// A regular meeting of the Council of the City of Lynchburg was held on the 11th day of November, 2008, at 7:30 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. Council Member Garrett gave the Invocation, followed by the Pledge of Allegiance led by Cub Scout Pack 29 – Den #3. The following Members were present:

Present:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Absent:	Johnson	1

// Mayor Foster announced that Council Member Johnson was representing the City at the National League of Cities conference in Orlando.

// Copies of the minutes of the October 28 (two meetings), 2008 meetings, having been previously furnished Council, reading was dispensed with. Mayor Foster mentioned a correction on page 204 of the minutes. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote approved the minutes as corrected:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Police – General, Resolution #R-08-129 amending the FY 2009 City/Federal/State Aid Fund budget and appropriating $27,500, fully reimbursable, to conduct DUI and occupant restraint enforcement activities, laid over from the October 28, 2008 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted the Resolution:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Police – General, Resolution #R-08-130 amending the FY 2009 City/Federal State Aid Fund budget and appropriating $23,100, fully reimbursable, for accident investigation training and to purchase equipment, laid over from the October 28, 2008 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted the Resolution:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Community Planning - General, City Council Report # 4 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted Resolution #R-08-132, as presented, approving the waiver of a demolition lien in the amount of $5,322.83 for 1415 Fifth Street:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Commonwealth Attorney, City Council Report #5 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-08-133, as presented, amending the FY 2009 City/Federal/State Aid Fund budget and appropriating $8,025, fully reimbursable, to provide outreach materials and educational programming to the Central Virginia community:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - Zoning, a second public hearing was held regarding the petition of Systematic Concepts, LLC for a Conditional Use Permit (CUP) at 2016, 2020 and 2028 Mimosa Drive to allow the construction of a planned unit development containing eight (8) single-family detached and eighteen (18) single-family attached units in an R-1, Low Density, Single-Family Residential District. City Planner Tom Martin explained that following a public hearing on January 8, 2008, City Council indefinitely postponed action on the petition to allow the developers an opportunity to address environmental concerns and density issues. Mr. Martin stated that the petitioner submitted a revised concept plan on September 17 that would reduce the proposed density of the project to eight (8) single-family detached homes and eighteen (18) single-family attached homes and that the revised plan also provides for a reduced environmental impact by eliminating one (1) road and homes that were proposed on the steepest part of the site. Mr. Martin went on to say that City Council at its September 23 meeting requested that staff schedule a new public hearing for the petition for November 11. Mr. Trent Warner, representing the petitioner, provided a brief overview regarding the changes from the original petition and stated that the petitioner has reduced the project by 15%. Two adjoining property owners spoke in support of the project, expressing appreciation for the demolition of the unsightly radio station building that is located on the property. Ms. Shannon Brennan, representing many of the neighbors who are opposed to the proposed development, stated that Council Members were aware of the concerns of the neighborhood, i.e., traffic, density, environmental impact, etc. A large number of individuals stood in opposition to the proposed development. Ms. Brennan asked Council consider an earlier suggestion by Dr. Garrett that the developers donate a portion of the property to resource conservation and reduce the number of buildings to no more than twenty. Five other individuals spoke in opposition to the proposed development citing concerns regarding density, the increase in traffic on an already narrow street, the development would not be in character with the existing neighborhood, and that it would have a negative impact on the adjoining neighborhood. Mr. Peter Ramsey also distributed a traffic study prepared by City staff during the summer showing the amount of traffic on Mimosa Drive. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Gillette stated that Council Member Johnson wanted to be present during the discussion regarding this item, and made a motion, seconded by Vice Mayor Dodson, that this item be postponed until the November 25 work session.

