a substantial portion thereof is taken by condemnation or under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease, at Tenant's sole discretion, shall automatically terminate as of the date the condemning authority takes title or possession, whichever occurs first.

If any other taking (of the Premises or otherwise) adversely and substantially affects Tenant's use, access, or rights of ingress or egress of or to the Premises, then Tenant may elect to terminate this Lease of the date the condemning authority takes possession. Tenant's election to terminate shall be made in writing within thirty (30) days after Landlord has given Tenant written notice of the taking (or in the absence of such notice, within fifteen (15) days after the condemning authority has taken possession). If Tenant does not terminate this Lease in accordance with this Section 16, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that rent shall be reduced in the proportion that the area taken diminishes the value and use of the Premises to Tenant. In addition, Landlord, at its expense, shall promptly repair any damage to the Premises caused by condemnation and restore the remainder of the Premises to the reasonable satisfaction of Tenant.

Any award or payment made upon condemnation of all or any part of the Premises shall be the property of Landlord, whether such award or payment is made as compensation for the taking of the fee or as severance damages; provided Tenant shall be entitled to the portion of any such award or payment for loss of or damage to Tenant's trade fixtures, removable personal property, and additions, alterations and improvements made to the Premises by Tenant, and for its loss of business or the leasehold herein created or any other consequential or special damages, such as Tenant's relocation and moving expenses.

17. **DEFAULTS; REMEDIES.**

(a) **Defaults**. The occurrence of any of the following events constitutes a material default of this Lease by Tenant:

(i) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where the failure continues for a period of twenty (20) days after Tenant receives notice thereof from Landlord. If Tenant does not pay the rent after Tenant receives the aforementioned notice, Tenant is subject to a 10% late penalty.

(ii) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than those described in subsection (i) above, where the failure continues for a period of thirty (30) days after Tenant receives notice thereof from Landlord; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the thirty (30) day period and thereafter diligently completes the cure.

(iii) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filng by Tenant of a petition to have Tenant adjudged a bankrupt; the judicial declaration of Tenant as bankrupt.

(iv) The appointment of a trustee or receiver to take possession of substantially all Tenant's assets located at the Premises or of Tenant's interest in this Lease, if possession is not restored to Tenant within thirty (30) days.

(v) The attachment, execution or other judicial seizure of substantially all Tenant's assets located at the Premises or of Tenant's interest in this Lease, if the seizure is not discharged within thirty (30) days.

(b) **Remedies upon Tenant's Default.** In the event of any such material default by Tenant, Landlord may, after giving notice as provided above, enter into the Premises, remove Tenant's property and take and hold possession of the Premises and expel Tenant and pursue those remedies available to Landlord under the laws of the state in which the Premises is located. Landlord shall make reasonable efforts to relet the Premises or any part thereof in order to mitigate any damages resulting from Tenant's default.

(c) **Default by Landlord.** Landlord shall not be in default unless Landlord fails to perform any covenants, terms, provisions, agreements or obligations required of it within a reasonable time, but in no event later than thirty (30) days after notice by Tenant to Landlord; provided that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, then Landlord shall not be in default if Landlord commences performance within the thirty (30) day period and thereafter diligently completes performance.

(c) **Remedies upon Landlord's Default.** If Landlord defaults in the performance of any of the obligations or conditions required to be performed by Landlord under this Lease, Tenant may, after giving notice as provided above, either cure the default and deduct the cost thereof from rent subsequently becoming due hereunder, or elect to terminate this Lease upon giving 30 days notice to Landlord of its intention to do so. In that event, this Lease shall terminate upon the date specified in the notice, unless Landlord has meanwhile cured the default to the satisfaction of Tenant. In the event that any representations and warranties set forth in this Lease (including but not limited to those set forth in Section 6 herein) shall cease to be the case, and if Landlord shall have failed to commence to cure within sixty (60) days after notice from Tenant and thereafter diligently completes the cure of the same, then, except as specifically provided elsewhere in this Lease, Tenant shall have the right to terminate this Lease upon notice to Landlord. Tenant may also pursue those remedies available to it under the laws of the state in which the Premises is located.

18. **HOLDING OVER.** If Tenant remains in possession of the Premises after the expiration or termination of this Lease, and without the execution of a new Lease, Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month, subject to all of the conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy.

19. **NOTICES.** All acceptances, approvals, consents, notices, demands or other communications required or permitted to be given or sent by either party to the other, unless otherwise provided, shall be deemed to have been fully given when made in writing and delivered in person or deposited in the United States mail, certified and postage prepaid, addressed to the name and address set forth at the top of this Lease. The address and person for written communication may be changed uponten (10) days written notice to the other party.

20. **WAIVER OF SUBROGATION.** Landlord and Tenant and all parties claiming under or through them hereby mutually release and discharge each other, and the officers, employees, agents, representatives, customers and business visitors of Landlord or Tenant from all claims, losses and liabilities arising from or caused by any injury to persons or property covered by third party insurance, even if caused by the fault or negligence of a released party, but only: (i) in the actual amount and to the extent that insurance proceeds are received by the aggrieved party from third party insurers, (ii) if this provision does not void or render invalid any insurance coverage or policy, (iii) if consent to this waiver of subrogation by a third party insurer is given after a request has been made therefor (if required under the terms of such policy in order not to void same) and/or an endorsement to the policy is obtained (if an endorsement can be obtained at no additional cost), and (iv) applying, in the case of Tenant, to any amounts in excess of the amount for which Tenant may self-insure.

21. **ENVIRONMENTAL MATTERS.** As a condition precedent to the effectiveness of this Lease, Landlord shall provide Tenant a copy of all existing environmental reports, studies or audits concerning the Premises. Tenant will comply with all environmental laws during the term of the Lease, but shall bear no liability whatsoever and shall not assume any conditions for any existing environmental materials or Hazardous Materials on the Premises. Landlord agrees to indemnify, defend and hold Tenant harmless, to the extent allowable by law, from and against any and all loss, damage, liability and expense (including reasonable attorneys' fees) that Tenant may incur as a result of any claim, demand or action related to environmental conditions, Hazardous Materials or any other environmental laws and regulations not directly resulting from Tenant's activities on the Premises. The delivery of copies of environmental reports, studies or audits required in this Section must be provided to Tenant not later than fourteen (14) days prior to the Commencement Date.

22. **HAZARDOUS MATERIALS.** The term "Hazardous Materials" as used herein shall include but not be limited to asbestos, flammable explosives, dangerous substances, pollutants, contaminants, hazardous wastes, toxic substances, and any other chemical, material or related substance exposure to which is prohibited or regulated by any governmental authority having jurisdiction over the Premises, any substances defined as "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, by Superfund Amendments and Reauthorization Act 42 U.S.C. §6901, et seq.; the Hazardous Materials Transportation Act, 42 U.S.C. §6901, et seq.; Clean Air Act, 42 U.S.C. §7901, et seq.; Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; Clean Water Act, 33 U.S.C. §1251, et seq; the laws, regulations or rulings of the state in which the Premises is located or any local ordinance affecting the Premises; or the regulations adopted in publication promulgated pursuant to any of such laws and ordinances.

23. **MISCELLANEOUS.**

(a) Signs. Tenant may not erect such signs on the exterior or interior of the Premises without City approval, which approval shall not be unreasonably withheld.

(b) **Severability; Choice of Law.** The invalidity or unenforceability of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of the remainder of this Lease or any other provision hereof. **THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.**

(c) **Entire Agreement.** This Lease and any addenda and exhibits attached hereto or to be attached hereto, set forth all of the covenants, promises, agreements, and conditions between Landlord and Tenant concerning the Premises and this Lease and there are no covenants, promises, agreements or conditions, either oral or written, between them. This Lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

(d) **Brokerage.** Landlord covenants and agrees to save and hold Tenant harmless, to the extent allowable by law, from any and all claims for brokerage fees arising out of this Lease.

(e) **Attorney's Fees.** If either party named herein brings an action to enforce the terms of this Lease or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by losing party as fixed by the court.

IN WITNESS WHEREOF, the parties hereto have executed this instrument to be effective as of the day and year first above written.

Landlord:

CITY OF LYNCHBURG

By: Kimball Payne

Name: L. KIMBALL PAYNE III

Its: City Manager

Tax ID No.: ______________________

(If individual, Social Security Number)

Patricia W. Kost

WITNESS:

Tenant:

GREYHOUND LINES, INC.
a Delaware corporation

By: ______________________

Name: J. W. Haugsland

Its: Executive Vice President & COO

____

WITNESS: Asst. Sec.

Approved as to form

By ______________________
Attorney 11/29/01

Stg_lse.doc

EXHIBIT "A"

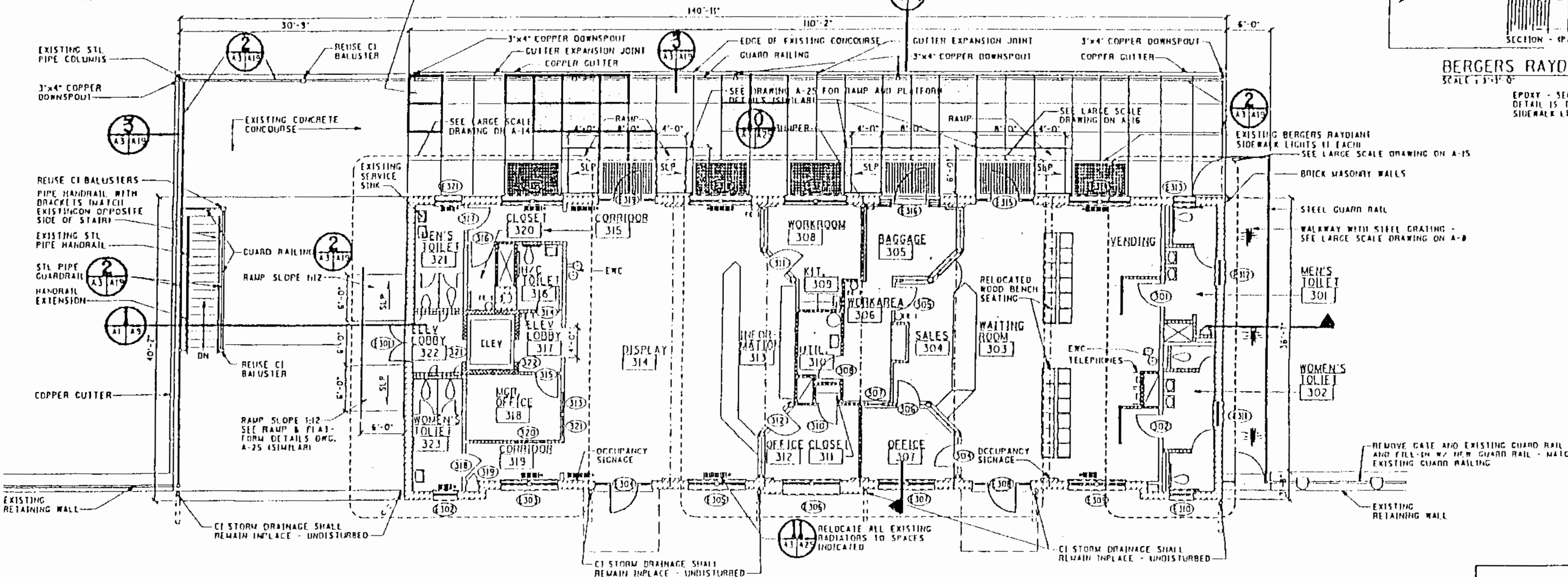
to that certain Lease Agreement

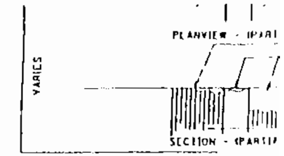
by and between ____ as Landlord and
GREYHOUND LINES, INC., as Tenant

Dated ____________________, __________

SITE PLAN
OR LEGAL DESCRIPTION

FILL REMOVED PORTIONS OF EXISTING CONCRETE (SEE DEMOLITION DWGS.) WITH NEW CONCRETE USE AGGREGATE AND CEMENT TO COLOR MATCH ADJACENT EXISTING SURFACES. REMOVE ALL LOOSE MATERIAL AND DEBRIS. PROVIDE VERTICAL SURFACES AT EXISTING CONCRETE. USE BONDING AGENT AT ALL EXISTING SURFACES PRIOR TO INSTALLATION OF NEW CONCRETE





BERGERS RAYDIAN
SCALE: 3"=1'-0"

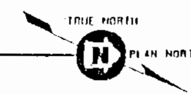
EPOXY - SEE NO DETAIL IS TYPIC SIDEWALK LIGHTS

FLOOR PLAN - UPPER (STREET) LEVEL

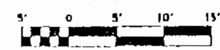
SCALE: 1/8" = 1'-0"   NOTE: ALL METAL STUD AND GYPSUM BOARD WALLS SHALL HAVE SOUND ATTENUATION INSULATION FULL HEIGHT

LEGEND

1HR FIRE RATED WOOD STUD AND PLASTER WALLS - UL DESIGN NO U315



IF THIS DRAWING IS A REDUCTION, GRAPHIC SCALE MUST BE USED.



EXISTI
1/8" PLANS
MASONRY
STUD & PL
CONCRE
MASONRY

EXHIBIT "B"

to that certain Lease Agreement

by and between City of Lynchburg as Landlord and

Greyhound Lines, Inc., as Tenant

Dated October 26, 2001

ADDITIONAL PROVISIONS

Extension. If the Lease is still in full force and effect at the end of the initial Five (5) year term, Tenant and Landlord shall have the right to agree to extend the Lease for Two (2) additional terms of Five (5) years each, provided Tenant is not, at the date of such election, in default hereunder of such a nature as would allow Landlord to terminate the Lease, and further provided written notice of the election to exercise such option(s) to extend shall be sent to each party by the other party not less than Three (3) months prior to the expiration of the then current term (initial or extended). If said option(s) are duly exercised by Landlord and Tenant, the term of the Lease shall be automatically extended for the period of the next ensuing option, without the requirement of any further instrument, upon all of the same terms, provisions and conditions set forth in the Lease as existed the last year of the initial term of the Lease. except the rent which will increase by Three (3%) for each year of the renewal term. In the event the aforesaid option(s) to extend are duly exercised, all references in the Lease to the term hereof, shall be construed to refer to the initial term hereof, as extended as aforesaid, whether or not specific reference thereto is made in the Lease.