Some Council Members recognized the developers' willingness to reduce the original project by 15% and commented regarding the success of other such developments, i.e., Legacy Oaks, while other Council Members still questioned whether the road could handle the increased traffic, the impact on the environment, and the potential impact of additional students on the Bedford Hills Elementary School. Council Member Gillette called for a point of order and questioned whether the debate should be focused on the motion on the floor or on the petition. City Attorney Walter Erwin agreed that the debate has gone beyond the motion on the floor. Mayor Foster stated that she also favored taking this item to a work session and asked that staff update the traffic study presented at tonight's meeting to reflect the traffic generated by the Bedford Hills Elementary School. City Manager Payne stated that in preparation for the work session discussion, staff would provide City Council with the following additional information: (1) a clarification on the differences between a Planned Unit Development and a rezoning, (2) the capacity of Bedford Hills Elementary School based on the potential for additional students, (3) an updated traffic count (that includes school traffic), and (4) a means to insure the protection of steep slopes on the property. The vote was called on the motion, and Council by the following recorded vote agreed to postpone the petition of Systematic Concepts, LLC for a Conditional Use Permit (CUP) at 2016, 2020 and 2028 Mimosa Drive to allow the construction of a planned unit development until the October 25 work session:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #7 outlining the petition of the Church of the Covenant for a conditional use permit to allow the construction of a 1,250 square foot sanctuary addition to an existing church in an R-1, Low-Medium Density, Single-Family Residential District at 4415 Boonsboro Road. City Planner Tom Martin provided a brief summary regarding the petition. Rev. David Edwards, Minister of Church of the Covenant, outlined the request and asked for approval. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Garrett, seconded by Council Member Gillette, Council by the following recorded vote adopted Resolution #R-08-134, as presented, granting the Conditional Use Permit:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - General, a public hearing was held regarding City Council Report #8 regarding adopting an Ordinance to amend Chapter 12, Natural Systems of the City of Lynchburg Comprehensive Plan 2002-2020, to reflect the Natural Resources Advisory Committee's recommended updates to the text, goals and objectives. City Planner Tom Martin introduced Dr. Karin Warren, Chair of the Natural Resources Advisory Committee, who provided a brief summary regarding the request. Ms. Laura-Gray Street, President of the Greater Lynchburg Environmental Network (GLEN), stated that although GLEN supports the proposed changes to the ordinance, GLEN is requesting that the ordinance be returned to the Planning Commission to be further updated to incorporate the best available information and initiatives regarding Lynchburg's natural resources, i.e., the City's participation in the James River Association's 2006 watershed-wide assessment of local development codes and ordinances, the Sustainable City Initiative adopted by City Council on August 8, 2008, the applicable findings of the City's Green Infrastructure Project, and the Region 2000 water supply plan. There was no one else present who wished to speak to this item, and the public hearing was closed. City Manager Kimball Payne stated that he would also like to recommend that the document be sent back to the Planning Commission for further review for the following reasons: 1) the document has not been reviewed by the City's Utilities Department which has subsequently suggested some language revisions, 2) anticipated comments from GLEN, and 3) inclusion in the document regarding the Sustainable City Initiative. Council Member Helgeson expressed a concern that some of the "information" statements contained in the document could not be quantified and suggested that the document should only contain factual information. Council Member Gillette stated that he also would like to see the document reflect the Sustainable City Initiative. Council Member Perrow made a motion, seconded by Council Member Helgeson, to postpone indefinitely the request to adopt an Ordinance to amend Chapter 12, Natural Systems of the City of Lynchburg Comprehensive Plan 2002-2020, to reflect the Natural Resources Advisory Committee's recommended updates to the text, goals and objectives. In response to questioning, Council agreed that staff could determine when to bring this item back to Council. The vote was called on the motion, and Council by the following recorded vote agreed to postpone indefinitely the request to adopt an Ordinance to amend Chapter 12, Natural Systems of the City of Lynchburg Comprehensive Plan 2002-2020, to reflect the Natural Resources Advisory Committee's recommended updates to the text, goals and objectives:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #9 regarding an Ordinance to amend the City's Zoning Ordinance relating to large scale retail establishments. City Planner Tom Martin presented a power point presentation outlining the proposed changes to the City's zoning ordinance to address large scale retail establishments. Mr. Martin stated that the key elements of the proposed ordinance are 1) it applies to retail establishments with cumulative gross floor area of 50,000 square feet, 2) does not apply to renovation, rehabilitation or redevelopment of existing retail establishments, 3) provides incentive to expand existing retail establishments by increasing the threshold to 75,000 square feet, 4) sets mandatory requirements and voluntary provisions, 5) provides for administrative review if all mandatory requirements and 75% of voluntary provisions are met, and 6) requires conditional use permit if developer does not wish to fulfill voluntary provisions. Mr. Martin provided a list of the mandatory and voluntary requirements of the ordinance. Dr. Tom Shahady spoke in support of the proposed changes to the ordinance, but expressed a little concern that the environmental protection and economic development balance might be hard to achieve if the ordinance is too complex. Mr. Gary Case, representing himself, Norman Moon, Rick Read and George Lupton stated that with the additional regulations imposed by the City's new sign and landscape ordinances, they did not see the need for these additional regulations. Mr. Case explained that they were opposed to the ordinance in its current form, expressing the following concerns: 1) 50,000 square feet for new development is too small and if City Council is considering the ordinance, then 100,000 square feet should be the definition for a big box; 2) the ordinance should not apply to renovation or expansion of existing developments, i.e., The Plaza or the Fort Hill Shopping Center,; 3) that the mandatory traffic study should not be required before presenting a project to the Planning Department, that it should be required later on in the process; 4) in addition to what the new development may create, the developer would have to pay for all of the traffic study recommended improvements when the City should be funding some of those improvements; 5) many of the improvements are cost prohibitive and that the City should contribute since the City will be receiving the real estate, water/sewer and property taxes from the development; 6) mandatory concealment of flat roofs and rooftop equipment from street view is not feasible due to the City's topography, citing the new Home Depot store as an example; 7) voluntary provisions in lieu of a public hearing appear to be more mandatory since, of the 20 possible points, 3 are tied to LEED certification, and of the 17 remaining, you have to get 15 to qualify; 8) connectivity requirements is not always practical and doable due to topographical issues and the impact on adjoining properties, i.e., liability exposure due to traffic, and that requirement should not be mandatory; and 9) total compliance of LEED certification is a very expensive. Mr. Case stated that one of the goals in the City's Comprehensive Plan is to keep the City as a retail HUB and that we need to be careful not to over regulate ourselves and discourage development in the City, and mentioned that Campbell and Bedford Counties do not have big box ordinances. Mr. Case asked City Council to take time to study the ordinance. Mr. Norman Moon expressed concern regarding the complexity of the document, and stated that these additional regulations will be adding upfront costs to the site plan and engineering costs for a project. There was no one else present who wished to speak to this item, and the public hearing was closed. Vice Mayor Dodson stated that Council Member Johnson wanted to be present during the discussion regarding this item, and made a motion, seconded by Council Member Gillette, that this item be postponed until the November 25 work session. In response to Council Member Perrow's request, Gary Case stated that he has been in the commercial real estate business for 34 years and has done a lot of development in the City, Rick Reed stated that he has been in the commercial real estate business for 32 years and has done a lot of projects in the City, including shopping centers, and Norman Moon stated that he has been in the commercial real estate business for 22 years and has done a lot of projects, and is currently working on the Walmart project on Old Forest Road. Council Members Perrow and Helgeson stated that they were philosophically opposed to a big box ordinance. Council Member Gillette stated that he is philosophically in support of the ordinance and mentioned that the idea for the ordinance came about due to the Walmart development on Old Forest Road. Mayor Foster stated that the ordinance is complex and that she would like more time to review. The vote was called on the motion, and Council by the following recorded vote agreed to postpone this item until the November 25 work session:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Economic Development - General, a public hearing was held regarding City Council Report #10 regarding a proposal to amend the boundaries of Enterprise Zone #2 (Downtown). Economic Development Director Marjette Glass stated that Lynchburg has two enterprise zones identified by the state as # 2 and #46 and referred to locally as “Downtown” and “Lynchpin”, respectively. Ms. Glass explained that both zones were established by the state and provide incentives for businesses to locate, or to expand, thus stimulating economic development within the designated areas, and that although the benefits of enterprise zone designation have changed over the years, two primary benefits remain -- job creation and capital improvement grants. Ms. Glass went on to say that Enterprise Zone #2 has existed since 1984 and its current boundaries encompass primarily downtown, with an extension to the Carroll Avenue industrial area, and that the boundaries are eligible for amendment upon approval of City Council and the Virginia Department of Housing and Community Development. Ms. Glass noted that under the state’s regulations the zone size is limited to 7% of the locality’s total land area and as much as 15% of an existing zone may be deleted (with an equal area then added) in a given year. Ms. Glass explained that for sometime there has been an interest in amending the boundaries of Enterprise Zone #2 (Downtown) to take in more of the midtown area and, in particular, the Plaza and properties along Oakley Avenue, and that because of the limit on the size of the enterprise zone, taking in new areas requires that the zone designation be lifted from other areas. Ms. Glass stated that the areas proposed for deletion from the zone are primarily residential where zone designation provides no benefit, and that in order to accomplish this amendment, City Council is required to conduct a public hearing and to consider adopting a resolution in support of the proposed revision to the zone boundaries. Ms. Glass explained that property owners in the areas to be deleted by the proposed amendment have also been notified, and that enterprise zone designation has no impact on land use regulation. Mr. Gary Case spoke in support of the request and commended the City for having such a program. Mr. Mike Bedsworth spoke in support of the request and commented that the businesses currently on Cabell Street, Daniels Hill and Rivermont needed to remain in the Enterprise Zone. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Garrett stated that since his office building is located in the area to be encompassed, he will abstain from discussion and voting on this item. Council Member Helgeson inquired of City Attorney Walter Erwin regarding whether he should abstain since his office building is also located in this area. City Attorney Erwin stated that Council Member Helgeson could participate since the requested action impacts a group of individuals and that he is only one member of a group that would be affected. Mr. Erwin went on to say that he would need to make a statement that he can participate in a fair and impartial manner in order to satisfy the requirements of the Conflicts of Interests Act. Council Member Helgeson stated that he was not aware that his office facility was in the enterprise zone and that he believes that he can participate in this matter in a fair and impartial manner. Council Member Perrow stated that his family offices are in this area, but that he can participate in this matter in a fair and impartial manner. In response to questioning, Ms. Glass stated that only businesses located in an Enterprise Zone can take advantage of the program. On motion of Council Member Perrow, seconded by Vice Mayor Dodson, Council by the following recorded vote adopted Resolution #R-08-135, as presented, amending the boundaries of Enterprise Zone #2 (Downtown):

Ayes: Dodson, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson	1
Abstention: Garrett	1

// In the matter of Community Planning - General, a public hearing was held regarding City Council Report #11 to receive comments and questions regarding the draft Consolidated Annual Performance and Evaluation Report (CAPER) for FY 2007-2008. Community Planning Director Charlene Montford provided a brief summary regarding the request. There was no one else present who wished to speak to this item, and the public hearing was closed. Mayor Foster announced that no action by City Council is required at this time.

// In the matter of Community Planning - General, City Council Report # 12 regarding amending the Citizen Participation Plan for the Community Development Block Grant and HOME Programs was considered. Community Planning Director Charlene Montford stated that at the October 28 public hearing several revisions were suggested, and that the Plan has been updated to incorporate those revisions. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted Resolution #R-08-136, as presented, amending the Citizen Participation Plan for the Community Development Block Grant and HOME Programs:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Economic Development – General, City Council Report #13 regarding appropriating $500,000, with resources from the Commonwealth of Virginia’s Governor’s Opportunity Fund, to assist with an expansion at R. R. Donnelley and Sons Company was considered. Council Member Helgeson, Chair of the Finance Committee, stated that the request was considered by the Finance Committee and made a motion to approve the request. The motion did not require a second, and Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-08-137, as presented, amending the FY 2009 City/Federal/State Aid Fund budget and appropriating $500,000, fully reimbursable, to assist with an expansion at R. R. Donnelley and Sons Company :

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Parks and Recreation - General, City Council Report #14 regarding appropriating $22,000 to purchase replacement seats and hinge assemblies at the City Stadium was considered. Council Member Helgeson, Chair of the Finance Committee, stated that the request was considered by the Finance Committee and made a motion to approve the request. The motion did not require a second, and Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-08-138, as presented, amending the FY 2009 Stadium Fund budget and appropriating $22,000 to purchase replacement seats and hinge assemblies:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// On motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote elected to hold a closed meeting to consider appointments to Council-appointed Boards and Commissions, i.e., Code Enforcement Task Force, pursuant to Section 2.2-3711(A) (1) of the Code of Virginia, 1950, as amended:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

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

// Council Member Perrow 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 Gillette, and Council by the following recorded vote adopted the motion:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Appointments, and on nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Vice Mayor Bert Dodson to serve on the Code Enforcement Task Force for an indefinite term:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// The meeting was adjourned at 10:13 P.M

Clerk of Council

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **November 25, 2008**		AGENDA ITEM NO.: 5
CONSENT: **X**	REGULAR:	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Personal Property Tax Refund for Young Moving & Storage, Inc.**

RECOMMENDATION:
Adopt a resolution to amend the FY 2009 General Fund budget and appropriate $23,178 with resources from the General Fund Reserve for Contingencies to refund an overpayment by Young Moving & Storage, Inc. in personal property taxes for calendar years 2005, 2006, and 2007.

SUMMARY:
Young Moving & Storage, Inc. is an interstate common carrier of goods; therefore, the vehicles engaged in interstate commerce are afforded an apportioned assessment, the machinery and tools tax rate, and are not subject to the local license fee. In order to qualify for common carrier status the carrier is required to remit certifying information. Young Moving & Storage, Inc. remitted the required documents for the current and past three years on October 10, 2008. The total amount of the refund is $23,178 of which $19,158 is tax and $4,020 is interest.

PRIOR ACTION(S):
November 25, 2008, Finance Committee

FISCAL IMPACT:
A reduction of $23,178 from the General Fund Reserve for Contingencies. An annual loss of approximately $14,000 will occur as a result of this correction from FY 2009 forward.

CONTACT(S):
Mitchell W. Nuckles, Commissioner of the Revenue, 455-3871

ATTACHMENT(S):
Resolution
Statement of review and approval by the City Attorney

REVIEWED BY: lkp

RESOLUTION:
BE IT RESOLVED that the FY 2009 General Fund budget is amended and $23,178 is appropriated with resources from the General Fund Reserve for Contingencies to refund an overpayment by Young Moving & Storage, Inc. in personal property taxes for calendar years 2005, 2006, and 2007.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

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Approval:

As required by Section 58.1-3981 of the Code of Virginia, the proposed refund to Young Moving & Storage, Inc. for the overpayment of personal property taxes has been reviewed and approved by the City Attorney.

11/17/08
Date

Walter C. Erwin
City Attorney

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE**: November 25, 2008** AGENDA ITEM NO.: 6

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

ACTION: **X** INFORMATION**:**

ITEM TITLE**: Department of Homeland Security (DHS) Federal Emergency Management Agency's (FEMA) National Preparedness Directorate's FY 2008 Assistance to Firefighters Grant (AFG) request—Regional Training grant**

RECOMMENDATION:
Adopt a resolution to amend the FY 2009 City/Federal/State Aid Fund budget and appropriate $108,494 with resources of $86,796 from the Department of Homeland Security (DHS) Federal Emergency Management Agency's (FEMA) National Preparedness Directorate's FY 2008 Assistance to Firefighters Grant (AFG), $8,680 from the General Fund Reserve for Contingencies, and $13,018 from the Counties of Amherst and Campbell for a regional training initiative.

SUMMARY:
DHS/FEMA awards grant funding through the Assistance to Firefighters Grant (AFG) program with the primary goal of meeting the firefighting and emergency response needs of fire departments and other agencies by assisting with the purchase of critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect the public and emergency personnel from fire and related hazards.

The Lynchburg Fire Department has been notified of the grant award from the AFG FY 2008 program. This grant provides funding to support a regional training initiative involving the City of Lynchburg Fire Department and the Counties of Amherst and Campbell. This initiative will increase the knowledge, skills, and abilities of the firefighters and fire officers in the area. It will also assist the department in complying with numerous National Fire Protection Association standards. Thirty-three certificate courses will be taught at numerous facilities/fire stations in the area over a one year period. Topics include Firefighting, Driver Training, Technical Rescue, Fire Instructor, and Fire Officer. Each locality will receive at least two LCD projectors to support training delivery. The total request for the regional training initiative is $108,494; the Federal share is 80% ($86,796) with a required 20% local match of $21,698 (based on the total population of the region making the request).

A large percentage of classes will be offered in the City of Lynchburg and/or attended more frequently by City of Lynchburg firefighters; therefore, the department will contribute a larger portion of the match (40% of the $21,698 match; the Counties will pay 30% each).
Amherst County (30%) - $6,509
Campbell County (30%) - $6,509
City of Lynchburg (40%) - $8,680
Total Match 20% - $21,698

The Lynchburg Fire Department will serve as the host applicant. As the host applicant, the department is responsible for collecting the total 20% match. Currently, the City has received a letter of support from each aforementioned locality stating that as long as their budgets allow this expense, the initiative is supported. Representatives from Amherst County and Campbell County have verbally agreed to pay their match portion and to provide support to the host applicant in management of the initiative by providing training facilities, submitting course requests to the State, assisting with administrative tasks, etc.

PRIOR ACTION(S):
November 25, 2008, Finance Committee
April 1, 2008, Finance Committee

FISCAL IMPACT:
The local match requires a one-time appropriation of $8,680 from the General Fund Reserve for Contingencies.