Greyhound's Leased Space/Lynchburg
Simsek, Deanna
to:
steve.lawson@lynchburgva.gov
09/09/2011 03:24 PM
Hide Details
From: "Simsek, Deanna" <Deanna.Simsek@firstgroup.com>

To: "steve.lawson@lynchburgva.gov" <steve.lawson@lynchburgva.gov>

Steve – It was great talking to you this afternoon regarding the upcoming lease renewal.
As we discussed, we would like you all to consider reducing our rent at this time.
We are challenged by this economy, twofold, lack of passengers, which drives our revenue down and the rising fuel costs, which increases our overhead.
Therefore, we would greatly appreciate the City considering this request.

Regards,
Deanna

Deanna Simsek
Regional Real Estate Manager

FirstGroup America, Inc.
600 Vine Street
Suite 1400
Cincinnati, OH 45202

727-449-0475 - Tel
727-643-7941 - Cell
727-449-0475 - Fax

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 13, 2011** AGENDA ITEM NO.: 7

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

ACTION: **X** INFORMATION:

ITEM TITLE: **City Code Amendment – Addition of Chapter 16.3 Stormwater Utility**

RECOMMENDATION: Amend and reenact the Code of the City of Lynchburg by adding Chapter 16.3 – Stormwater Utility, sections 16.3-1 through 16.3-11 (attached).

SUMMARY: During discussions following the Public Hearing on October 25, 2011, it was decided that the Utilities staff would amend the proposed ordinance and provide two versions for Council's consideration. Both versions assume billing the stormwater fee on the utility bill. Attachment 1 (owner) reflects billing the owner of the property. This will also require an amendment to the Water Code to reflect the desire to bill the property owner for water and sewer charges as well. A transition period will be allowed to convert all existing tenant accounts to the property owner. As of June 30, 2013 all utility billing would be transitioned to the property owner. Attachment 2 (owner or occupant) reflects billing the owner or occupant which is how the water and sewer billings are currently handled. Additionally, in both versions the description of the billing units and various tiers has been revised for better clarity.

PRIOR ACTION(S):
October 25, 2011 Public Hearing.
July 13, 2010 Council Work Session presentation.
September 28, 2010 Council Work Session presentation.
December 14, 2010 Council Work Session update (document only).
January 25, 2011 Council Work Session presentation.
February 8, 2011 Council Work Session presentation.
April 26, 2011 Council Work Session presentation.
September 13, 2011 Council Work Session presentation.

FISCAL IMPACT: Both ordinances have the proposed stormwater per single family unit (sfu) rate set at $0.00 per month, the actual rate for the FY 2013 budget will be established during the upcoming budget process.

CONTACT(S): Tim Mitchell, 455-4252; Erin Hawkins, 455-3869

ATTACHMENT(S):
Attachment 1 (owner). Proposed Ordinance: Chapter 16.3 Stormwater Utility, Sections 16.3-1 through 16.3-11

Attachment 2 (owner or occupant). Proposed Ordinance: Chapter 16.3 Stormwater Utility, Sections 16.3-1 through 16.3-11

REVIEWED BY: lkp

Attachment 1
(Owner)

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY ADDING THERETO CHAPTER 16.3 CONTAINING SECTIONS NUMBERED 16.3-1 THROUGH 16.3-11, THE NEW CHAPTER AND SECTIONS RELATING TO THE REGULATION OF STORMWATER WITHIN THE CITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted by adding thereto Chapter 16.3, containing sections numbered 16.3-1 through 16.3-11 as follows:

Chapter 16.3 – Stormwater Utility

Sec. 16.3–1. Purpose.
Sec. 16.3–2. Authority.
Sec. 16.3–3. Definitions.
Sec. 16.3–4. Establishment of stormwater utility and enterprise fund.
Sec. 16.3–5. Assessment of utility fee.
Sec. 16.3–6. Billing, payment and penalties.
Sec. 16.3–7. Adjustments of fees and exemptions.
Sec. 16.3–8. Appeal.
Sec. 16.3–9. Limitations of responsibility.
Sec. 16.3–10. Conflict and severability.
Sec. 16.3–11. Right to enter property.
Secs. 16.3–12 through 16.3 – 19. Reserved.

Sec. 16.2-1. Purpose.

The purpose of this chapter is to create a stormwater utility and enterprise fund to manage and fund the planning, design, monitoring, operation, maintenance and construction of the stormwater system in the City of Lynchburg, both to meet rquirements of the city’s National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit and new federal and state regulations to address identified water quality and flood event needs. The elements of the city’s stormwater infrastructure provide benefit and service to properties within the city through direct protection of property and through control of flooding of critical components of the infrastructure and protection of the city's natural environment. Stormwater runoff is associated with all improved properties in the city, whether residential or nonresidential, and the individual property impacts of runoff are correlated to the amount of impervious surface area on the property and land-disturbing activities on property. This runoff contributes to non-point source pollution to the streams of the city’s watersheds and a stormwater utility can help reduce this type of pollution. Therefore, the costs of the stormwater utility shall be allocated, to the extent practicable, to all property owners based on their impact on the stormwater system.

Sec. 16.3-2. Authority.

The city is authorized by the provisions of Code of Virginia, § 15.2-100 et seq., specifically § 15.2-2114, and the Constitution of the Commonwealth of Virginia to construct, reconstruct, improve and extend the stormwater system; establish and impose stormwater utility charges; and to issue bonds and other debts as needed to finance in whole or in part the costs of the system and to establish rents, fees and charges for the services and facilities provided by the system.

Sec. 16.3-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

(1) "Developed property" means real property that has been altered from its "natural" state by the addition of any improvements such as buildings, structures and other impervious surfaces. For new construction, property shall be considered developed pursuant to this section upon issuance of the certificate of occupancy (CO), temporary CO or equivalent.

(2) "Developed detached single-family residential property" means a developed lot or parcel containing one (1) residence or dwelling unit, and accessory uses related to but subordinate to the purpose of providing permanent dwelling facilities.

(3) "Developed multi-family residential property" means developed property containing more than one (1) residence or dwelling unit, and accessory uses related to but subordinate to the purpose of providing permanent dwelling facilities. Such property shall include duplexes, triplexes, quadruplexes, townhomes, apartments, condominiums and mobile homes.

(4) "Developed nonresidential property" means developed property which does not serve a primary purpose of providing permanent dwelling units. Such property shall include, but not be limited to, commercial properties, industrial properties, parking lots, recreational and cultural facilities, hotels, offices, hospitals, institutions, schools and churches.

(5) "Impervious surface area" means a man-made surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious cover includes, but is not limited to, roofs, buildings, concrete, asphalt, gravel surfaces that are or may become compacted, or managed or artificial turf athletic fields that have an underdrain system.

(6) “Revenues” means all rates, fees, assessments, rentals or other charges or other income received by the utility, in connection with the management and operation of the system, including amounts received from the investment or deposit of monies in any fund or account and any amounts contributed by the city, fees-in-lieu-of provided by developers or individual residents and the proceeds from sale of bonds.

(7) “Single-family unit” or “SFU” means the equivalent impervious area of a detached single-family residential developed property per dwelling unit located within the city based on the statistical average horizontal impervious area of this residence in the city. SFU value in square feet of impervious surface area will be established by city council resolution.

(8) “SFU rate” means the utility fee charged on a single-family unit.

(9) “Stormwater fee factor” means a factor multiplied by the SFU rate to determine the monthly billing rate for each property.

(~~9~~10) “Stormwater system” or “system” means the stormwater infrastructure and equipment of the city and all improvements thereto for stormwater control in the city. Infrastructure and equipment shall include structural and natural stormwater control systems of all types, including, without limitation, retention basins, sewers, conduits, pipelines, pumping and ventilation stations, and other plants, structures and real and personal property used for support of the system. The system does not include privately owned ditches, drainage systems or stormwater systems, unless otherwise explicitly stated by written agreement with the city.

(~~10~~11) “Stormwater utility” or “utility” means the enterprise fund created by this section to operate, maintain and improve the city's stormwater system.

(~~11~~12) “Undeveloped property” means any parcel which has not been altered from its natural state to disturb or alter the topography or soils on the property in a manner which substantially reduces the rate of infiltration of stormwater into the earth.

(~~12~~13) “Utility fees” means any permit or local program fees as allowed by State Code, and the monthly service charges based on the SFU rate applied to ~~property owners~~ all developed properties~~, including condominium unit owners, of developed residential property, developed multi-family residential property and developed nonresidential property,~~ all as more fully described in sub-paragraphs (1) through (4) of this section.

Sec. 16.3-4. Establishment of a stormwater utility and enterprise fund.

(a) There is hereby established a stormwater utility to be known as the City of Lynchburg Stormwater Utility, which shall be under the administration of the director of utilities and responsible for the stormwater services throughout the city, and which shall provide for the manangement, protection, control, regulation, use and enchancement of the city’s stormwater services, systems and facilities.

(b) There is hereby established a stormwater utility enterprise fund in the city budgeting and accounting systems for the purpose of dedicating and protecting all funding applicable to the purposes and responsiblities of the city stormwater utility. The utility shall deposit in a separate ledger account all revenues collected pursuant to this chapter. The funds deposited shall be used exclusively to provide services and facilities related to the stormwater system pursuant to the provisions of Code of Virginia §15.2-2114. The stormwater utility and enterprise fund will be established effective July 1, 2012. Stormwater utility charges will become effective July 1, 2012 and the first bills shall be due with the first water/sewer billing cycle of July 2012.

Sec. 16.3-5. Assessment of stormwater utility charge.

Adequate revenues shall be generated to provide for a balanced operating and capital improvement budget for the stormwater utility by setting sufficient levels of utility fees. Income from utility fees shall not exceed actual costs incurred in providing the services and facilities described in Sec. 16.3-4. Utility fees shall be charged to owners of all developed property in the city.

(a) SFU area established. The single-family unit (SFU) area is hereby established to be 2,672 square feet of impervious surface area.

(b) The utility fee for each property shall be the SFU rate times the stormwater fee factor for each individual property.

(c) The SFU rate shall be $0.00 per month.

(d) The stormwater fee factor shall be as follows:

Property Type	Impervious Area on Property (in square feet)	Stormwater Fee Factor
Detached single-family residential	Less than 1,300	0.5
Detacted single-family residential	1,301 to 4,300	1.0
Detached single-family residential	Greater than 4,301	1.6
Duplex		0.5 per unit
Triplex, Quadplex, and Mobile Homes		0.7 per unit
Condominiums and Townhomes		0.33 per unit
Apartments or 5 or more units and all nonresidential property		As defined in 16.3-5(e)

Undeveloped property	0.0

(e) The stormwater fee factor for apartment properties of 5 or more units and for all nonresidential properties shall be equal to the impervious area of the property in square feet divided by the SFU area of 2,672 square feet, rounded to the nearest 0.1, except that the minimum factor shall be 1.0. For example a nonresidential property of 10,000 square feet of impervious area shall have a stormwater fee factor of 10,000 divided by 2,672, or a stormwater fee factor of 3.7.

~~(b) SFU rate established. The single-family~~ (SFU) ~~unit rate for stormwater service charges applied to other residential and nonresidential development is hereby established to be $4~~ $0.00 ~~per month for each single-family unit (SFU) or portion of a single-family unit on the parcel, and will become effective January 1, 2012.~~

~~(c) Residential (SFU) tiers established. The tier structure rate established for residential developed land is as follows:~~

~~Detached Single-Family Residential~~	~~Impervious Area On Property (Square Feet)~~	~~Percentage of SFUs~~
~~Small Tier~~	~~1,300 or less~~	~~50%~~
~~Medium Tier~~	~~1,301 to 4,300~~	~~100%~~
~~Large Tier~~	~~4,301 or more~~	~~160%~~

~~Other Residential Development (SFUs/Dwelling unit)~~

~~Duplex~~	~~50%~~
~~Triplex, Quadplex and Mobile Homes~~	~~70%~~
~~Condominiums and Townhomes~~	~~33%~~

~~Apartments of 5 or more units shall be billed per 16.3-5(e)~~

~~(d) The monthly utility fee for developed residential and developed multi-family property shall equal the SFU rate times the appropriate SFU factor times the number of dwelling units on the parcel.~~

~~(e) The monthly utility fee for developed nonresidential property and residential apartments of 5 or more units shall be the SFU rate multiplied by the numerical factor obtained by dividing the total impervious surface area of the property by one (1) SFU. The numbered factor will be rounded to the nearest tenth (0.1) of a unit. The minimum utility fee for any developed nonresidential property or apartment of five or greater units shall equal the SFU rate.~~

(f) The utility fee for unoccupied developed property, both residential and nonresidential, shall be the same as that for occupied property of the same class.

~~(g) Undeveloped property shall be exempt from the utility fee.~~

Sec. 16.3-6. Billing, payment and penalities.

(a) The utility fee is to be paid by the owner of each lot or parcel subject to the utility fee. All properties, except as stated in Sec. 16.3-5, shall be rendered bills or statements for stormwater services. Such bills or statements shall be combined with sewer and water bills levied pursuant to chapters 34 and 39 of the City of Lynchburg Code.

(b) All utility billing shall be transistioned to the property owner by June 30, 2013.

(~~b~~c) All payments received shall first be credited to stormwater charges, and then to the sewer charges and finally to the water charges.

(~~c~~d) If any such stormwater bill is not paid within five (5) days after due date, it shall be declared delinquent and shall be subject to a penalty of five (5) percent of the amount of the bill. The penalty shall be added to the unpaid bill or subsequent bills.

(~~d~~e) Whenever the city utilizes the services of an attorney or a collection agency to collect any delinquent fees, rents or charges for the use and services of the city's stormwater system, reasonable attorney's fees or collection agency's fees shall be added to the delinquent bill. The attorney's fees or collection agency's fees shall not exceed twenty (20) percent of the delinquent bill and may be recovered by the city by action at law or suit in equity. Attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.

Sec. 16.3-7. Adjustment of fees and exemptions.

The city may provide a system of credits to reduce stormwater utility fees for properties on which stormwater control measures substantially mitigate the peak discharge or runoff pollution flowing from such properties or substantially decreases the city's cost of maintaining the stormwater system. The utilities department will develop written policies to implement the credit system. No credit will be authorized until the city council approves written policies to implement the system of credits; a copy of the approved policies shall be on file with the utilities department. Nothing shall prevent the city council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

Sec. 16.3-8. Appeal.

The city manager shall have the authority to adopt an appeals process for customers who believe the provisions of this chapter have been applied in error. All appeals shall be in accordance with the process adopted by the city manager. A copy of the appeals process shall be kept in the city manager's office and the office of the utilities department and shall be available for review upon request.

Sec. 16.3-9. Limitations of responsibility.