CONTACT(S):
Fire Chief S. Brad Ferguson, 455-6340
Ellen Davidson-Martin, Fire Administrative Manager, 455-6368

ATTACHMENT(S):
Resolution

REVIEWED BY: lkp

RESOLUTION:
BE IT RESOLVED That the FY 2009 City/Federal/State Aid Fund budget is amended and $108,494 is appropriated with resources of $86,796 from the Department of Homeland Security (DHS) Federal Emergency Management Agency's (FEMA) National Preparedness Directorate's FY 2008 Assistance to Firefighters Grant (AFG), $8,680 from the General Fund Reserve for Contingencies, and $13,018 from the Counties of Amherst and Campbell for a regional training initiative.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

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LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **November 25, 2008**		AGENDA ITEM NO.: 7
CONSENT: **X**	REGULAR:	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Governor's Opportunity Fund Grant Award for Areva NP, Inc. Expansion**

RECOMMENDATION:
Adopt a resolution to amend the FY 2009 City/Federal/State Aid Fund budget and appropriate $1,000,000 with resources from the Commonwealth of Virginia's Governor's Opportunity Fund for the expansion of Areva NP, Inc. These funds will then be disbursed to the Lynchburg Economic Development Authority for distribution to Areva NP, Inc. when the Performance Agreement obligations are fulfilled.

SUMMARY:
An application for the Governor's Opportunity Fund in the amount of $1,000,000 to provide an incentive for Areva to expand its operation in the City was submitted to the State in May 2008. The Performance Agreement was executed in October 2008; the State submitted the funds to the City in November 2008.

The $1,000,000 was given to the City by the State to distribute when the measures outlined in the Performance Agreement dated October 15, 2008 (attached) have been met. The funds will be transferred to the Lynchburg Economic Development Authority (LEDA) to hold until Areva NP, Inc. provides proof the measures have been met.

The Governor's Opportunity Fund requires a dollar-for-dollar local match. The LEDA's Strategic Initiative Fund has provided $500,000 of the required match, which was appropriated in August 2008. These funds are dedicated to infrastructure improvements to support Areva's expansion. The remaining $500,000 will be supplied by the LEDA's Strategic Initiative Fund when Areva meets the performance measurements outlined in the attached document. AREVA has thirty-six months to satisfy the performance measures.

PRIOR ACTION(S):
November 25, 2008, Finance Committee
August 12, 2008, City Council Meeting, *FY 2008 Carry Forward Agenda Item*

FISCAL IMPACT:
None, the dollar-for-dollar required local match will be provided by the LEDA's Strategic Initiative Fund.

CONTACT(S):
Marjette L. Glass, 455-4492

ATTACHMENT(S):
Resolution
GOF Request letter
Performance Agreement

REVIEWED BY: lkp

RESOLUTION:
BE IT RESOLVED that the FY 2009 City/Federal/State Aid Fund budget is amended and $1,000,000 is appropriated with resources from the Commonwealth of Virginia's Governor's Opportunity Fund for the capital expansion of Areva NP, Inc. These funds will then be disbursed to the Lynchburg Economic Development Authority for distribution to Areva NP, Inc. when the Performance Agreement obligations are fulfilled.

Introduced: Adopted:

Certified: ____________________________________
Clerk of Council

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THE CITY OF LYNCHBURG, VIRGINIA

900 Church Street, Lynchburg, VA 24504
www.lynchburgva.gov
TEL: 434-455-3990
FAX: 434-847-1536

OFFICE OF THE
CITY MANAGER

May 27, 2008

Mr. Jeffrey M. Anderson
Executive Director
Virginia Economic Development Partnership
P. O. Box 798
Richmond, VA 23218

Dear Mr. Anderson:

Attached is an application for the Governor's Opportunity Fund in the amount of $1,000,000 to assist Areva NP, Inc. with its $25,000,000 expansion in the City of Lynchburg.

Areva NP, Inc. is one of our largest employers with over 1,600 employees. They are one of the region's largest high technology employers. Their anticipated expansion is a capital investment of $25,000,000 to construct a new building on their existing Old Forest Road campus and hire 500 new permanent full-time jobs at an average annual salary of $84,000.

We are currently working with State offices to request incentives from Workforce Services and Virginia Investment Partnership grant.

The Lynchburg Industrial Development Authority (LIDA) has informally agreed to invest $1,000,000 in the project. Formal action will be taken once the project has been formally announced.

We appreciate your consideration of our request and look forward to working with you. Areva's expansion will benefit Lynchburg, our Region and the State.

Sincerely,

L. Kimball Payne, III
City Manager

Enclosure

cc: Massie G. Ware, Jr., LIDA Chairman

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered as of the 15th day of October, 2008, by and among the **CITY OF LYNCHBURG, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LYNCHBURG, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth, and **AREVA NP INC.** (the "Company"), a Delaware corporation authorized to transact business in the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has received a grant of and expects to receive $1,000,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to expand and improve its facilities in the Locality and in Campbell County, Virginia (the "Facilities"), and create a significant number of New Jobs, as defined below;

WHEREAS, the Locality is willing to provide the funds to the Authority, with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to Capital Investment, as defined below, and New Jobs;

WHEREAS, the Locality is required to seek from the Company the return of all or a portion of the GOF Grant proceeds if the performance criteria of the Company are not met, then to remit any amount received to the Commonwealth;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant, the use of the GOF Grant proceeds, the obligations of the Company regarding Capital Investment and New Job creation, and the repayment by the Company of all or part of the GOF Grant proceeds under certain circumstances; and

WHEREAS, the Company's plans to expand and improve the Facilities will entail a capital expenditure of approximately $25,000,000, of which approximately $900,000 will be invested in machinery and equipment in the Locality, approximately $100,000 will be invested in the purchase of land in the Locality, approximately $19,000,000 will be invested in the construction and up-fit of buildings at the Facilities in the Locality, and approximately $5,000,000 will be invested in the construction and up-fit of buildings at the Facilities in Campbell County. It is expected that 500 New Jobs will be created at the Facilities in the Locality. Together, the Capital Investment target of $25,000,000, of which at least $20,000,000 must be located in the Locality, and the New Jobs target of 500 are referred to herein as the "Targets;"

WHEREAS, the additional tax revenue and economic activity generated by the Capital Investment and New Jobs constitute valid public purposes for the expenditure of public funds:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows.

Section 1. Disbursement of GOF Grant.

The GOF Grant in the amount of $1,000,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Authority. Within 30 days of its receipt of the GOF Grant proceeds from the Locality, the Authority will disburse the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facilities. The Company will use the GOF Grant proceeds to reimburse the Company for costs related to site preparation, including grading, drainage, paving and utility extension or capacity development, as permitted by Section 2.2-115(C) of the Code of Virginia of 1950, as amended (the "Virginia Code").

By no later than October 15, 2008, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by October 15, 2008, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

Section 2. Targets; Definitions.

The Company will expand and operate the Facilities in the Locality and in Campbell County, make a Capital Investment of at least $25,000,000, of which at least $20,000,000 must be in the Locality, and create ***and maintain*** at least 500 New Jobs at the Facilities in the Locality, all by the Performance Date. The average annual wage of the New Jobs will be at least $84,000. The average annual wage of $84,000 is more than the prevailing average annual wage in the Locality of $37,543.

If the Locality, in consultation with VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may extend the Performance Date by up to 15 months. If the Locality so chooses to extend the Performance Date, it shall send written notice of the extension to the Company and to VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

For the purposes of this Agreement, the following terms shall have the following definitions:

"Capital Investment" means a capital expenditure in taxable real property, tangible personal property, or both, at the Facilities in the Locality and in Campbell County. The Capital

Investment must be in addition to the capital improvements at the Facilities as of June 30, 2008. For the Locality, the capital improvements as of June 30, 2008 were $117,500,000 and for Campbell County, such capital improvements were $70,000,000. The Capital Investment Target is $25,000,000, of which at least $20,000,000 must be in the Locality.

"Maintain" means that the New Jobs created pursuant to the GOF Grant will continue without interruption from the date of creation through the Performance Date.

"New Job" means (except as provided in the next paragraph) new permanent full-time employment of an indefinite duration at the Facilities in the Locality for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least $84,000. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with contractors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 1,381 full-time employees at the Facilities in the Locality as of June 30, 2008. The New Jobs Target is 500 New Jobs at the Facilities in the Locality.

New jobs for employees of the Company who do not work year-round, but are still full-time equivalents, may count as New Jobs, if the other conditions set forth in the prior paragraph (including the average annual wage rate and the payment by the Company of standard fringe benefits) have been satisfied. New jobs for contractors or employees of contractors who are located in the Commonwealth and provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in the prior paragraph have been satisfied.

"Performance Date" means October 31, 2011, subject to extension as described above.

Section 3. Break-Even Point.

VEDP has estimated that the Commonwealth will reach its "break-even point" in 27 months. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facilities with the Commonwealth's expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facilities, the Commonwealth will provide incentives in the following amounts:

Category of Incentive:	Total Amount
GOF Grant	$1,000,000
VEDIG Grant	2,500,000
Virginia Jobs Investment Program (Initial Estimated)	750,000
Virginia Jobs Investment Program (Subsequent Estimated)	450,000
Major Business Facilities Job Tax Credit (Estimated)	450,000

The Locality and the Authority have committed to provide the following incentive, as matching grant for the GOF Grant, for the Facilities in the Locality:

Category of Incentive:	Total Amount
Strategic Initiative Grant	$1,000,000

The Authority will provide $500,000 of the Strâtegic Initiative Grant to the Locality on or about the date of this Agreement to fund a portion of the costs of infrastructure improvements for the Facilities in the Locality. The Authority plans to hold the remaining $500,000 of the Strategic Initiative Grant in abeyance until the Company has achieved the Targets, then will pay such amount to the Company.

The proceeds of the GOF Grant shall be used for the purposes described in Section 1. The first $500,000 of the Strategic Initiative Grant shall be used to fund infrastructure improvements for the Facilities. The VEDIG Grant proceeds and the second $500,000 of the Strategic Initiative Grant may be used by the Company for any lawful purpose. The VJIP proceeds shall be used for recruitment and training. The Major Business Facilities Job Tax Credits are an offset to Virginia corporate income taxes that may be owed by the Company.

Section 4. Repayment Obligation.

(a) *If Statutory Minimum Requirements are Not Met:* The Locality is a high-unemployment locality, with an unemployment rate of 3.8% as compared to the 2007 statewide unemployment rate of 3.0%. Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least $5,000,000 in the Facilities in the Locality and create at least 50 New Jobs at the Facilities in the Locality in order to be eligible for the GOF Grant. If the Company fails to meet either of these eligibility requirements by the Performance Date, the entire GOF Grant must be repaid by the Company to the Authority. For the purposes of this subsection (a), the prevailing average annual wage of the New Jobs must be at least equal to 85% of the prevailing average annual wage in the Locality.

(b) *If Statutory Minimum Requirements are Met:* For purposes of repayment, the GOF Grant is to be allocated as $500,000 (50%) for the Company's Capital Investment commitment and $500,000 (50%) for its New Jobs commitment. If the Company has met at least ninety percent (90%) of both of the Targets (including at least $18,000,000 of Capital Investments in the Locality, with the remaining Capital Investments of at least $4,500,000 in either the Locality or Campbell County), then and thereafter the Company is no longer obligated to repay any portion the GOF Grant. If the Company has not met at least ninety percent (90%) of either or both of its Targets, the Company shall repay to the Authority that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall below 90%. For example, if at the Performance Date, the Capital Investment is only $12,500,000 and only 400 New Jobs have been created, the Company shall refund to the Authority fifty percent (50%) of the GOF Grant proceeds allocated to Capital Investment ($500,000 x 0.5 = $250,000) and twenty percent (20%) of the GOF Grant proceeds allocated to New Jobs ($100,000). The New Jobs component will be determined by comparing the anticipated payroll (agreed number of 500 New Jobs multiplied by the $84,000 anticipated average annual wage) to the actual numbers of New Jobs at the actual average annual wage rates reported at the Performance Date. The Capital Investment Target will be determined in two steps: determining the shortfall below $20,000,000 of Capital Investments in the Locality and determining the shortfall below $25,000,000 of Capital Investments in the Locality and Campbell County.

(c) *Determination of Inability to Comply:* If the Locality and VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and maintain its Targets by and through the Performance Date, and if the Locality or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire GOF Grant to the Authority.

(d) *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within thirty days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality, then shall be repaid by the Locality to VEDP for redeposit into the Governor's Development Opportunity Fund. Anything in this Agreement to the contrary notwithstanding, neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

(e) *VEDIG Funds Not Yet Disbursed to Company*: If the Company has a repayment obligation under this Section 4, but has failed or refused to make such repayment, the Company has agreed in a Performance Agreement dated as of October 15, 2008 between the Commonwealth and the Company relating to a $2,500,000 Virginia Economic Development Incentive Grant (a "VEDIG Grant"), that any VEDIG Grant payments due from the Commonwealth to the Company after such failure or refusal shall instead be paid by the Commonwealth to the Authority, until the full repayment amount shall have been paid to the Authority.

Section 5. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality and the Authority of the Company's progress on the Targets. Such progress reports will be provided annually, starting at twelve months from the date that the Locality receives the GOF Grant, and at such other times as the Locality or the Authority may require.

Section 6. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United

States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

AREVA NP Inc.
3315 Old Forest Road
Post Office Box 10935
Lynchburg, Virginia 24506-0935
Attention: Chief Executive Officer

with copies to:

AREVA NP Inc.
3315 Old Forest Road
Post Office Box 10935
Lynchburg, Virginia 24506-0935
Attention: Vice President Business Integration
Attention: General Counsel

if to the Locality, to:

City of Lynchburg, Virginia
900 Church Street
Lynchburg, Virginia 24504
Attention: L. Kimball Payne, III, City Manager

if to the Authority, to:

Industrial Development Authority of the City of Lynchburg, Virginia
828 Main Street, 10th Floor
Lynchburg, Virginia 24504
Attention: Massie G. Ware, Jr., Chairman

Section 7. <u>Miscellaneous</u>.

(a) *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue*: This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

(c) *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability*: If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall, in the discretion of the Locality, the Authority and VEDP, be voidable or interpreted as in effect as if such unenforceable provisions were not included therein.

(e) *Future Appropriations*: This Agreement and any payment of public funds by the City or the Authority are subject to future appropriations by the City's City Council.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF LYNCHBURG, VIRGINIA

By L Kimball Payne
Name: L. KIMBALL PAYNE, III
Title: City Manager
Date: 10/15/08

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LYNCHBURG, VIRGINIA

By Massie G. Ware
Name: MASSIE G. WARE, JR
Title: CHAIRMAN
Date: OCTOBER 14, 2008

AREVA NP INC.