(a) The city shall be responsible only for the portions of the stormwater system that are in city maintained street rights-of-way, permanent stormwater easements conveyed to and accepted by the city, or as otherwise explicitly stated in a written agreement with the city. Repairs and improvements to the drainage system shall be in accordance with established standards, policies and schedules.

(b) The city's acquisition of permanent storm drainage easements and/or the construction or repair by the city of stormwater control measures and drainage facilities does not constitute a warranty against stormwater hazards, including, but not limited to, flooding, erosion or standing water.

Sec. 16.3-10. Severability.

(a) All laws and clauses of laws in conflict herewith are hereby repealed to the 9extent of said conflict.

(b) If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Sec. 16.3-11. Right to enter property.

In order to assure compliance with the provisions of this chapter, and all applicable city ordinances, state and federal laws, orders or regulations, the director of utilities or his agent shall have the right to inspect any property, public or private, within the city at any reasonable time. In the event the director of utilities, or his agent shall be denied access to property, the director of utilities or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this ordinance has has occurred, request that the magistrate or court grant the director of utilities or his agent an inspection warrant to enable the director of utilities or his agent to enter the property for the purpose of determining whether a violation of this ordinance exists. The director of utilities or his agent shall make a reasonable effort to obtain consent from the owner or ~~tenant~~ <u>occupant</u> of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the director of utilities or his agent access to any property after the director of utilities or his agent has obtained an inspection warrant from a magistrate or a court of competent jurisdiction for the inspection of such property.

Secs. 16.3-12 through 16.3 – 19. Reserved.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified: ______________________________
Clerk of Council

182L1

Attachment 2
(Owner or Occupant)

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY ADDING THERETO CHAPTER 16.3 CONTAINING SECTIONS NUMBERED 16.3-1 THROUGH 16.3-11, THE NEW CHAPTER AND SECTIONS RELATING TO THE REGULATION OF STORMWATER WITHIN THE CITY.

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Chapter 16.3 – Stormwater Utility

Sec. 16.3–1. Purpose.
Sec. 16.3–2. Authority.
Sec. 16.3–3. Definitions.
Sec. 16.3–4. Establishment of stormwater utility and enterprise fund.
Sec. 16.3–5. Assessment of utility fee.
Sec. 16.3–6. Billing, payment and penalties.
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Secs. 16.3–12 through 16.3 – 19. Reserved.

Sec. 16.2-1. Purpose.

The purpose of this chapter is to create a stormwater utility and enterprise fund to manage and fund the planning, design, monitoring, operation, maintenance and construction of the stormwater system in the City of Lynchburg, both to meet rquirements of the city’s National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit and new federal and state regulations to address identified water quality and flood event needs. The elements of the city’s stormwater infrastructure provide benefit and service to properties within the city through direct protection of property and through control of flooding of critical components of the infrastructure and protection of the city's natural environment. Stormwater runoff is associated with all improved properties in the city, whether residential or nonresidential, and the individual property impacts of runoff are correlated to the amount of impervious surface area on the property and land-disturbing activities on property. This runoff contributes to non-point source pollution to the streams of the city’s watersheds and a stormwater utility can help reduce this type of pollution. Therefore, the costs of the stormwater utility shall be allocated, to the extent practicable, to all property owners or occupants based on their impact on the stormwater system.

Sec. 16.3-2. Authority.

The city is authorized by the provisions of Code of Virginia, § 15.2-100 et seq., specifically § 15.2-2114, and the Constitution of the Commonwealth of Virginia to construct, reconstruct, improve and extend the stormwater system; establish and impose stormwater utility charges; and to issue bonds and other debts as needed to finance in whole or in part the costs of the system and to establish rents, fees and charges for the services and facilities provided by the system.

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For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

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(2) “Developed detached single-family residential property” means a developed lot or parcel containing one (1) residence or dwelling unit, and accessory uses related to but subordinate to the purpose of providing permanent dwelling facilities.

(3) “Developed multi-family residential property” means developed property containing more than one (1) residence or dwelling unit, and accessory uses related to but subordinate to the purpose of providing permanent dwelling facilities. Such property shall include duplexes, triplexes, quadruplexes, townhomes, apartments, condominiums and mobile homes.

(4) “Developed nonresidential property” means developed property which does not serve a primary purpose of providing permanent dwelling units. Such property shall include, but not be limited to, commercial properties, industrial properties, parking lots, recreational and cultural facilities, hotels, offices, hospitals, institutions, schools and churches.

(5) “Impervious surface area” means a man-made surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious cover includes, but is not limited to, roofs, buildings, concrete, asphalt, gravel surfaces that are or may become compacted, or managed or artificial turf athletic fields that have an underdrain system.

(6) “Revenues” means all rates, fees, assessments, rentals or other charges or other income received by the utility, in connection with the management and operation of the system, including amounts received from the investment or deposit of monies in any fund or account and any amounts contributed by the city, fees-in-lieu-of provided by developers or individual residents and the proceeds from sale of bonds.

(7) “Single-family unit” or “SFU” means the equivalent impervious area of a detached single-family residential developed property per dwelling unit located within the city based on the statistical average horizontal impervious area of this residence in the city. SFU value in square feet of impervious surface area will be established by city council resolution.

(8) “SFU rate” means the utility fee charged on a single-family unit.

9) “Stormwater fee factor” means a factor multiplied by the SFU rate to determine the monthly billing rate for each property.

(~~9~~10) “Stormwater system” or “system” means the stormwater infrastructure and equipment of the city and all improvements thereto for stormwater control in the city. Infrastructure and equipment shall include structural and natural stormwater control systems of all types, including, without limitation, retention basins, sewers, conduits, pipelines, pumping and ventilation stations, and other plants, structures and real and personal property used for support of the system. The system does not include privately owned ditches, drainage systems or stormwater systems, unless otherwise explicitly stated by written agreement with the city.

(~~10~~11) “Stormwater utility” or “utility” means the enterprise fund created by this section to operate, maintain and improve the city's stormwater system.

(~~11~~12) “Undeveloped property” means any parcel which has not been altered from its natural state to disturb or alter the topography or soils on the property in a manner which substantially reduces the rate of infiltration of stormwater into the earth.

(~~12~~13) “Utility fees” means any permit or local program fees as allowed by State Code, and the monthly service charges based on the SFU rate applied to ~~property owners~~ all developed properties~~, including condominium unit owners, of developed residential property, developed multi-family residential property and developed nonresidential property,~~ all as more fully described in sub-paragraphs (1) through (4) of this section.

Sec. 16.3-4. Establishment of a stormwater utility and enterprise fund.

(a) There is hereby established a stormwater utility to be known as the City of Lynchburg Stormwater Utility, which shall be under the administration of the director of utilities and responsible for the stormwater services throughout the city, and which shall provide for the manangement, protection, control, regulation, use and enchancement of the city’s stormwater services, systems and facilities.

(b) There is hereby established a stormwater utility enterprise fund in the city budgeting and accounting systems for the purpose of dedicating and protecting all funding applicable to the purposes and responsiblities of the city stormwater utility. The utility shall deposit in a separate ledger account all revenues collected pursuant to this chapter. The funds deposited shall be used exclusively to provide services and facilities related to the stormwater system pursuant to the provisions of Code of Virginia §15.2-2114. The stormwater utility and enterprise fund will be established effective July 1, 2012. Stormwater utility charges will become effective July 1, 2012 and the first bills shall be due with the first water/sewer billing cycle of July 2012.

Sec. 16.3-5. Assessment of stormwater utility charge.

Adequate revenues shall be generated to provide for a balanced operating and capital improvement budget for the stormwater utility by setting sufficient levels of utility fees. Income from utility fees shall not exceed actual costs incurred in providing the services and facilities described in Sec. 16.3-4. Utility fees shall be charged to owners <u>or occupants</u> of all developed property in the city.

(a) SFU area established. The single-family unit (SFU) area is hereby established to be 2,672 square feet of impervious surface area.

<u>(b) The utility fee for each property shall be the SFU rate times the stormwater fee factor for each individual property.</u>

<u>(c) The SFU rate shall be $0.00 per month.</u>

<u>(d) The stormwater fee factor shall be as follows:</u>

Property Type	Impervious Area on Property (in square feet)	Stormwater Fee Factor
Detached single-family residential	Less than 1,300	0.5
Detacted single-family residential	1,301 to 4,300	1.0
Detached single-family residential	Greater than 4,301	1.6
Duplex		0.5 per unit
Triplex, Quadplex, and Mobile Homes		0.7 per unit
Condominiums and Townhomes		0.33 per unit
Apartments or 5 or more units and all nonresidential property		As defined in 16.3-5(e)

Undeveloped property	0.0

(e) The stormwater fee factor for apartment properties of 5 or more units and for all nonresidential properties shall be equal to the impervious area of the property in square feet divided by the SFU area of 2,672 square feet, rounded to the nearest 0.1, except that the minimum factor shall be 1.0. For example a nonresidential property of 10,000 square feet of impervious area shall have a stormwater fee factor of 10,000 divided by 2,672, or a stormwater fee factor of 3.7.

~~(b) SFU rate established. The single-family~~ (SFU) ~~unit rate for stormwater service charges applied to other residential and nonresidential development is hereby established to be $4~~ $0.00 ~~per month for each single-family unit (SFU) or portion of a single-family unit on the parcel, and will become effective January 1, 2012.~~

~~(c) Residential (SFU) tiers established. The tier structure rate established for residential developed land is as follows:~~

~~Detached Single-Family Residential~~	~~Impervious Area On Property (Square Feet)~~	~~Percentage of SFUs~~
~~Small Tier~~	~~1,300 or less~~	~~50%~~
~~Medium Tier~~	~~1,301 to 4,300~~	~~100%~~
~~Large Tier~~	~~4,301 or more~~	~~160%~~

~~Other Residential Development (SFUs/Dwelling unit)~~	
~~Duplex~~	~~50%~~
~~Triplex, Quadplex and Mobile Homes~~	~~70%~~
~~Condominiums and Townhomes~~	~~33%~~

~~Apartments of 5 or more units shall be billed per 16.3-5(e)~~

~~(d) The monthly utility fee for developed residential and developed multi-family property shall equal the SFU rate times the appropriate SFU factor times the number of dwelling units on the parcel.~~

~~(e) The monthly utility fee for developed nonresidential property and residential apartments of 5 or more units shall be the SFU rate multiplied by the numerical factor obtained by dividing the total impervious surface area of the property by one (1) SFU. The numbered factor will be rounded to the nearest tenth (0.1) of a unit. The minimum utility fee for any developed nonresidential property or apartment of five or greater units shall equal the SFU rate.~~

(f) The utility fee for unoccupied developed property, both residential and nonresidential, shall be the same as that for occupied property of the same class.

~~(g) Undeveloped property shall be exempt from the utility fee.~~

Sec. 16.3-6. Billing, payment and penalities.

(a) The utility fee is to be paid by the owner or occupant of each lot or parcel subject to the utility fee. All properties, except as stated in Sec. 16.3-5, shall be rendered bills or statements for stormwater services. Such bills or statements shall be combined with sewer and water bills levied pursuant to chapters 34 and 39 of the City of Lynchburg Code.

(b) All payments received shall first be credited to stormwater charges, and then to the sewer charges and finally to the water charges.

(c) If any such stormwater bill is not paid within five (5) days after due date, it shall be declared delinquent and shall be subject to a penalty of five (5) percent of the amount of the bill. The penalty shall be added to the unpaid bill or subsequent bills.

(d) Whenever the city utilizes the services of an attorney or a collection agency to collect any delinquent fees, rents or charges for the use and services of the city's stormwater system, reasonable attorney's fees or collection agency's fees shall be added to the delinquent bill. The attorney's fees or collection agency's fees shall not exceed twenty (20) percent of the delinquent bill and may be recovered by the city by action at law or suit in equity. Attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.

Sec. 16.3-7. Adjustment of fees and exemptions.

The city may provide a system of credits to reduce stormwater utility fees for properties on which stormwater control measures substantially mitigate the peak discharge or runoff pollution flowing from such properties or substantially decreases the city's cost of maintaining the stormwater system. The utilities department will develop written policies to implement the credit system. No credit will be authorized until the city council approves written policies to implement the system of credits; a copy of the approved policies shall be on file with the utilities department. Nothing shall prevent the city council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

Sec. 16.3-8. Appeal.

The city manager shall have the authority to adopt an appeals process for customers who believe the provisions of this chapter have been applied in error. All appeals shall be in accordance with the process adopted by the city manager. A copy of the appeals process shall be kept in the city manager's office and the office of the utilities department and shall be available for review upon request.

Sec. 16.3-9. Limitations of responsibility.

(a) The city shall be responsible only for the portions of the stormwater system that are in city maintained street rights-of-way, permanent stormwater easements conveyed to and accepted by the city, or as otherwise explicitly stated in a written agreement with the city. Repairs and improvements to the drainage system shall be in accordance with established standards, policies and schedules.

(b) The city's acquisition of permanent storm drainage easements and/or the construction or repair by the city of stormwater control measures and drainage facilities does not constitute a warranty against stormwater hazards, including, but not limited to, flooding, erosion or standing water.

Sec. 16.3-10. Severability.

(a) All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

(b) If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Sec. 16.3-11. Right to enter property.

In order to assure compliance with the provisions of this chapter, and all applicable city ordinances, state and federal laws, orders or regulations, the director of utilities or his agent shall have the right to inspect any property, public or private, within the city at any reasonable time. In the event the director of utilities, or his agent shall be denied access to property, the director of utilities or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this ordinance has has occurred, request that the magistrate or court grant the director of utilities or his agent an inspection warrant to enable the director of utilities or his agent to enter the property for the purpose of determining whether a violation of this ordinance exists. The director of utilities or his agent shall make a reasonable effort to obtain consent from the owner or ~~tenant~~ occupant of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the director of utilities or his agent access to any property after the director of utilities or his agent has obtained an inspection warrant from a magistrate or a court of competent jurisdiction for the inspection of such property.

Secs. 16.3-12 through 16.3 – 19. Reserved.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified: ______________________________
Clerk of Council

182L2

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 13, 2011**			AGENDA ITEM NO.: 8
CONSENT:	REGULAR: **X**	WORK SESSION:	CLOSED SESSION: (Confidential)
ACTION: **X**		INFORMATION:	
ITEM TITLE: **Public Library – Approval of Revised Internet Safety Policy**			

RECOMMENDATION: Approve the Revised Internet Safety Policy

SUMMARY: VIRGINIA CODE #42.1-36.1 requires that the governing body of a library that receives state funding shall biennially file with the Librarian of Virginia an acceptable use policy governing the use of public and staff access to the Internet. For the 2011/2012 funding year, the library received for the first time $3,485.86 in telecommunications cost reimbursement through the federal E-RATE program; E-RATE requires the library's Internet Safety Policy conform to the provisions of the Children's Internet Protection Act (CIPA); the policy has been revised. There are no substantive changes to content.