By ____________________
Name: ____________________
Title: ____________________
Date: ____________________

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

CITY OF LYNCHBURG, VIRGINIA

By ______________________________
Name: __________________________
Title: __________________________
Date: ____________________________

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LYNCHBURG, VIRGINIA

By ______________________________
Name: __________________________
Title: __________________________
Date: ____________________________

AREVA NP INC.

By Jim Hicks
Name: Jim Hicks
Title: Vice President of Business Integration
Date: 10/6/08

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **November 25, 2008** AGENDA ITEM NO.: 8

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Intersection improvements at Memorial Avenue/Park Avenue/Lakeside Drive: Highway Safety Improvement Program (HSIP) Grant Appropriation**

RECOMMENDATION:
Adopt a resolution to amend the FY 2009 City Capital Projects Fund budget and appropriate $487,000 with resources from a Highway Safety Improvement Program grant to make improvements at Memorial Avenue/Park Avenue/Lakeside Drive.

SUMMARY:
The City has applied for and obtained a Highway Safety Improvement Program (HSIP) grant to improve the intersection of Memorial Avenue/Park Avenue/Lakeside Drive. This intersection was originally planned for improvement under the Midtown Connector project. The Midtown Connector project originally included pedestrian features and protected left-turn phases for the Memorial Avenue to Lakeside Drive and Park Avenue movements. These protected movements have been needed for some time; during certain peak periods it is very difficult to make a left-turn due to inadequate gaps in oncoming traffic. It is especially difficult for large vehicles such as buses going to the transfer station at the Plaza. The pedestrian facilities are also sub-standard and are in need of replacement to be consistent with the Americans with Disabilities Act.

The Midtown Connector project no longer includes this intersection in its scope; therefore, the City applied for the HSIP grant to replace the funds and complete the necessary improvements at this critical intersection. Signal replacement and a roundabout are both intersection improvement options being considered, along with improving pedestrian features.

PRIOR ACTION(S):
February 12, 2008, City Council
November 25, 2008, Finance Committee

FISCAL IMPACT:
None, no local match is required for this grant.

CONTACT(S):
Gerry Harter, PE, City Transportation Engineer, 455-3935
Lee Newland, PE, City Engineer, 455-3947
Charlene Montford, Director of Community Development, 455-3902

ATTACHMENT(S):
Resolution

REVIEWED BY: lkp

RESOLUTION:
BE IT RESOLVED That the FY 2009 City Capital Projects Fund budget is amended and $487,000 is appropriated with resources from a Highway Safety Improvement Program grant to make improvements at Memorial Avenue/Park Avenue/Lakeside Drive.

Introduced: Adopted:

Certified: ____________________
Clerk of Council

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LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **November 25, 2008** AGENDA ITEM NO.: **9**

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Appropriations of VDOT Urban Construction Initiative (UCI) 2009 Payments**

RECOMMENDATION:
Adopt a resolution to amend the FY 2009 City Capital Projects Fund budget and appropriate $2,470,348 with resources from federal and State construction funds for the Urban Construction Initiative (UCI) to reflect FY 2009 funding allocated in the VDOT Six Year Improvement Plan (SYIP) to support projects in the Capital Improvement Program (CIP).

SUMMARY:
As part of the State's Urban Construction Initiative (UCI) the City's Capital Improvement Program and Capital Projects Fund budget need to match the SYIP. Appropriating $2,470,348 to the City Capital Projects Fund budget will satisfy this requirement. UCI funds are being used for the Midtown Connector Phase I ($431,354), Midtown Connector Phase II ($1,603,001), Greenview Drive Phase II ($40,000), and Rivermont Avenue Bridge ($395,993) projects.

PRIOR ACTION(S):
November 25 2008, Finance Committee

FISCAL IMPACT:
None

CONTACT(S):
Lee Newland, PE, City Engineer, 455-3947
Charlene Montford, Director of Community Development, 455-3902

ATTACHMENT(S):
Resolution

REVIEWED BY: lkp

<u>RESOLUTION:</u>
BE IT RESOLVED That the FY 2009 City Capital Projects Fund budget is amended and $2,470,348 is appropriated with resources from federal and State construction funds for the Urban Construction Initiative (UCI) to reflect FY 2009 funding allocated in the VDOT Six Year Improvement Plan (SYIP) to support projects in the Capital Improvement Program (CIP).

Introduced: Adopted:

Certified: ____________________
Clerk of Council

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AGENDA ITEM # 10

To: Lynchburg City Council
From: Mary B. Guthrow, representing Friends of the Lynchburg Public Library
Date: November 17, 2008

Having just returned from a two-day Library Advocacy conference in Greensboro NC, sponsored by and entirely paid for by the Bill and Melinda Gates Foundation, I would like to give Council members a brief update on the public access computers at the Lynchburg Public Library, in constant use at both the main library and the downtown branch. I especially want to express thanks for the technical support for these computers, furnished by the City's IT staff, as we learned in Greensboro that many libraries in Virginia and North Carolina have no such support.

Mary Guthrow
1909 Quarry Road
Lynchburg, VA 24503
384-2583

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **November 25, 2008** AGENDA ITEM NO.: 11

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Violations of the Uniform Statewide Property Maintenance Code**

RECOMMENDATION: Amend Sections 11-9 and 11-170 of the City Code to provide that violations of the Uniform Statewide Property Maintenance Code shall be prosecuted as violations of the City Code so the City, not the State, can keep the fines imposed for Property Maintenance Code violations.

SUMMARY: Localities are allowed to keep fines that are imposed for violations of local ordinances, while the fines imposed for violations of the State Code go to the Commonwealth. The Virginia Department of Housing and Community Development has adopted a Uniform Property Maintenance Code for the state. However, the enforcement of the Property Maintenance Code is optional. If a locality wishes to enforce a Property Maintenance Code it must enforce the code adopted by the Department of Housing and Community Development. Even thought the Property Maintenance is adopted by the Department of Housing and Community development, the State does not provide localities with any resources for the enforcement of the Property Maintenance Code. Localities that enforce the Property Maintenance Code must provide all of the staff and equipment needed for Code enforcement. Since the City bears all of the costs of enforcing the Property Maintenance Code, it makes sense for violations of the Property Maintenance Code to be prosecuted as violations of the City Code rather than violations of the State Code. Prosecuting violations of the Property Maintenance Code as violations of the City Code will allow the City to keep the fines that are imposed for Code violations and such revenues can be used to help cover the costs the City incurs in enforcing the Code.

PRIOR ACTION(S): Sections 11-9 and 11-170 were last amended on October 28, 2003 and March 8, 2005

FISCAL IMPACT: The Inspections Division estimates the City will collect several thousand dollars a year in fines if building code violations are prosecuted as violations of the City Code. Since the City has not received these fines in the past, the amount of such fines cannot be calculated with any degree of certainty.

CONTACT(S): Walter C. Erwin, 455-3973 and Bob Drane, 455-3899

ATTACHMENT(S): An ordinance amending Sections 11-9 and 11-170 of the City Code

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTIONS 11-9 AND 11-170 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTIONS RELATING TO VIOLATIONS OF THE UNIFORM STATEWIDE BUILDING CODE.

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

1. That Sections 11-9 and 11-170 of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

Sec. 11-9. Violation penalties.

(a) Violations of the provisions of Part I, the Virginia Construction Code and Part II, the Virginia Rehabilitation Code, 2006 Edition, of the Uniform Statewide Building Code, shall be prosecuted as violations of the state code and the ~~P~~penalties, upon conviction, for violations of Part I, the Virginia Construction Code and Part II, the Virginia Rehabilitation Code, of the Virginia Uniform Statewide Building Code, shall be as set out in Section 36-106 of the Code of Virginia. All fines imposed for violations of the provisions of Part I, the Virginia Construction Code and Part II, the Virginia Rehabilitation Code of the Uniform Statewide Building Code, shall be payable to the Commonwealth of Virginia.

(b) Violations of the provisions of Part III, the Virginia Maintenance Code, 2006 Edition, of the Uniform Statewide Building Code, shall be prosecuted as violations of the city code and the penalties, upon conviction, for violations of Part III, of the Virginia Uniform Statewide Building Code, shall be punished by a fine of not more than two thousand five hundred dollars ($2,500). If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the maintenance code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six (6) months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense committed within less than five (5) years after a first offense under this chapter shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500). Any person convicted of a second offense committed within a period of five (5) to ten (10) years of a first offense under this chapter shall be punished by a fine of not less than five hundred dollars ($500) nor more than two thousand five hundred dollars ($2,500). Any person convicted of a third or subsequent offense involving the same property committed within ten (10) years of an offense under this chapter after having been at least twice previously convicted shall be punished by confinement in jail for not more than ten (10) days and a fine of not less than two thousand five hundred dollars ($2,500) nor more than five thousand dollars ($5,000), either or both. No portion of the fine imposed for such third or subsequent offense committed within ten (10) years of an offense under this chapter shall be suspended. All fines imposed for violations of the provisions of Part III, the Virginia Maintenance Code, of the Uniform Statewide Building Code, shall be payable to the city.

(b~~c~~) ~~Upon a reasonable showing to the court by a landlord as defined in Section 55-248.41 of the Code of Virginia, that such landlord is financially unable to abate the lead base paint hazard, the court shall order any rental agreement relating to the affected premises terminated effective thirty (30) days from the entry of the court order. For the purposes of the proceeding sentence, termination of the rental agreement shall not be deemed non-compliance by the landlord pursuant to Section 55-248.21 of the Code of~~

~~Virginia.~~ Any owner or any other person, firm or corporation violating any code provisions relating to lead hazard controls that poses a hazard to the health of pregnant women and children under the age of six (6) years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than two thousand five hundred dollars ($2,500) as provided by Section 36-106 of the Code of Virginia. If the court convicts pursuant to this subsection and sets a time by which such hazard must be controlled, each day the hazard remains uncontrolled after the time set for the lead hazard control has expired shall constitute a separate violation of the Uniform Statewide Building Code.

The landlord shall maintain the painted surfaces of the dwelling unit in compliance with the Maintenance Code of the Uniform Statewide Building Code. The landlord's failure to do so shall be enforceable in accordance with the Uniform Statewide Building Code and shall entitle the tenant to terminate the rental agreement.

Termination of the rental agreement or any other action in retaliation against the tenant after written notification of (i) a lead hazard in the dwelling unit or (ii) that a child of the tenant, who is an authorized occupant in the dwelling unit, has an elevated blood lead level, shall constitute retaliatory conduct in violation of Section 55-248.39 of the Code of Virginia.

(~~c~~d) Any prosecution under this section shall be commenced within the time period provided in Section 19.2-8 of the Code of Virginia.

Sec. 11-170. Violations.

(a) It shall be unlawful for any owner or managing agent to fail to comply with the requirements contained in this article and to fail to comply with the provisions of the uniform statewide building code.

(b) Unless otherwise provided herein, the penalties imposed for a violation of this article ~~shall be the penalties provided in Section 36-106 of the Code of Virginia. Each day such violation continues shall constitute a separate punishable offense.~~ shall be punished by a fine of not more than two thousand five hundred dollars ($2.500). Any person convicted of a second offense committed within less than five (5) years after a first offense under this chanter shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500). Any person convicted of a second offense committed within a period of five (5) to ten (10) years of a first offense under this chapter shall be punished by a fine of not less than five hundred dollars ($500) nor more than two thousand five hundred dollars ($2.500). Any person convicted of a third or subsequent offense involving the same property committed within ten (10) years of an offense under this chapter after having been at least twice previously convicted shall be punished by confinement in jail for not more than ten (10) days and a fine of not less than two thousand five hundred dollars ($2,500) nor more than five thousand dollars ($5,000), either or both. No portion of the fine imposed for such third or subsequent offense committed within ten (10) years of an offense under this chapter shall be suspended. All fines imposed for violations of the provisions of this article shall be payable to the city.

(c) If any violation remains uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation and to bring the property into compliance with the uniform statewide building code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six (6) months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense.

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

Adopted:

Certified: __________________________

Clerk of Council

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LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **November 25, 2008**　　　AGENDA ITEM NO.: 12

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

ACTION: **X**　　　INFORMATION:

ITEM TITLE: **Proposal to Establish a New Polling Place for Liberty University Voters**

RECOMMENDATION: None

SUMMARY: Council Member Helgeson has asked that Council consider creating another precinct in Ward III to provide a new polling place for Liberty University voters and to reduce voter traffic at Ward III's Fourth Precinct where LU students voted in the most recent election. Attached is a memorandum from City Attorney Walter Erwin outlining the process and challenges of creating a new precinct.

PRIOR ACTION(S): N/A

FISCAL IMPACT: Undetermined.

CONTACT(S): Walter Erwin, 455-3973

ATTACHMENT(S): Memorandum to Council from the City Attorney dated November 17, 2008.

REVIEWED BY: lkp

THE CITY OF LYNCHBURG, VIRGINIA

CITY HALL, 900 CHURCH STREET, LYNCHBURG, VIRGINIA 24504 • (434) 455-3980
Fax (434) 847-9049

OFFICE OF THE CITY ATTORNEY

WALTER C. ERWIN, III
CITY ATTORNEY

ELEANOR A. PUTNAM DUNN
DEPUTY CITY ATTORNEY

SUSAN L. HARTMAN
ASSISTANT CITY ATTORNEY

HOPE R.TOWNES
ASSISTANT CITY ATTORNEY

November 17, 2008

To The Honorable City Council
Lynchburg, Virginia

Dear Council:

At its November 25 meeting, Council will consider a proposal to establish a new polling place for Liberty University voters. In order to prepare for the upcoming discussion, I thought it would be helpful for Council to have some information concerning election precincts and polling places.

Currently Liberty University voters are part of Ward III, the Fourth Election Precinct and the polling place for the Precinct is Heritage Elementary School. Under the State Code a precinct is allowed to have only one polling place. In order to add a new polling place for Liberty University voters, it will be necessary to create a new precinct. The State Code allows a local governing body to "establish by an ordinance as many precincts as it deems necessary" and "to alter precinct boundaries." The best approach for adding a new polling place for Liberty University voters would be to divide the Fourth Election Precinct into two precincts and designate a polling place for the new precinct.