PRIOR ACTION(S): City Council approved the library's Internet Use Policy in 1999, 2001, 2003, 2005, 2007 and 2009.

FISCAL IMPACT: None

CONTACT(S): Lynn Dodge, 455-6330

ATTACHMENT(S): Resolution; Lynchburg Public Library Internet Safety Policy

REVIEWED BY: lkp

RESOLUTION

BE IT HEREBY RESOLVED THAT the Lynchburg City Council approves the Internet Safety Policy for the Lynchburg Public Library.

Adopted:

Certified: ______________________________

Clerk of Council

183L

INTERNET SAFETY POLICY

Lynchburg Public Library

Introduction

It is the policy of the Lynchburg Public Library to: (a) prevent user access over its computer network to, or transmission of, inappropriate material via Internet, electronic mail, or other forms of direct electronic communications; (b) prevent unauthorized access and other unlawful online activity; (c) prevent unauthorized online disclosure, use, or dissemination of personal identification information of minors; and (d) comply with the Children's Internet Protection Act [Pub. L. No. 106-554 and 47 USC 254(h)].

Definitions

Key terms are as defined in the Children's Internet Protection Act.

Access to Inappropriate Material

To the extent practical, technology protection measures (or "Internet filters") shall be used to block or filter Internet, or other forms of electronic communications, access to inappropriate information. Specifically, as required by the Children's Internet Protection Act, blocking shall be applied to visual depictions of material deemed obscene or child pornography, or to any material deemed harmful to minors.

Subject to staff supervision, technology protection measures may be disabled or, in the case of minors, minimized only for bona fide research or other lawful purposes.

Inappropriate Network Usage

To the extent practical, steps shall be taken to promote the safety and security of all users of the Lynchburg Public Library online computer network and wireless Internet access when using electronic mail, chat rooms, instant messaging, and other forms of direct electronic communications.

Specifically, as required by the Children's Internet Protection Act, prevention of inappropriate network usage includes: (a) unauthorized access, including so-called 'hacking,' and other unlawful activities; and (b) unauthorized disclosure, use, and dissemination of personal identification information regarding minors.

Supervision and Monitoring

It shall be the responsibility of all members of the Lynchburg Public Library staff to supervise and monitor usage of the online computer network and access to the Internet in accordance with this policy and the Children's Internet Protection Act.

Procedures for the disabling or otherwise modifying any technology protection measures shall be the responsibility of the City of Lynchburg's Information Technology department or designated representatives.

Adoption

The Lynchburg City Council adopted this Internet Safety Policy at a public meeting, following normal public notice, on December 13, 2011.

CIPA definitions of terms:
TECHNOLOGY PROTECTION MEASURE. The term "technology protection measure" means a specific technology that blocks or filters Internet access to visual depictions that are:

1. **OBSCENE**, as that term is defined in section 1460 of title 18, United States Code;

2. **CHILD PORNOGRAPHY**, as that term is defined in section 2256 of title 18, United States Code; or

3. Harmful to minors.

HARMFUL TO MINORS. The term "harmful to minors" means any picture, image, graphic image file, or other visual depiction that:

1. Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

2. Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

3. Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

SEXUAL ACT; SEXUAL CONTACT. The terms "sexual act" and "sexual contact" have the meanings given such terms in section 2246 of title 18, United States Code.

Prohibited Behaviors:

Any use of library computers and/or Internet access by patrons or staff that interferes with activities of the library, it users or its network is strictly prohibited. Prohibited behaviors are:

Accessing obscenity and pornography
Accessing materials harmful to minors
Copyright violations
Harassing, bullying, libeling or slandering
Violation of software licensing agreements
Violation of another user's privacy
Destruction or damage of equipment
Disruption or unauthorized monitoring of electronic communications
Accessing gambling sites or using library computers for gambling

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 13, 2011**			AGENDA ITEM NO.: 9
CONSENT:	REGULAR: **X**	WORK SESSION:	CLOSED SESSION: (Confidential)
ACTION: **X**		INFORMATION:	
ITEM TITLE: **Urban Development Areas (UDAs)**			

RECOMMENDATION: Affirm that the City's *Comprehensive Plan 2002-2020* is consistent with the requirements of Section 15.2-2223.1 of the Code of Virginia.

SUMMARY: Section 15.2-2223.1 B1 of the Code of Virginia requires localities to provide for urban development areas (UDAs) within its comprehensive plan. A UDA is defined as "an area designated by a locality that is (i) appropriate for higher density development due to its proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and (ii) to the extent feasible, to be used for redevelopment or infill development".

A UDA within a locality with a population less than one hundred thirty thousand (130,000) persons is to provide for development at a density on the developable acreage of "at least four (4) single-family residences, six (6) townhouses, or twelve (12) apartments, condominium units or cooperative units per acre and an authorized floor area ratio of at least four tenths (0.4) per acre for commercial development or any proportional combination thereof". A UDA designated by a locality is also to be sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least ten (10) but not more than twenty (20) years.

Section 15.2-2223.1 D of the Code of Virginia provides any locality that would be required to amend its plan that determines that its plan accommodates growth consistent with a UDA shall not be required to amend its plan upon adoption of a resolution describing the accommodation.

PRIOR ACTION(S):
September 14, 2011: Planning Commission postponed adopting a resolution concerning UDAs.
November 16, 2011: Planning Commission adopted a resolution stating that the City's existing Comprehensive Plan 2002-2020 accommodates growth in a manner that is consistent with a UDA. (6-0 with 1 absent, Sale)

FISCAL IMPACT: None

CONTACT(S): Tom Martin, City Planner -- 455-3900
Kent White, Director Community Development – 455-3919

ATTACHMENT(S):
- Resolution
- Memorandum to Planning Commission and Minutes – 11/16/11
- Resolution of the Lynchburg Planning Commission – 11/16/11
- § 15.2-2223.1 of the Code of Virginia
- Memorandum to Planning Commission and Minutes – 9/14/11

REVIEWED BY: lkp

RESOLUTION

WHEREAS, Section 15.2-2223.1 Comprehensive plan to include urban development areas, of the Code of Virginia requires localities having a population of less than one hundred thirty thousand (130,000) persons to provide for urban development areas that are appropriate for development at a density on the developable acreage of at least four (4) single-family residences, six (6) townhouses, or twelve (12) apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least four tenths (0.4) acre for commercial development, or any proportional combination thereof; and

WHEREAS, Section 15.2-2223.1 D of the Code of Virginia states "any locality that would be required to amend its plan pursuant to subsection B that determines that its plan accommodates growth in a manner consistent with subsection B, upon adoption of a resolution describing such accommodation and describing any financial and other incentives for development in the areas that accommodate such growth, shall not be required to further amend its plan pursuant to subsection B;" and

WHEREAS, the City of Lynchburg's 2010 Census population was seventy five thousand five hundred sixty-eight (75,568); and

WHEREAS, the City of Lynchburg's 2030 population is projected to increase to 83,990; and

WHEREAS, the City of Lynchburg projects a minimum of 505,320 square feet of commercial growth by 2030; and

WHEREAS; the City's *Comprehensive Plan 2002-2020* adopted September 10, 2002 as amended includes the following land uses and densities:

Low Density	4 units per acre
Medium Density (single-family, duplex or townhomes)	12 units per acre
High Density (townhomes or apartments)	30 units per acre
Traditional Residential	4 units per acre
Office	20,000 sf floor plate
Employment 1 / 2	20,000 + floor plate
Neighborhood Commercial	50,000 sf floor plate
Community Commercial	100,000 – 200,000 sf floor plate
Regional Commercial	No maximum

WHEREAS; the City's *Comprehensive Plan 2002-2020* adopted September 10, 2002 as amended also includes land uses, goals and objectives for pedestrian-friendly road design, interconnection of new local streets with existing local streets and roads, connectivity of road and pedestrian networks, preservation of natural areas, mixed-use neighborhoods, including mixed housing types, with affordable housing, reduction of front and side yard building setbacks; and

WHEREAS; the City's *Subdivision Ordinance* provides that the city shall fund fifty percent (50%) of the cost of curb, gutter and sidewalk, to serve new residential subdivisions and that the city will extend water and sewer lines where financially feasible based on the number of dwelling units; and

WHEREAS; the City of Lynchburg provides Business Incentives in the designated Technology Zone, Enterprise Zone and the Arts & Cultural District; and

WHEREAS; the Lynchburg Economic Development Authority and the City of Lynchburg's Office of Economic Development operate a Revolving Loan Fund that targets assistance to starting or expanding private business.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the City Council hereby determines the City's *Comprehensive Plan 2002-2020* adopted September 10, 2002 as amended accommodates growth in a manner that is consistent with the requirements of Section 15.2-2223.1 of the Code of Virginia.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that in so finding the City's *Comprehensive Plan 2002-2020* adopted September 10, 2002 as amended accommodates growth in a manner that is consistent with the requirements of Section 15.2-2223.1 of the Code of Virginia, declares that such finding does not obligate the City to approve a rezoning, affect existing zoning or mandate a specific type or style of development on a property.

Adopted:

Certified: ______________________________
Clerk of Council

186L

MEMORANDUM

The Department of Community Development

Planning

455-3900

To: Planning Commission

From: Tom Martin, AICP, City Planner

Subj: Urban Development Areas

Date: November 16, 2011

Chapter 15.2-2223.1 B1 of the Code of Virginia requires localities with a population of less than one hundred thirty thousand (130,000) persons to provide for urban development areas in its comprehensive plan. An urban development area is defined as "an area designated by a locality that is (i) appropriate for higher density development due to its proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and (ii) to the extent feasible, to be used for redevelopment or infill development.

Urban development areas within localities with a population of less than one hundred thirty thousand (130,000) persons are to provide for development at a density on the developable acreage of "at least four (4) single-family residences, six (6) townhouses, or twelve (12) apartments, condominium units, or cooperative units per acre and an authorized floor area ratio of at least four tenths (0.4) per acre for commercial development or any proportional combination thereof".

The City's *Comprehensive Plan 2002-2020* meets or exceeds the requirements of the State Code by designating the following land uses and densities:

Land Use	**Density**
Low Density	4 units per acre
Medium Density (single-family, duplex or townhomes)	12 units per acre
High Density (townhomes or apartments)	30 units per acre
Traditional Residential	4 units per acre
Office	20,000 sf floor plate
Employment 1 / 2	20,000 + floor plate
Neighborhood Commercial	50,000 sf floor plate
Community Commercial	100,000 – 200,000 sf floor plate
Regional Commercial	No maximum

Chapter 15.2-2223.1 B3 of the Code of Virginia states that "urban development areas designated by a locality shall be sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years". As part of the City's Housing Assessment, Housing

Opportunities Made Equal (HOME) of Virginia, Inc., projected the City's population to be 83,990 in the year 2030. This population projection was based upon the Virginia Employment Commission's most recent projection as adjusted with the current population of 75,568 as a baseline. The projection indicates that the City's population will increase by 8,422 by the year 2030. The U.S. Census Bureau indicates that there were 2.38 persons per household between 2005-2009. For planning purposes, this data can be extrapolated as follows:

2030 Residential Acres

	Year 2030	FLUM Density	Acres
Additional Residents	8422		
Additional Households[1]	3538[2]		
Single-Family Units	884	4	221
Townhouse Units	884	12	74
Multi-Family Units	1770	30	59
		Total	***354***

[1] 8422 / 2.38 person per household

[2] Assumes 25% Single-Family, 25% Townhouse and 50% Multi-Family

For the purposes of determining commercial square feet needed by 2030 a 60 square feet per capita is estimated. 8422 additional residents x 60 sf = 505,320 square feet commercial space needed. Development of 504,320 square feet at a floor area ratio of .4 (as required by State Code) would require 29 acres. The acre estimate does not calculate the City's "fair share" of the Metropolitan Statistical Areas (MSA) retail market, nor does it include possibilities for redevelopment of vacant commercial space.

Chapter 15.2-2223.1 D of the Code of Virginia states "any locality that would be required to amend its plan pursuant to subsection B that determines that its plan accommodates growth in a manner consistent with subsection B, upon adoption of a resolution describing such accommodation and describing any financial and other incentives for development in the areas that accommodate such growth, shall not be required to further amend its plan pursuant to subsection B".

In order to be compliant with the Code of Virginia, the Planning Commission and, ultimately, City Council are requested to consider a resolution that the City's existing *Comprehensive Plan 2002-2020* as amended accommodates growth that is consistent with Chapter 15.2-2223.1 of the Code of Virginia. Upon adoption of the resolution, an amendment to the *Comprehensive Plan* would not be required.

A copy of the proposed resolution and Chapter 15.2-2223.1 of the Code of Virginia area attached for your review.

attachments:

MINUTES FROM THE NOVEMBER 16, 2011 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

a. Update on the Urban Development Areas requirement for the *Comprehensive Plan:* Mr. Martin reminded the commissioners that this item had come before them on September 14, 2011 and had been tabled. Since that time, Mr. Martin has met with Commissioner Swienton, addressed his concerns and made some revisions to the resolution. The resolution is in relation to a Code of Virginia requirement that localities are to adopt urban development areas. If any locality adopts a resolution determining that its plan accommodates growth that is consistent with urban development areas, the locality is not required to amend its *Comprehensive Plan.*

This is to ensure that the locality is adequately planned and has enough land set aside to allow growth for ten but not more than twenty years. For a locality the size of Lynchburg, its *Comprehensive Plan* is supposed to provide for the development of single-family homes, condominiums and retail/commercial space at certain densities. Single-family homes would be at a minimum of four units per acre, townhouses at a minimum of six, apartments or condos at a minimum of twelve units per acre and commercial space with a floor area ratio of 0.4.

Looking at the City's *Comprehensive Plan,* our land use categories either meet or exceed the requirements for the State code. Another purpose was to look at projections for growth in the locality. Mr. Martin put some planning numbers together that are contained in the memorandum presented to the commissioners for this meeting. The population projection was based on data provided by HOME as part of the housing strategy that the City is working on right now. Taking the projected population number and dividing it by 2.38 (which is the average household size), Mr. Martin was able to determine that an additional 3,538 housing units are going to be needed by the year 2030. Doing a 25/25/50 split (25 percent single-family, 25 percent townhome and 50 percent multi-family), Mr. Martin was able to come up with a unit yield for each of those housing types. Then based on our *Future Land Use Map* density, he arrived at acreages. Those numbers are contained in the memorandum. The City is also projected to have ample vacant land to accommodate the additional needed retail/commercial space.

The new resolution states that the City accommodates growth in a manner that is consistent with the State code. Staff believes this resolution is consistent with requirements of the State code and recommends its approval.

Commissioner Swienton thanked Mr. Martin for the time he put into this research. He had serious reservations about the first resolution but is fully supportive of this resolution. He thinks it clearly meets the requirements of the State code.

Commissioner Swienton made a motion to pass the resolution, which was seconded by Commissioner Coleman. The motion passed by the following vote:

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

RESOULTION OF THE LYNCHBURG PLANNING COMMISSION

WHEREAS: Chapter 15.2-2231.1 Comprehensive plan to include urban development areas, of the Code of Virginia requires localities having a population of less than one hundred thirty thousand (130,000) persons to provide for urban development areas that are appropriate for development at a density on the developable acreage of at least four (4) single-family residences, six (6) townhouses, or twelve (12) apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least four tenths (0.4) acre for commercial development, or any proportional combination therof.

WHEREAS: Chapter 15.2-2223.1 D of the Code of Virginia states "any locality that would be required to amend its plan pursuant to subsection B that determines that its plan accommodates growth in a manner consistent with subsection B, upon adoption of a resolution describing such accommodation and describing any financial and other incentives for development in the areas that accommodate such growth, shall not be required to further amend its plan pursuant to subsection B".

WHERAS: The City of Lynchburg's 2010 Census population was seventy five thousand five hundred sixty-eight (75,568).

WHERAS: The City of Lynchburg's 2030 population is projected to increase to 83,990.

WHERAS: The City of Lynchburg projects a minimum of 505,320 square feet of commercial growth by 2030.

WHERAS: The City's *Comprehensive Plan 2002-2020* adopted September 10, 2002 as amended includes the following land uses and densities:

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Employment 1 / 2	20,000 + floor plate
Neighborhood Commercial	50,000 sf floor plate
Community Commercial	100,000 – 200,000 sf floor plate
Regional Commercial	No maximum

WHERAS: The City's *Comprehensive Plan 2002-2020* adopted September 10, 2002 as amended also includes land uses, goals and objectives for pedestrian-friendly road design, interconnection of new local streets with existing local streets and roads, connectivity of road and pedestrian networks, preservation of natural areas, mixed-use neighborhoods, including mixed housing types, with affordable housing, reduction of front and side yard building setbacks.

WHERAS: The City's *Subdivision Ordinance* provides that the city shall fund fifty percent (50%) of the cost of curb, gutter and sidewalk, to serve new residential subdivisions and that the city will extend water and sewer lines where financially feasible based on the number of dwelling units.

WHERAS: The City of Lynchburg provides Business Incentives in the designated Technology Zone, Enterprise Zone and the Arts & Cultural District.

WHERAS: The Lynchburg Economic Development Authority and the City of Lynchburg's Office of Economic Development operate a Revolving Loan Fund that targets assistance to starting or expanding private business.

NOW, THEREFORE, BE IT RESOLVED that the Lynchburg Planning Commission finds that the City's *Comprehensive Plan 2002-2020* adopted September 10, 2002 as amended accommodates growth in a manner that is consistent with the requirements of Chapter 15.2-2231.1 of the Code of Virginia.

NOW, THERFORE, BE IT FURTHER RESOLVED that the Lynchburg Planning Commission in so finding that the City's *Comprehensive Plan 2002-2020* adopted September 10, 2002 as amended accommodates growth in a manner that is consistent with the requirements of Chapter 15.2-2231.1 of the Code of Virginia, declares that such finding does not obligate the City to approve a rezoning, affect existing zoning or mandate a specific type or style of development on a property.

Adopted: 11/16/11 6-0-1 (Absent Sale)

Certified: [signature]

§ 15.2-2223.1. Comprehensive plan to include urban development areas.

A. For purposes of this section:

"Commercial" means property devoted to usual and customary business purposes for the sale of goods and services and includes, but is not limited to, retail operations, hotels, motels and offices. "Commercial" does not include residential dwelling units, including apartments and condominiums, or agricultural or forestal production, or manufacturing, processing, assembling, storing, warehousing, or distributing.

"Commission" means the Commission on Local Government.

"Developable acreage," solely for the purposes of calculating density within the urban development area, means land that is not included in (i) existing parks, rights-of-way of arterial and collector streets, railways, and public utilities and (ii) other existing public lands and facilities.

"Population growth" means the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census. In computing its population growth, a locality may exclude the inmate population of any new or expanded correctional facility that opened within the time period between the two censuses.

"Urban development area" means an area designated by a locality that is (i) appropriate for higher density development due to its proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and (ii) to the extent feasible, to be used for redevelopment or infill development.

B. Every locality that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of this chapter and that (i) has a population of at least 20,000 and population growth of at least five percent or (ii) has population growth of 15 percent or more, shall, and any locality may, amend its comprehensive plan to incorporate one or more urban development areas.

1. The comprehensive plan of a locality having a population of less than 130,000 persons shall provide for urban development areas that are appropriate for development at a density on the developable acreage of at least four single-family residences, six townhouses, or 12 apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least 0.4 per acre for commercial development, or any proportional combination thereof.

2. The comprehensive plan of a locality having a population of 130,000 or more persons shall provide for urban development areas that are appropriate for development at a density on the developable acreage of at least eight single-family residences, 12 townhouses, or 24 apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least 0.8 per acre for commercial development, or any proportional combination thereof.

3. The urban development areas designated by a locality shall be sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years, which may include phasing of development within the urban development areas. Where an urban development area in a county with the urban county executive form of government includes planned or existing rail transit, the planning horizon may be for an ensuing

period of at least 10 but not more than 40 years. Future residential and commercial growth shall be based on official estimates of either the Weldon Cooper Center for Public Service of the University of Virginia, the Virginia Employment Commission, the United States Bureau of the Census, or other official government projections required for federal transportation planning purposes.

4. The boundaries and size of each urban development area shall be reexamined and, if necessary, revised every five years in conjunction with the review of the comprehensive plan and in accordance with the most recent available population growth estimates and projections.

5. The boundaries of each urban development area shall be identified in the locality's comprehensive plan and shall be shown on future land use maps contained in such comprehensive plan.

6. The comprehensive plan shall incorporate principles of traditional neighborhood design in the urban development area, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) mixed-use neighborhoods, including mixed housing types, with affordable housing to meet the projected family income distributions of future residential growth, (vi) reduction of front and side yard building setbacks, and (vii) reduction of subdivision street widths and turning radii at subdivision street intersections.

7. The comprehensive plan shall describe any financial and other incentives for development in the urban development areas.

8. A portion of one or more urban development areas shall be designated as a receiving area for any transfer of development rights program established by the locality.

C. No locality that has amended its comprehensive plan in accordance with this section shall limit or prohibit development pursuant to existing zoning or shall refuse to consider any application for rezoning based solely on the fact that the property is located outside the urban development area.

D. Any locality that would be required to amend its plan pursuant to subsection B that determines that its plan accommodates growth in a manner consistent with subsection B, upon adoption of a resolution describing such accommodation and describing any financial and other incentives for development in the areas that accommodate such growth, shall not be required to further amend its plan pursuant to subsection B. Any locality that has adopted a resolution certifying compliance with subsection B prior to February 1, 2010, shall not be required to comply with this subsection until review of the locality's comprehensive plan as provided for in provision 4 of subsection B.

E. Localities shall consult with adjacent localities, as well as the relevant planning district commission and metropolitan planning organization, in establishing the appropriate size and location of urban development areas to promote orderly and efficient development of their region.

F. Any county that amends its comprehensive plan pursuant to subsection B may designate one or more urban development areas in any incorporated town within such county, if the council of the town has also amended its comprehensive plan to designate the same areas as urban development areas with at least the same density designated by the county. However, if a town has established an urban development area within its corporate boundaries, the county within which the town is located shall not include the town's projected population and commercial growth when initially determining or reexamining the size and boundary of any other urban development area within the county.

G. To the extent possible, federal, state and local transportation, housing, water and sewer facility, economic development, and other public infrastructure funding for new and expanded facilities shall be directed to the urban development area, or in the case of a locality that adopts a resolution pursuant to subsection D, to the area that accommodates growth in a manner consistent with this section.

H. Documents describing all urban development area designations, as well as any resolution adopted pursuant to subsection D, together with associated written policies, zoning provisions and other ordinances, and the capital improvement program shall be forwarded, electronically or by other means, to the Commission within 90 days of the adoption or amendment of comprehensive plans and other written policies, zoning provisions and other ordinances. The Commission shall annually report to the Governor and General Assembly the overall compliance with this section including densities achieved within each urban development area. Before preparing the initial report, the Commission shall develop an appropriate format in concert with the relevant planning district commission. Other than the documents, policies, zoning provisions and other ordinances, resolutions, and the capital improvement program forwarded by the locality, the Commission shall not impose an additional administrative burden on localities in preparing the annual report required by this subsection.

I. Any locality that becomes subject to provision 2 of subsection B shall have until July 1, 2012, to amend its comprehensive plan in accordance with this section.

J. Any locality that becomes subject to this section due to population growth shall have two years following the report of the United States Bureau of the Census made pursuant to P.L. 94-171 to amend its comprehensive plan in accordance with this section.

(2007, c. 896; 2009, c. 327; 2010, cc. 465, 528; 2011, c. 561.)

MEMORANDUM

The Department of Community Development

Planning

455-3900

To: Planning Commission

From: Tom Martin, AICP, City Planner

Subj: Urban Development Areas

Date: September 14, 2011

Chapter 15.2-2223.1 of the Code of Virginia requires localities with a population of less than one hundred thirty thousand (130,000) persons to provide for urban development areas in its comprehensive plan. An urban development area is defined as "an area designated by a locality that is (i) appropriate for higher density development due to its proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and (ii) to the extent feasible, to be used for redevelopment or infill development.

Urban development areas within localities with a population of less than one hundred thirty thousand (130,000) persons are to provide for development at a density on the developable acreage of "at least four (4) single-family residences, six (6) townhouses, or twelve (12) apartments, condominium units, or cooperative units per acre and an authorized floor area ratio of at least four tenths (0.4) per acre for commercial development or any proportional combination thereof".

The City's *Comprehensive Plan 2002-2020* meets or exceeds the requirements of the State Code by designating the following land uses and densities:

Land Use	**Density**
Low Density	4 units per acre
Medium Density (single-family, duplex or townhomes)	12 units per acre
High Density (townhomes or apartments)	30 units per acre
Traditional Residential	4 units per acre
Office	20,000 sf floor plate
Employment 1 / 2	20,000 + floor plate
Neighborhood Commercial	50,000 sf floor plate
Community Commercial	100,000 – 200,000 sf floor plate
Regional Commercial	No maximum

The Code of Virginia further requires the comprehensive plan to incorporate principles of traditional neighborhood design in the urban development area and to identify any financial or other incentives for development within the urban development area.

In order to be compliant with the Code of Virginia, the Planning Commission and, ultimately, City Council are being asked to pass resolutions identifying the entire city limits as an Urban Development Area.

A copy of the proposed resolution and Chapter 15.2-2223.1 of the Code of Virginia area attached for your review.

attachments:

MINUTES FROM THE SEPTEMBER 14, 2011 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

c. Consideration of adopting a resolution stating that the City's existing *Comprehensive Plan 2002-2020* as adopted meets the requirements for urban development areas in localities with a population less than 130,000 persons and includes designated land uses for the development of single-family residences at the density of at least four (4) per acre, six (6) townhouses, or twelve (12) apartments, condominium units, or cooperative units per acre and an authorized floor area ratio of at least four tenths (0.4) acre for commercial development as required by Chapter 15.2-2223.1 of the Code of Virginia.

Mr. Henry commented that we are a City and are basically considered urban. The standard of less than 130,000 persons does not stipulate city or county. It is more of a formality because the City meets or exceeds the above requirements in both the *Zoning Ordinance* and the *Comprehensive Plan* for the whole city to be considered an urban development area. It is not really going to be a tool that we use. It is more something that the counties use as a land use tool.

Chair Hamilton asked for anyone present to speak either in favor or in opposition to the petition. No one came forward and she closed the public hearing portion of the petition.

The commissioners asked how this matter surfaced and if it is sent anywhere from here. Mr. Henry said it is more of a formality and if it is approved, it is in the *Comprehensive Plan.* Commissioner Swienton pointed out that Paragraph H of Section 15.2-2223.1 indicates the reporting requirements associated with this amendment. Commissioner Hannon thought that the main thrust of this is that rural areas pay attention to their urban development.

Commissioner Swienton asked about paragraph E on page 6 where it states that localities will consult with adjacent localities. He asked what process is in place to take care of that requirement. Mr. Henry said that adjoining localities are informed of *Comprehensive Plan* amendments. Commissioner Swienton commented that he interprets this as the discussion with localities is supposed to take place before any amendment to the *Comprehensive Plan.* Mr. Henry said that he understands the question, but the whole City qualifies as an urban development area. Areas adjoining the City could be considered urban development areas but he does not see a need for us to consult with them if the entire City can be classified as an urban development area.

Commissioner Swienton said he is not sure our entire City is classified as an urban development area. He gave Blacksburg as an example, which is identifying specific areas within Blacksburg for urban development areas, almost the same way we have identified areas for mixed use. He is not convinced that this was intended to make an entire City an urban development area. Commissioner Swienton had also found that VDOT says it changes how traffic studies are done for an urban development area. Personally, he thinks it is premature to pass this.

Commissioner Hannon stated that, in all fairness, he cannot think of any area of Lynchburg that we would not classify as an urban development area. We would be trying to carve out little areas that are not urban development areas. Chair Hamilton pointed out that even our lowest density area is still classified as an urban development area.

Commissioner Swienton asked if paragraph 6 on page 5 means that the urban development areas are supposed to incorporate the principles of the traditional neighborhood development design.

Mr. Henry remarked that these are requirements for the *Comprehensive Plan.* It is not geared toward implementation like specifically designating areas and wanting to see those uses there. That gets more along the lines of implementation whereas this requirement gets more toward things that need to be in your *Comprehensive Plan* and we have all of these requirements met already.

Chair Hamilton thought this was geared more toward ensuring that communities that may not be as progressive are incorporating these requirements into their *Comprehensive Plan.* Commissioner Sale asked if it would be fair to say that they are being asked to put a stamp on the *Comprehensive Plan* and say that it includes these design specifications and these criterion. Mr. Henry said that is correct.