In order to divide the Fourth Election Precinct into two precincts and designate a new polling place, City Council will have to advertise and hold a public hearing and then adopt an ordinance creating the new precinct and designating a polling place. Before the City can advertise the public hearing it must prepare a description of and maps for the proposed new precinct and polling place. The State Code requires that the advertisement for the public hearing must state where the description and maps of the proposed precinct and polling place are located for citizen review.

A recent amendment to the State Code complicates efforts to establish a new precinct and polling place for Liberty University voters. During the 2008 session of the General Assembly, Section 24.2-309.2 was added to the State Code. Section 24.2-309.2 provides that "no locality shall create, divide, abolish, or otherwise change the boundaries of any precinct, effective during the period of February 1, 2009 to May 15, 2011." This section was added to the State Code in light of the upcoming 2010 Federal census. The General Assembly typically places a restriction on creating and changing precincts when a Federal census is pending. The Federal census will be conducted in 2010 and the census results should be certified in early 2011. As a result of the census many localities will have to make adjustments in their election districts and precincts. Because it will be necessary to make changes as a result of the Federal census, the General Assembly believes localities should not make changes to their precincts immediately prior to and while the census is being conducted. In order for the City to add a new polling place for Liberty University voters, the State Code requires the City to identify the boundaries of the new precinct and location of the new polling place, advertise and hold a public hearing, and adopt the necessary ordinance before February 1, 2009.

It will be difficult to meet the February 1, 2009 deadline because of the pre-clearance requirements of the Voting Rights Act of 1965. Virginia is one of 16 states that were found to have a history of voting-rights abuses and is subject to the special requirements of the Voting Rights Act. Under the Act, any changes in voting procedures must be approved by the United States Justice Department before such changes can be implemented. The Justice Department will have to approve the creation of a new precinct and the location of the polling place for Liberty University voters. In order to apply for Justice Department approval, the City will have to comply with all of the requirements of the State Code and then send the new ordinance and supporting documentation justifying the establishment of a new precinct and polling place to the Justice Department for review and approval. It normally takes the Justice Department about two months to review and approve a pre-clearance request from the City for such routine things as adding additional voter registration sites, temporarily relocating the registrar's office for renovations, adding additional voter registration application boxes, conducting special voter registration drives, etc. It might take the Justice Department even longer to review a request to create a new precinct and polling place. Even if the City can meet the requirements of the State Code to create a new precinct and designate a polling place prior to February 1, 2009, it will be difficult to get the Justice Department's approval before that date.

The State Code provides that a precinct shall have "no more than 5,000 registered voters." A "Statement of Votes Cast" for the November 4 election that was prepared by the General Registrar's Office shows that all of the City's precincts are below the 5,000 limit and are in compliance with the State Code. A copy of the Statement is enclosed for Council's information. Lynchburg has four precincts that have over 4,000 registered voters: Ward I, the First Election Precinct (the Moose Lodge) has 4,883 registered voters; Ward III, the Fourth Election Precinct (Heritage Elementary School) has 4,762 registered voters; Ward II, the First Election Precinct (St. Paul's Episcopal Church) has 4,328 registered voters; and, Ward IV, the Third Election Precinct (Memorial Christian Church) has 4,049 registered voters. Since all of the City's precincts have less than 5,000 registered voters it is not necessary for City Council to establish any new precincts unless Council wishes to do so for the convenience of the voters. The Lynchburg Electoral Board is not scheduled to hold another meeting until December so I do not know if the Board has any thoughts or recommendations concerning the establishment of a new precinct and polling place.

In summary, while the State Code allows the City to create new precincts and polling places, the restrictions imposed by Section 24.2-309.2 will make it difficult to establish a new precinct and polling place for Liberty University voters by the February 1, 2009 deadline. If the City wishes to pursue the establishment of a new precinct and polling place, as part of its 2009 Legislative

Agenda the City could ask the General Assembly to amend Section 24.2-309.2 of the State Code to include a "grandfather provision" that would allow any locality that started the process of establishing a new precinct prior to February 1, 2009, to be allowed to complete the process. In the event Council does not wish to pursue the establishment of a new precinct at this time, it could ask the Electoral Board to consider providing additional voting machines and election workers at Heritage Elementary School in order to better handle the influx of Liberty University voters.

If any of the members of Council have any questions concerning this matter, please do not hesitate to contact me.

Respectfully,

Walter Erwin

Walter C. Erwin

Cc: L. Kimball Payne, City Manager
W/Enclosure

CITY OF LYNCHBURG
STATEMENT OF VOTES CAST
GENERAL ELECTION NOVEMBER 4, 2008

Percents based on votes cast

RACE						PRESIDENT AND VICE PRESIDENT											
JURISDICTION WIDE REPORT						DEM. PARTY			REP. PARTY			IND. GREEN			LIB. PARTY		
	Reg. Voters	**T/O Accu-Vote**	**T/O WIN-vote**	**Total T/O**	**% T/O**	Accu-Vote	WIN-Vote	Total	Accu-Vote	WIN-Vote	Total	Accu-Vote	WIN-vote	Total	Accu-Vote	WIN-vote	Total
I-1	4,883	2,700	394	3,094	63.4%	1,210	160	1,370	1429	225	1,654	13	6	19	10	1	11
I-2	3,144	1,725	405	2,130	67.7%	666	126	792	1031	275	1,306	6	1	7	10	1	11
I-3	2,544	1,346	330	1,676	65.9%	499	128	627	821	198	1,019	5	1	6	5	1	6
I-4	1,471	455	494	949	64.5%	271	283	554	167	202	369	3	2	5	6	6	12
I-5	1,761	783	367	1,150	65.3%	414	165	579	348	196	544	5	2	7	6	3	9
II-1	4,328	1,998	408	2,406	55.6%	1639	295	1,934	300	100	400	13	3	16	3	4	7
II-2	3,042	1,364	450	1,814	59.6%	1189	343	1,532	148	88	236	0	6	6	3	0	3
II-3	1,161	608	120	728	62.7%	507	85	592	89	32	121	0	1	1	2	0	2
III-1	2,156	975	338	1,313	60.9%	516	171	687	437	157	594	11	1	12	1	6	7
III-2	1,092	318	343	661	60.5%	159	191	350	148	141	289	0	6	6	0	3	3
III-3	1,729	644	452	1,096	63.4%	260	179	439	362	263	625	5	2	7	5	3	8
III-4	4,762	3,215	498	3,713	78.0%	564	75	639	2587	413	3,000	16	4	20	12	2	14
III-5	2,183	1,068	483	1,551	71.0%	355	142	497	697	338	1,035	4	0	4	2	1	3
IV-1	3,850	1,787	756	2,543	66.1%	594	241	835	1165	493	1,658	3	5	8	6	5	11
IV-2	1,687	713	392	1,105	65.5%	264	141	405	433	243	676	1	2	3	4	2	6
IV-3	4,049	2,099	543	2,642	65.3%	932	238	1,170	1106	303	1,409	20	1	21	10	0	10
IV-4	3,366	1,784	418	2,202	65.4%	843	191	1,034	916	218	1,134	5	1	6	6	2	8
ABSENTEE		1,725	2,123	3,848		774	1401	2,175	815	696	1,511	0	2	2	8	3	11
Hand counted (email)				98				53			43			0			2
Provisional				75				5			15			1			2
Totals	**47,208**	25,307	9,314	**34,719**	**73.5%**	11,656	4,555	**16,269**	12,999	4,581	**17,638**	110	46	**157**	99	43	**146**