Commissioner Hannon moved for its adoption and the motion was seconded by Commissioner Sale. Commissioner Hannon remarked that everything this says we are supposed to be doing we are doing. Designating the whole jurisdiction as an urban development area gives us the broadest possible latitude in doing what we need to do rather than trying to micromanage small areas, which does not seem to be practicable. Commissioner Barnes pointed out that our *Comprehensive Plan* does designate areas for further study. Commissioner Coleman remarked that he appreciated Commissioner Swienton's thinking but he does agree that we are already doing these things in our *Comprehensive Plan.* This simply helps us to authenticate it and to make sure that we are doing all we can do to further develop it.

Commissioner Swienton acknowledged that we are meeting or exceeding the intent of this state legislature. He does not believe that the entire City is intended to be designated an urban development area. He thinks there are some questions that need to be answered before he is comfortable voting for this amendment. He looks back at their recommendation of the zoning warrants amendment and wishes he had asked more questions so he will be voting against this today.

Commissioner Hooper acknowledged that he was not as thorough in his viewing of this amendment. He does not know enough about it. Chair Hamilton asked if Commissioner Swienton would like to make a motion to table it and he indicated that he would like to do so. Commissioner Hooper seconded the motion. Commissioner Hannon agreed to withdraw his motion. The commissioners voted unanimously to table it until they can get their questions answered by Mr. Martin. Commissioner Swienton will meet with him on behalf of the commission.

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 13, 2011** AGENDA ITEM NO.: 10

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Region 2000 Emergency Communications Regional Cooperative Agreement**

RECOMMENDATION: Adopt the attached resolution authorizing the City Manager to sign the attached cooperative agreement.

SUMMARY: On May 1, 1996 the City of Lynchburg entered into a regional agreement with the City of Bedford, the County of Bedford and the County of Amherst to fund, build and operate a regional 800 MHz trunked radio communications system. The Central Virginia Radio Communications Board (CVRCB), made up of representatives from these member jurisdictions was created in that agreement and has overseen the building, maintenance and operation of the radio system since that time. The system currently serves as the primary radio communications network for all public safety agencies in each jurisdiction along with various public services agencies as well.

Overall the regional cooperative agreement and radio communications system have been extremely successful and beneficial to the member agencies. Over the years, however, several issues have been identified that have caused the CVRCB to consider updating the agreement so as to preserve the successful regional effort for the future. Those issues are:

- The bond issue that financed the current radio system will be paid in full in the upcoming fiscal year.
- Harris Corporation has notified CVRCB that many of the infrastructure parts of the system, including the main communications switch, will begin reaching “end of life” status in February of 2014. After reaching “end of life” status Harris will no longer guarantee being able to provide parts to maintain the effected equipment.
- The CVRCB is not a legal entity in and of itself; therefore, it cannot enter into contracts or procure equipment or services under its own name. This has been problematic over the years in providing maintenance services on the system.
- The City of Lynchburg originally agreed to be the “Fiscal Agent” for the CVRCB. Again, this arrangement has proved problematic in procurement and contract efforts since the City was not actually procuring the items for itself.

The CVRCB contracted with Region 2000 in 2009 to begin addressing the issues that had been identified. CVRCB ultimately decided that given the upcoming “end of life” status of critical infrastructure equipment it was time to consider modernizing the existing infrastructure equipment. Region 2000 offered to administratively oversee the CVRCB through the Local Government Council, which would alleviate the need for the City of Lynchburg to remain as “Fiscal Agent”. Organizing under the Local Government Council would also give the CVRCB legal standing to enter contracts.

After conferring with the City Managers and County Administrators of the member jurisdictions the CVRCB hired the law firm of Hefty & Wiley to assist in drafting a new agreement to address the new direction that CVRCB would like to take. During the drafting of the new agreement it also became apparent that the method of dividing the costs of the system should be re-evaluated with a goal to better associate the costs to the specific user jurisdiction. A financial advising firm, Davenport, Inc. LLC, was contracted to assist in creating such a formula for the new agreement.

The new agreement provides a new administrative structure wherein the CVRCB will operate under the Local Government Council and have legal status to enter into contracts, it provides the financial framework to support requisitioning funding for future system upgrade needs, and it reaffirms a cooperative effort that has been extremely successful in providing the region with a dependable and interoperable public safety/service radio communications system.

The attached agreement was still in draft form when originally presented to Council on June 14th. Attached is a final version that is not significantly changed from the earlier version. If approved by all localities the plan is to shift financial responsibilities from the City to Region 2000 on July 1, 2011. A vendor for the replacement equipment will be procured in August and it is anticipated that new debt for the system will be issued late in the year. The new system should be up and operational by late 2013.

Counsel has recommended that City Council adopt the attached resolution approving the final version so that there is a clear record of the City's approval for bond issuing purposes.

PRIOR ACTION(S): June 14, 2011; City Council approved the Cooperative Agreement and authorized the City Manager to sign it.

FISCAL IMPACT: To be determined, however, it is anticipated that the City's current debt service payments on the regional radio system will cover the City's share of costs for the replacement system.

CONTACT(S): William A. Aldrich, Director, Department of Emergency Services, 455-4285; Kimball Payne, 455-3990

ATTACHMENT(S): Finalized agreement; Resolution

REVIEWED BY: lkp

RESOLUTION

WHEREAS, Amherst County, Bedford County, the City of Bedford and the City of Lynchburg have been operating a regional emergency communication system under the auspices of the Central Virginia Radio Communications Board ("CVRCB") under an Intergovernmental Agreement since 1996; and

WHEREAS, bonds were issued in 1996 through the Industrial Development Authority of the Town of Amherst to pay for the original regional radio system; and

WHEREAS, the original bonds have been paid, and the original radio equipment has reached its useful life, resulting in the need for the localities to determine the best way to continue the operation of the regional radio communication system and to finance the purchase of new radio equipment; and

WHEREAS, the localities have determined that the best way to accomplish these goals is to dissolve the CVCB and replace it with a new Region 2000 Radio Communications Board (the "Board"), consisting of the chief public safety communications officer of each locality (or the chief law enforcement officer, if there is no chief public safety communications officer), which Board would be a committee of Virginia's Region 2000 Local Government Council (the "Council") and would manage and operate the regional radio system, with the bonds for the purchase of the new equipment to be issued by the Council, pursuant to an agreement among the parties.

NOW THEREFORE, BE IT RESOLVED by the Lynchburg City Council that the Council hereby approves the Region 2000 Emergency Communications Regional Cooperative Agreement (the "Agreement") presented with this Resolution to the Council, and the Council authorizes the City Manager to execute the Agreement on behalf of the City.

Adopted:

Certified: ______________________________
Clerk of Council

184L

REGION 2000 EMERGENCY COMMUNICATIONS
REGIONAL COOPERATIVE AGREEMENT

This Agreement is entered into by and between Amherst County, Virginia (“Amherst County”), Bedford County, Virginia (“Bedford County”), the City of Bedford, Virginia (“Bedford City”), and the City of Lynchburg, Virginia (“Lynchburg”), collectively the “Member Jurisdictions”, and Virginia’s Region 2000 Local Government Council (“Council”), all political subdivisions or public bodies corporate and politic of the Commonwealth of Virginia, and all of which collectively may be referred to as the “Parties”.

RECITALS

WHEREAS, the Member Jurisdictions have been jointly operating a Regional Emergency Communications System (“System”) under the auspices of the Central Virginia Radio Communications Board (“CVRCB”), which the Member Jurisdictions formed pursuant to the May 1, 1996 Intergovernmental Agreement (“Intergovernmental Agreement”); and

WHEREAS, the System was financed primarily through a 1996 bond issuance by the Industrial Development Authority of the Town of Amherst, Virginia (“Amherst IDA”) in the amount of $9,931,000.00 as described in the Intergovernmental Agreement; and

WHEREAS, the Member Jurisdictions have paid the interest and principal on the 1996 Bonds pursuant to the May 1, 1996 Lease Agreement (“Lease Agreement”) between the Amherst IDA and the Member Jurisdictions, with the final payment having occurred and such bonds having been fully paid; and

WHEREAS, the Member Jurisdictions have determined that the System is in need of significant upgrades or replacement before January 1, 2014 (the “Project”) in order to maintain or improve the level of emergency services currently provided by the Member Jurisdictions and expected by the residents of the community before the current System becomes unserviceable and obsolete; and

WHEREAS, the Project will require debt financing in an amount similar to the debt issued in 1996, which financed the current System; and

WHEREAS, the Member Jurisdictions and the Council have determined that in order to manage the Project operations and maintenance in an efficient and cost effective manner, the CVRCB should be dissolved upon repayment of the 1996 Bonds and replaced by a new Region 2000 Radio Communications Board (“Board”), established as a committee by the Council and consisting of representatives from each of the Member Jurisdictions; and

WHEREAS, the Parties have determined that the Council will finance the Project through the issuance of debt to be paid by the Council through payments received from the Member Jurisdictions; and

WHEREAS, the Council's purpose under §15.2-4207 of the Act is to encourage and facilitate local government cooperation, including physical infrastructure development, criminal justice and emergency management through regional cooperative arrangements for the facilitation of revenue sharing, joint service delivery, and joint government purchasing, such as is set forth in this Agreement.

NOW THEREFORE, for and in consideration of the mutual and reciprocal benefits inuring to the Parties, 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.

"1996 Assets" means all System assets and equipment financed jointly with the 1996 Bonds.

"1996 Bonds" means the Series 1996 Bonds issued by the Amherst IDA in the original principal amount of $9,931,000.00, as described in the Intergovernmental Agreement, for the original financing of the System.

"Act" means the Regional Cooperation Act, Chapter 42, Subtitle IV, Title 15.2, Code of Virginia, 1950, as now in effect or as hereafter amended.

"Agreement" means this agreement entered into by the Parties.

"Annual Budget" means the budget adopted each fiscal year by the Board to cover the annual Operating and Capital Costs associated with the Project and System.

"Annual Deficit" means any actual deficit at the end of a Fiscal Year consisting of an excess of Operating and Capital Costs over Operating Revenues for such Fiscal Year incurred by the Council acting pursuant to the 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 of any of the Facilities, the System or the performance of any obligations under any agreement entered into in connection therewith.

"Board" means the Region 2000 Radio Communications Board as set forth herein.

"Bonds" means any bonds, notes, financing leases or other obligations issued by the Council to finance the acquisition, construction and equipping of the Project, including any bonds issued to refund such bonds.

"Capital Costs" means all capital-related costs associated with the Project and System, including but not limited to Debt Service Payments and Capital Expenditures necessary for compliance with Applicable Law, necessary for normal maintenance and reasonable periodic expansion of improvements to the Facilities, or incurred in connection with Uncontrollable Circumstances.

"Capital Expenditure" means any expenditure of a capital nature made directly to support the Project or System, and which will be amortized or depreciated over more than one Fiscal Year.

"Chairman" means chairman of the Board.

"Council" means Virginia's Region 2000 Local Government Council, a planning district commission and a public body corporate and politic, organized under the Act.

"Debt Service Payments" means the payments of principal, premium, if any, and interest required to be made by Council but funded from the Member Jurisdictions by the terms of any Bonds. It shall also include any payments to Member Jurisdictions that have advanced funding for the Project pursuant to a reimbursement resolution for such payments as may be approved by the Board and Council.

"Event of Default" means any of the events of default set forth in Article VIII of this Agreement.

"Executive Director" means Executive Director of the Council.

"Facility" or "Facilities" means all hardware, software, infrastructure, terminal equipment, and other tangible equipment comprising the System or associated with the Project, including all radio frequency licenses necessary for the operation of the System.

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

"Indenture" means any Indenture of Trust, loan or financing agreement, financing lease or other agreement entered into between the Council and a corporate trustee or lender, pursuant to which the Bonds are issued.

"Member Jurisdiction" means each political subdivision that enters into this Agreement as of its effective date, and any additional political subdivision that subsequently enters into this Agreement as a Member Jurisdiction.

"Operating Costs" means all costs approved by the Board as properly allocable to acquiring, constructing, equipping, maintaining and operating the Facilities, other than any costs qualifying as Capital Costs, 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, and monitoring;

(4) All costs for compliance with all permit conditions and compliance with Applicable Law;

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

(6) Insurance costs and the costs of bonds, letters of credit, escrows or other financial assurance or allowance for environmental assessments or property value guarantees, or for compliance with Applicable Law;

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

(8) All accounting, bookkeeping and financial advisory fees and charges;

(9) All costs associated with uncollectible accounts;

(10) All amounts necessary to create funds required by an Indenture, or to replenish deficits in any such funds;

(11) Any payments made by the Member Jurisdictions to the Council or any other governmental entity for Project-related services;

(12) Amounts paid to reserve accounts created by the Board pursuant to Section 4.11 of this Agreement; and

(13) Amounts paid to maintain Facilities, including but not limited to costs for generator maintenance and fuel, pest control, and fire suppression.

"Operating Revenues" means all income and revenues resulting from the ownership or operation of the Facilities and the System, including any payments of a Member Jurisdiction's Pro Rata Share.

"Parties" means Amherst County, Bedford County, the City of Bedford, the City of Lynchburg, Virginia's Region 2000 Local Government Council ("Council"), and any political subdivision that may join this Agreement subsequent to the Effective Date.

"Pro Rata Share" means each Member Jurisdiction's proportional share of the Annual Deficit, Capital Costs and Operating Costs.

"Project" means the Facilities financed with Bonds, and any interest in real estate and equipment that are common facilities required to upgrade, manage and operate the System.

"Shortfall" means an expected lack of funds required for any Debt Service Payment pursuant to Section 6.1(c) of this Agreement.

"System" means the regional emergency communications system operated and managed by the Board.

"System Customer" means a non-Member Jurisdiction entity authorized to access and utilize the System pursuant to an agreement with the Board.

"Uncontrollable Circumstance" means any event or condition, whether affecting the Facilities, any Member Jurisdiction or the Council, that interferes with the acquisition, design, construction, equipping, start-up, operation, ownership or possession of the Facilities or the System, 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
EFFECTIVE DATE AND DURATION OF AGREEMENT

Section 2.1. Effective Date. This Agreement shall become effective upon its execution by authorized officers of all Member Jurisdictions and the Council ("Effective Date"), subject to the terms and conditions contained herein. The initial term of this Agreement shall be 20 years following the Effective Date; provided, however, that the initial term may be extended by unanimous agreement of the Parties.

Section 2.2. Withdrawal of Member Jurisdiction. In the event a Member Jurisdiction withdraws from this Agreement while there is outstanding Project or System related debt, such withdrawal shall require unanimous consent of the other Parties. In the event a Member Jurisdiction withdraws from this Agreement while there is no outstanding debt, then such withdrawal shall not require the consent of the other Parties. In the event of any withdrawal from this Agreement, the withdrawing Member Jurisdiction shall have no right to any portion of the System or the Facilities without the consent of the other Member Jurisdictions. In order to be effective, any withdrawal shall require at least one year advance written notice to the Parties, and shall be approved by the resolution or ordinance of the governing body.

Section 2.3. Dissolution. In the event that the Member Jurisdictions unanimously agree, prior to the end of the term of the Agreement, to voluntarily dissolve the Board and discontinue joint ownership and operation of the System, or in the event that, at the end of the Term of the Agreement, the Member Jurisdictions determine not to extend the Agreement for another term, the Council shall, after the payment of all debts relating to the System that have been approved by the Board, transfer title to all System Facilities to the Member Jurisdictions in proportion to the respective shares of capital costs established in Section 4.7 of this Agreement. The consent of Council to the dissolution shall be required if there is any outstanding indebtedness attributable to the Bonds at the time dissolution is proposed. The determination as to which specific assets of the System or the Facilities shall be given to each Member Jurisdiction shall be determined by agreement of all of the Member Jurisdictions, or if there is no agreement, then the assets shall be sold and the funds transferred to the Member Jurisdictions in proportion to the respective shares of capital costs established in Section 4.7 of this Agreement. In the event that any portion of the System or Facilities is sold prior to Dissolution, the proceeds from such sale shall be divided among the Member Jurisdictions in the same manner as provided in the event of Dissolution.

Section 2.4. Termination of Intergovernmental Agreement. As of the Effective Date of this Agreement, the Member Jurisdictions agree that the Intergovernmental Agreement shall terminate.

ARTICLE III
EFFECTIVE DATE OF CERTAIN PROVISIONS

Section 3.1. Cost Allocation: Member Jurisdictions' Pro Rata Share. Notwithstanding any provision herein to the contrary, for the purposes of determining the proportional amounts owed by each Member for annual Capital Costs, Operational Costs, and any Annual Deficit, the provisions of Section 4.7 shall not take effect until July 1, 2013. Until that time, the Member Jurisdictions shall be responsible for such costs pursuant to the terms and conditions of the Intergovernmental Agreement and the Lease Agreement, such terms being incorporated herein solely for the purposes of this section and which establish the following percentages for which each Member Jurisdiction is responsible:

Amherst County	24.8%
Bedford County	38.2%
City of Bedford	3.9%
City of Lynchburg	33.1%

Section 3.2. Reserved.

ARTICLE IV
CENTRAL VIRGINIA RADIO COMMUNICATIONS BOARD; MEMBER JURISDICTION RIGHTS AND DUTIES

Section 4.1. Creation of Board. As authorized by the Act, the Council hereby creates with the agreement of the Member Jurisdictions, the Region 2000 Radio Communications Board ("Board") as a committee of the Council to manage the Facilities, the Project and the System as provided herein. Original membership shall consist of the Member Jurisdictions as defined herein as of the Effective Date. The principal office of the Board shall be at the office of the Executive Director of the Council, unless otherwise designated by the Member Jurisdictions. The Board is authorized to manage the day to day operations of the Facilities, the Project and the System as set forth herein.

Section 4.2. Board Membership; Bylaws. The members of the Board shall consist of one representative from each of the Member Jurisdictions who shall be the chief public safety communications officer for that jurisdiction. If a Member Jurisdiction does not have a chief public safety communications officer, then the Board member from such jurisdiction shall be its chief law enforcement officer. Each Member Jurisdiction shall appoint an alternate Board member, who shall be the jurisdiction's chief administrative officer or his or her designee, to attend meetings in the absence of the primary Board member. Alternates shall be entitled to vote on any matter before the Board in the absence of the primary member. The Board may establish bylaws or procedures governing the election of officers, the scheduling of meetings and notice thereof, and other procedural matters.

Section 4.3. Powers and Duties of Board. The Board shall be responsible for overseeing the management, operation and administration of the Facilities, the Project and the System. Approval of the Board shall be required prior to the incurrence of Bonds related to the Project, the Facilities or the System.

Section 4.4. Reserved.

Section 4.5. Procedures to Add New Member. Any eligible local government entity or other political subdivision in Virginia may, with the approval of its governing body and with the consent of all of the Member Jurisdictions, join and participate in the use, management and operation of the Project and the System as a Board member under the provisions of this section and pursuant to any additional terms and conditions for membership as may be prescribed by the Board. New members shall be responsible for all costs associated with connecting their existing emergency communications infrastructure to the System, for purchasing their own portable and mobile radio equipment, and for other all applicable costs under this Agreement. The Board reserves the right to examine and test any equipment prior to connection to the System, and may, in its sole discretion, refuse to connect any such equipment to the System. Unless otherwise agreed to by the Board, legal title to any infrastructure being contributed and connected to the System by the new member shall be transferred to the Council and committed to use as a part of the System. A new member shall be responsible for providing and contributing any required infrastructure and equipment needed in such new member's jurisdiction, and in no event shall the Council or Member Jurisdictions be required to compensate a new member for the value of any infrastructure owned by the new member or transferred by the new member to the Council.

Section 4.6. Decisions Requiring Consent of Member Jurisdictions. None of the following decisions may be taken by the Board without the unanimous consent of all the Member Jurisdictions:

(a) Any amendment of this Agreement;

(b) Any change in the Cost Allocation Methodology used to determine the Pro Rata Share owed by any Member Jurisdiction; and

(c) The addition of a Member Jurisdiction.

Section 4.7. Allocation of Annual Deficit, Capital Costs and Operating Costs: Member Jurisdictions' Pro Rata Share. Beginning July 1, 2013, Each Member Jurisdiction shall pay its share of (i) any Annual Deficit, (ii) Capital Costs and (iii) Operating Costs associated with the Project and the System, as determined pursuant to the following Cost Allocation Methodology:

A. Capital Costs. Each Member Jurisdiction's share of Capital Costs shall be as follows:

Amherst County:	28.0%
Bedford County:	36.8%
City of Bedford:	5.1%
City of Lynchburg:	30.1%

B. Operating Costs. Each Member Jurisdiction's share of Annual Operating Costs shall be based on the number of radios on the System attributable to the Member Jurisdiction as a percentage of total Member Jurisdiction radios on the System.

C. Annual Deficit. Each Member Jurisdiction's share of any Annual Deficit shall be based on the formulas for determining its share of Capital Costs or Operating Costs, or a combination of both formulas as appropriate, depending on the type of costs constituting the Annual Deficit. Any unforeseen Operating Costs not included in the Annual Budget shall be treated as part of the Annual Deficit.

D. The total share of annual Capital Costs, Operating Costs, and Annual Deficit attributable to each Member Jurisdiction pursuant to the formulas set forth in this section shall constitute each Member Jurisdictions' respective "Pro Rata Share", which shall be set forth in the Annual Budget.

E. The Pro Rata Shares shall be re-calculated each fiscal year based on the methodology set forth in this section. However, if the Pro Rata Shares are not re-calculated in any particular fiscal year, then the Pro Rata Shares from the prior fiscal year shall continue to remain in effect.

F. For the purposes of determining each Member Jurisdiction's share of Operating Costs in subsection B, the number of radios shall be based on the total number attributable to each Member Jurisdiction as of July 1, in the fiscal year prior to the fiscal year for which the Annual Budget is being adopted.

G. Hand held and mobile radios for use on the System shall be purchased and owned separately by each respective Member Jurisdiction, unless otherwise agreed to by the Parties.

Section 4.8. System Customers. With approval of the Board, the Council may contract with System Customers for the use of the System. System Customers shall pay a proportional share of the Board's annual Operating Costs, based on the number of radios the System Customer uses on the System as a percentage of the total number of radios on the System, or as may otherwise be required by the Board. Any amounts received from System Customers shall be used for the Project or System. Such amounts may be used to offset Member Jurisdiction's Pro Rata Shares or any other payment obligations or expenses under this Agreement. However, such amounts shall in no way relieve any Member Jurisdiction of its obligations under this Agreement.

Unless otherwise agreed to in writing by the Board, individual hand held and mobile radios shall be purchased directly by each System Customer and shall remain the property of the System Customer.

Section 4.9. Annual Budget. On or before November 1 of each year the Board shall adopt a budget to cover all anticipated Operating Costs, Capital Costs and Annual Deficit for the ensuing fiscal year ("Annual Budget"), and communicate to each Member Jurisdiction the respective Pro Rata Shares due for the ensuing fiscal year. The Board shall itemize each Member Jurisdiction's Pro Rata Share by category of costs (Capital, Operating, Annual Deficit). Each Member Jurisdiction shall include its Pro Rata Share, as adopted in the Annual Budget and communicated by the Board, in its proposed annual budget for consideration by its governing body.

Section 4.10. Member Jurisdiction Payments. Each Member Jurisdiction agrees to pay its Pro Rata Share to the Council by July 30 each year.

Section 4.11. Reserve Accounts. Member Jurisdictions agree to appropriate monies into and maintain reserve accounts as may be required by the terms of any financing for the Project, to cover a certain percentage of Capital Costs, Operating Costs or other Project expenses as determined by the Board to be appropriate.

Section 4.12. City of Bedford; Reversion to Town Status. As of the execution of this Agreement, the City of Bedford has plans to revert to town status. Such reversion shall not affect the rights and obligations hereunder or any other agreement related to the Project or the System to which the City of Bedford is a party as of the date such Reversion becomes effective, unless agreed to in writing by the Parties. As long the Pro Rata Share attributable to the County and Town of Bedford combined continues to be paid in full (by either or both of such county and town), then the Parties agree to amend this Agreement in the event of the City of Bedford reverting to town status in order for this Agreement to be consistent with relevant terms and conditions of any reversion agreement(s) between Bedford County and City/Town of Bedford.

Section 4.13. Lease of tower space or radio spectrum. The Board, by majority vote and with the approval of the member of the Board from the jurisdiction where the tower is located, may lease space for the collocation of equipment on any System tower by entities that are not Member Jurisdictions or System Customers. Additionally, the Board may lease available radio spectrum to entities that are not Member Jurisdictions or System Customers. The Council agrees that in the event the System tower or System radio spectrum is owned by the Council, that it shall enter into any lease or co-location agreement approved by the Board pursuant to this section.

Section 4.14. Distribution of revenues from tower co-location or spectrum leases. Any revenues generated from the lease of System tower space or radio frequency spectrum shall either be used directly for the Project and System, or the Board may vote to divide such revenues according to the respective shares of Capital Costs set forth in Section 4.7.A and distribute them accordingly to the Member Jurisdictions. If there is outstanding indebtedness attributable to the Bonds at the time of the distribution, then such distribution shall be subject to the terms and conditions of the Bonds and any security therefor.

Section 4.15. Distribution of Operating Revenues. Operating revenues shall be used to pay Operating Costs, and to the extent appropriate be used as a credit towards Member Jurisdictions' respective Pro Rata Shares, once apportioned, or any other payment obligations or expenses under this Agreement. However, such amounts shall in no way relieve any Member Jurisdiction of its obligations under this Agreement.

ARTICLE V
REGION 2000 LOCAL GOVERNMENT COUNCIL RIGHTS AND DUTIES; OWNERSHIP OF SYSTEM

Section 5.1. Fiscal Responsibilities. The Council shall be the fiscal agent with regard to the Project and the System unless the Member Jurisdictions exercise their authority under Section 5.6. The Council shall deposit all Operating Revenues to a separate account or accounts established solely for the purposes of paying for all costs associated with the Project and the System. The Council shall not be liable or responsible for costs or other payments that are the responsibility of the Member Jurisdictions. The Executive Director is authorized to act on behalf of the Council in order to fulfill the responsibilities set out in this section. Pursuant to the Council's responsibilities as fiscal agent under this Agreement, the Council shall:

(i) Procure, upon approval by the Board, all contracts with vendors, service providers, contractors, engineers, attorneys, governmental agencies or other entities related to the Project and the System;

(ii) Provide professional, technical and clerical support to the Board on all matters related to planning, operations, monitoring, oversight, and evaluation of the Radio Board programs, activities and services as directed by the Board;

(iii) Assist the Board in developing an operations budget for the Board's approval and submission to the Member Jurisdictions;

(iv) Receive, account for and manage all of the Board's finances, including but not limited to accounts payables and receivables, audits and bond-related finances;

(v) Provide grant writing and management services;

(vi) Provide administrative staffing services for Board meetings; and

(vii) Perform such other duties as may be assigned by the Board from time to time.

Section 5.2. Ownership and Disposal of System and Project Facilities. Upon the Effective Date, the Member Jurisdictions shall transfer to the Council title to all 1996 Assets. The Council shall be the owner of and hold title to the System Facilities purchased with the Bonds, including the 1996 Assets, until such time as the Bonds are fully paid. Upon repayment of the Bonds, ownership of the System Facilities purchased with the Bonds and the 1996 Assets shall transfer to the Member Jurisdictions, who shall own jointly own such assets in proportion to the respective shares of Capital Costs set forth in Section 4.7. However, the Board, by unanimous vote, may agree for the Council to continue holding title to such assets.

Except as otherwise provided in the event of dissolution under Section 2.3, unanimous approval of the Board shall be required for the Council to sell, transfer or otherwise dispose of any of the System or Facilities to which it holds title. Upon such sale or disposal, any income derived therefrom shall be distributed to the Member Jurisdictions in proportion to the respective shares of Capital Costs set forth in Section 4.7.

Section 5.3. Continued access to towers. In the event that a Member Jurisdiction owns the land on which a System tower is located, or owns the land and the tower, then such Member Jurisdiction shall allow access over and across such property, at no cost, to the Board, the other Member Jurisdictions, the Council and any employee, contractor or agent thereof for the purposes of accessing such tower in the course of operating and maintaining the System.

Section 5.4. Ownership of Portable and Mobile Radios. Individual hand held and mobile radios shall be purchased directly from the vendor by each Member Jurisdiction and shall remain the property of the purchasing locality. Notwithstanding the above, the parties may agree to finance such equipment through Council-issued debt. In that case, such hand held and mobile radios shall be owned by the Council until such time as the debt is paid in full at which point such ownership of such equipment shall transfer to the appropriate Member Jurisdiction. Any Member Jurisdiction financing radios through the Council shall be solely responsible to the Council for the repayment of all associated debt and other expenses.

Section 5.5. Decisions Requiring Consent of Council.

(a) Any amendment of this Agreement.

(b) Any issuance of Bonds by the Council in relation to the Project, if the funds to cover such obligation have not previously been appropriated to the Board as a part of its Annual Budget or otherwise.

Section 5.6. Discharge of Fiscal Agent. The Member Jurisdictions, by majority vote, may discharge the Council as fiscal agent at any time during the initial term of this Agreement or during any extended term. Such discharge shall not affect Council's rights and obligations as the issuer of the Bonds.

ARTICLE VI
PROJECT FINANCING

Section 6.1. Project Financing.

(a) General. As soon as practicable after the retirement of the 1996 Bonds, the Council shall proceed to secure financing for the costs of the Project and its acquisition, construction and equipping. The Council shall, with all reasonable dispatch after Project costs are established, issue and sell the Bonds pursuant to the authority granted to it under the Act in an amount, together with other available funds, which will be sufficient to pay the costs of the Project, including the repayment of any interim financing; provided, however, that nothing contained in this Agreement shall require the Council to issue the Bonds other than upon terms deemed reasonable by it and in accordance with the terms of this Agreement, or other agreement relating to the Bonds. Any issuance of Bonds for the Project shall require unanimous approval by the Board in addition to approval of the Council.

(b) Moral Obligation. Each Member Jurisdiction hereby agrees that it has a moral, but non-binding, obligation to pay the Debt Service Payments in the event that the Council fails to make such payments. As such, each Member Jurisdiction agrees to direct its chief administrative officer to include in each proposed annual general fund budget submitted to the governing bodies for the Member Jurisdictions an amount equal to its share of the Debt Service Payments, as a component of Capital Costs, determined pursuant to section 4.7. Each Member Jurisdiction agrees to consider whether to include such amounts in its final general fund budget for the ensuing fiscal year.

Further, each Member Jurisdiction agrees to direct their chief administrative officer to submit a budget amendment or other appropriate ordinance or resolution to the respective governing body whenever the chief administrative officer receives a notice from the Council that there is a Shortfall as described in paragraph (c) below. Each Member Jurisdiction agrees to consider whether to make an appropriation to the Council in the amount requested each time that such a budget amendment or other appropriate ordinance or resolution is presented to it.

The obligation of the respective governing bodies to consider making any such appropriations constitutes neither a debt of the Member Jurisdictions within the meaning of any constitutional or statutory limitation nor a lien or charge upon any property or funds of such Member Jurisdiction. The governing body for each Member Jurisdiction has full discretion as to whether it wishes to make any such appropriation.

(c) Notification of Shortfall to Member Jurisdictions. Until the Bonds have been paid in full, the Council will ascertain whether it has or is likely to have on hand Operating Revenues sufficient to pay the principal of and interest due on the Bonds during the next succeeding Fiscal Year. If sixty (60) days prior to a Debt Service Payment being due, the Council determines that it does not and will not have on hand an amount sufficient to make such payment, then it will immediately notify the chief administrative officer of each Member Jurisdiction of the amount of any expected shortfall ("Shortfall") and request each to submit to their respective governing bodies immediately a budget amendment or other appropriate ordinance or resolution described in paragraph (b) above in an amount equal to the amount of the deficiency. When ascertaining whether it has or will have a sufficient amount on hand, the Council may take into account moneys in the Board accounts created pursuant to this Agreement, to extent such moneys have not been and need not be allocated to other expenditures on the Project or System.

(d) Payment upon Appropriation. If any Member Jurisdiction agrees to make a payment under this section, then it shall make such payment directly to the Council. The Council agrees that once it has received a payment from the Member Jurisdiction pursuant to its Moral Obligation Agreement, it shall immediately transfer the amount of such payment to the holder or holders of the Bonds, as appropriate, to be applied to the payment of the principal of and interest on the Bonds.

(e) Council not bond issuer after debt retired. Notwithstanding any other provision herein to the contrary, once the Bonds are paid in full, the Council's rights and duties as the Bond issuer shall terminate and shall be assumed by the Member Jurisdictions.

Section 6.2. Reimbursement Resolution. Member Jurisdictions and Council agree that any funds advanced by Member Jurisdictions for Capital Expenditures, Operating Costs or other costs related to the Project in advance of the Bonds being issued may be reimbursed out of the proceeds of the Bonds to such Member Jurisdiction. The Council may execute a Resolution or other agreement required to effectuate this provision.

ARTICLE VII
SYSTEM USE AND OPERATION

Section 7.1. Use of Emergency Communications System by Member Jurisdictions. Member Jurisdictions shall have exclusive rights to use the System; except that other entities, including System Customers shall be entitled to use the System pursuant to terms and conditions as may be established by the Board. Each Member Jurisdiction shall use the System as its primary emergency communications network as long as this Agreement is in effect, and as long as there are any outstanding Bonds on the Project. Failure to utilize the System as its primary emergency communications network shall not relieve any Member Jurisdiction of its duties and obligations under this Agreement unless agreed to in writing by all Parties. Notwithstanding the above, Member Jurisdictions may utilize other emergency communications network in emergency situations or as otherwise required to meet the public safety needs of such Member Jurisdiction, as long as the Member Jurisdiction continues to use the System as its primary emergency communications network.

Section 7.2. Reserved.

Section 7.3. Liability of Council. The financial obligations of the Council with regard to the Project and the System are not general obligations of the Council but are limited obligations payable solely from payments from the Member Jurisdictions. No director, officer, employee or agent of the Council shall be personally liable for the Council's obligations hereunder. The Council shall not be liable for the actions of any Member Jurisdiction.

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.1. Default by Council. Notwithstanding the provisions of Section 7.3 or any other provisions to the contrary, the occurrence of any one or more of the following events will constitute an "Event of Default" by the Council ("Council Default") and the Member Jurisdictions may pursue any appropriate legal or equitable action against the Council as a result of any such default that is not cured as provided below:

(a) Failure of the Council to pay principal or interest when due on any Bonds or other temporary or permanent financing for the Project issued or obtained by the Council pursuant to this Agreement when all required monies for such payment have been paid to the Council by the Member Jurisdictions;

(b) The Council is for any reason rendered incapable of performing any of its material obligations under this Agreement;

(c) The Council makes an assignment of all or a portion of its obligations under this Agreement without the prior consent of the Member Jurisdictions;

(d) The Council defaults on any of its material obligations under any agreement pursuant to which any Bonds, or other temporary or permanent financing for the Project are issued or obtained by the Council pursuant to this Agreement and such default is not cured within the applicable cure period;

(e) Any proceeding is instituted, with the consent or acquiescence of the Council, for the purpose of effecting a compromise between the Council and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the funds of the Council; or

(f) The Council defaults in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in this Agreement, and the default continues for 30 days after written notice specifying the default and requiring it to be remedied has been given to the Council by any Member Jurisdiction, unless the curing of such default is being diligently pursued, but in no event more than 60 days following such notice of default.

Section 8.2. Default by Member Jurisdictions. The occurrence of any one or more of the following events will constitute an "Event of Default" by any Member Jurisdiction ("Member Jurisdiction Default"):

(a) Failure of any Member Jurisdiction to pay its Pro Rata Share when due under this Agreement;

(b) Any Member Jurisdiction is for any reason rendered incapable of performing any of its material obligations under this Agreement;

(c) Any proceeding is instituted, with the consent or acquiescence of any Member Jurisdiction, for the purpose of effecting a compromise between such Member Jurisdiction and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the funds of such Member Jurisdiction; or

(d) Any Member Jurisdiction defaults in the due and punctual performance of any of the other covenants, conditions, agreements, and provisions contained in this Agreement, and the default continues for 30 days after written notice specifying the default and requiring it to be remedied has been given to such Member Jurisdiction by another Member Jurisdiction or by the Council, unless the curing of such default is being diligently pursued, but in no event more than 60 days following such notice of default.

Any Member Jurisdiction in default of this Agreement shall not be entitled to vote on the Board. Moreover, upon a majority vote of the non-defaulting members of the Board, access to and use of the System by the defaulting Member Jurisdiction may be limited or discontinued until such default is cured.

Section 8.3. Remedies of Member Jurisdictions. Upon the occurrence of any default, any party, after giving notice of such default to all parties, may bring suit by mandamus or other appropriate proceeding to require the defaulting party to perform its duties under the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 8.4. Remedies of Council. Upon the occurrence of a Member Jurisdiction Default, the Council, after giving notice of such Member Jurisdiction Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Member Jurisdiction to perform its duties under the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 8.5. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the parties is intended to be exclusive of any other remedy, and each remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute.

ARTICLE IX
MISCELLANEOUS

Section 9.1. Entire Agreement; Modification. This Agreement represents the entire agreement between the Member Jurisdictions and the Council and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall govern the relations between the Council and the Board, and shall supersede all other representations or agreements, either written or oral, unless otherwise agreed to by the Parties or required by law.

Section 9.2. 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 Parties' express written consent.

Section 9.3. Partnership. Nothing herein shall be construed to constitute a joint venture between the Council and any Member Jurisdiction or the formation of a partnership.

Section 9.4. Severability. 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 9.5. 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 Council:	Region 2000 Local Government Council Executive Director 828 Main Street – 12th Floor Lynchburg, VA 24504
If to City of Bedford:	Bedford, Virginia City Manager P.O. Box 807 Bedford, VA 24523
If to City of Lynchburg:	Lynchburg, Virginia City Manager 900 Church Street Lynchburg, VA 24504
If to County of Amherst:	Amherst County, Virginia County Administrator PO Box 390 Amherst, VA 24521
If to County of Bedford:	Bedford County, Virginia County Administrator 122 East Main Street, Suite 202 Bedford VA 24523

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.

Section 9.6. Representations as to Ability to Perform. The Council is not a party to any legal, administrative, arbitration or other proceeding or controversy pending, or, to the best of the Council's knowledge threatened, which would materially adversely affect the Council'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.

Section 9.7. 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.

Section 9.8. 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.

Section 9.9. Tax Exemption Covenant.

(a) General. Each Member Jurisdiction understands and acknowledges that the Council may issue Bonds or other obligations the interest on which will be treated as tax exempt under Federal income laws and regulations, including but not limited to the Internal Revenue Code of 1986, as amended (the "Tax Code"). In reliance on the financing provided by the issuance of such Bonds, each Member Jurisdiction agrees that it will not directly or indirectly use or permit the use of any of the proceeds received pursuant to the Bonds, in such manner as would, or enter into, or allow any other person or entity to enter into, any arrangement, formal or informal, that would, or take or omit to take any other action that would, cause interest on the Bonds to be includable in gross income for federal income tax purposes or to become a specific item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations**.**

(b) Use of Proceeds. Neither the Council nor any Member Jurisdiction shall knowingly (a) take any action, or approve the making of any investment or use of the proceeds of the Bonds (including failure to spend the same with due diligence) or taking any other action, which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or (b) barring unforeseen circumstances, approve the use of the proceeds from the sale of the Bonds otherwise than in accordance with the Authority's "non-arbitrage" certificate given immediately prior to the issuance of such Bonds.

(c) Preservation of Tax Exempt Status of Interest, Representation, Warranties and Covenants. The Council and each of the Member Jurisdictions agree that neither of them shall allow the use by or lease or sublease of the Project, the Facilities or the System, or any portion thereof, to any entity other than the Commonwealth of Virginia, a city, a county or a town, or any agency or political subdivision thereof, without an opinion of Bond Counsel that such sublease or other availability would not adversely affect the status of the interest on the Bonds for federal income tax purposes. The Council and each Member Jurisdiction covenant that the Project, the Facilities and the System shall not be used in a manner that would permit the proceeds of the Bonds to be used in any manner that would result in (a) 10% or more of such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Tax Code, provided that no more than 5% of such proceeds may be used in a trade or business unrelated to the Council's or any Member Jurisdiction's use of the Project, Facilities or System, (b) 5% or more of such proceeds being used with respect to any "output facility" (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Tax Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than governmental unit, as provided in Section 141(c) of the Tax Code; provided, however, that if the Council receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest on the Bonds from being includable in the gross income for Federal income tax purposes of the registered owner thereof under existing law, the Council and the Member Jurisdictions need not comply with such covenants.

(d) Financial Records and Statements. The Council and the Member Jurisdictions shall maintain proper books of record and account in which proper entries shall be made in accordance with generally accepted accounting principles, consistently applied, of all its business and affairs. The Council and each of the Member Jurisdictions shall have an annual audit of their respective financial conditions made by an independent certified public accountant within 180 days after the end of each Fiscal Year and shall furnish to Council, in an electronic format, copies of the report of such accountant immediately after such report is submitted to each Member Jurisdiction. Such report shall include statements in reasonable detail, certified by such accountant, reflecting the Member Jurisdiction's financial position as of the end of such Fiscal Year and the result of its operations and changes in the financial position of such Member Jurisdiction's funds for the Fiscal Year.

(e) Continuing Disclosure. Each Member Jurisdiction agrees that so long as any Bonds are outstanding, if required under any Indenture or other agreement related to the issuance of the Bonds, to provide financial and event information to the Council for submission to a national municipal securities information repository (NMSIR) which is required to be disclosed on a continuing basis, within the time frames required for such disclosure under Rule 15c2-12, as it may be amended from time to time, under the Securities Exchange Act of 1934, as amended and any similar rules of the Securities and Exchange Commission relating to disclosure requirements in the offering and sale of municipal securities, all as in effect from time or that may be promulgated by the Municipal Securities Rulemaking Board.

Section 9.10. Litigation. Any litigation involving this Agreement or the operation of the Council or the Member Jurisdictions shall be brought only in the Circuit Court or District Court for one of the Member Jurisdictions.

Section 9.11. Representations and Warranties. Each of the parties hereto makes the following representations and warranties, all of which shall continue for the duration of this Agreement:

a) It has the full power and authority to enter into this Agreement and to consummate and carry out the transaction contemplated herein. It has taken or will take all necessary action required by this Agreement and other applicable agreements and laws in connection therewith.

b) It has duly authorized the execution and delivery of this Agreement.

Section 9.12. Headings. The headings of sections throughout this Agreement are intended solely to facilitate reading. Such captions shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be signed as dated below.

Amherst County, Virginia

By:_________________________________
Chair, Board of Supervisors

Bedford County, Virginia

By: _________________________________
Chairman, Board of Supervisors

City of Bedford, Virginia

By: _________________________________
Mayor

City of Lynchburg, Virginia

By: _________________________________
City Manager

Region 2000 Local Government Council

By: _________________________________
Executive Director