

October 11, 2011

099

// A regular meeting of the Council of the City of Lynchburg was held on the 11th day of October, 2011, at 4:00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. The following Members were present:

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

6

Absent: Johnson

1

// Vice Mayor Johnson arrived at 4:03.

// Larry Faust with the Urban Deer Management Program gave a report from the Department of Game and Inland Fisheries regarding the City's new "Official Kill Permit Terms and Conditions" as of September 15, 2011.

// City Manager Kimball Payne gave a summary of questions that were asked by Council on September 27, 2011 regarding the Greater Lynchburg Transit Company (GLTC) FY 2012 Supplemental Funding request. Mr. Payne stated that GLTC made the request for \$100,000 from the City to prevent further reductions in services provided by the Greater Lynchburg Transit Company. During Council discussion, Council expressed concerns regarding the audit findings in GLTC's audit report and expressed no confidence in First Transit. Council Member Cary made a motion to defer action on this item until GLTC Board had a chance to meet and reconsider this item, seconded by Council Member Gillette and passed by the following recorded vote:

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

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Noes:

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// City Manager Kimball Payne gave a summary of the Proposed Code Amendment regarding Truck Prohibitions on City Streets. Mr. Payne stated that the State Code allows the governing body to delegate to the City Manager the authority to take actions on local streets as to regulatory signs such as stop and speed limits. Mr. Payne further stated that these signs go through a process in Public Works that results in an executive order that is signed by the City Manager for each individual street. The current practice is that truck prohibitions have been treated through the same process as regulatory signs although there is no clear grant of authority as in other sections of the City Code. Mr. Payne stated that he recommended items 9, 10 and 11 be removed to amend the Code. After Council discussion Council Member Perrow, Physical Development Committee (PDC) Chair stated this item came before PDC which recommended that staff draft an amendment to the City Code delegating authority to the City Manager to determine truck prohibitions and to post streets as "No Trucks" where appropriate due to cut-thru traffic or physical restraints. Council Member Perrow made a motion to approve the request which required no second, Council by the following recorded vote approved the draft amendment to the City Code regarding Truck Prohibitions on City Street:

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

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Noes:

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// During roll call Council Member Cary thanked Deputy City Manager Bonnie Svrcek and City staff for a great participation at the Virginia 10/4 Miler that was held on September 24, 2011.

// City Council recessed the meeting at 5:04 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, followed by the Pledge of Allegiance.

// Council Member Gillette made a statement that he would excuse himself from the closed meeting due to a conflict with Centra Health.

// Copies of the minutes of the September 27, 2011 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote approved the minutes as amended:

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

Noes: 0

// In the matter of Economic Development – General, Resolution #R-11-104 amending the FY 2012 General Fund budget and appropriating \$30,000 to allow the Office of Economic Development to provide incentives to attract and grow arts and cultural organizations, laid over from the September 27, 2011 meeting, was again presented and read, and on motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote adopted the Resolution:

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

Noes: 0

// In the matter of Library – General, Resolution #R-11-105 amending the FY 2012 City Capital Projects Fund budget and appropriating \$150,000 with resources from a donation from St. John's Episcopal Church to build a dedicated story time room at the Lynchburg Public Library, laid over from the September 27, 2011 meeting, was again presented and read, and on motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote adopted the Resolution:

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

Noes: 0

// In the matter of Fire – General, City Council Report #8 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-107, as presented, amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$7,200, to purchase a Forcible Entry Simulator for the Fire Department's Burn Building:

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

Noes: 0

// In the matter of Fire – General, City Council Report #9 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-108, as presented, amending the FY 2012

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City/Federal/State Aid Fund budget and appropriating \$7,527, to purchase a Temperature Monitoring System (TMS) for the Fire Department's Burn Building:

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

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Noes:

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// In the matter of Police – General, City Council Report #10 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-109, as presented, amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$35,820 with resources of \$29,850, an in-kind match of \$5,970, to send crash team members to accident reconstruction training and to purchase equipment:

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

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Noes:

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// In the matter of Police – General, City Council Report #11 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-110, as presented, amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$51,224, fully reimbursable, to purchase replacement digital in-car video recording equipment and computer tablets:

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

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Noes:

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// In the matter of Police – General, City Council Report #12 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-111, as presented, amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$53,227 with resources of \$42,137, an in-kind match of \$8,438, to provide selective DUI and occupant restraint enforcement activities, attend related training and purchase equipment:

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

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Noes:

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// In the matter of Public Works – Street Vacation, a public hearing was held regarding City Council Report #13 regarding the petition of Ms. Joan Menge to vacate a portion of Hillsman Street located between 416, 420 and 424 Hillsman Street and 513 Brunswick Drive, which extends approx. 3 hundred seventy-eight and 4 tenths (378.4) feet. City Planner Tom Martin provided a brief summary regarding the request. Ms. Joan Menge gave a report of the request and asked for Council approval. 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 item came before PDC and made a motion to vacate a portion of Hillsman Street located between 416, 420 and 424 Hillsman Street and 513 Brunswick Drive. The motion did not require a second, and Council by the following recorded vote

adopted Ordinance #O-11-112, as presented, vacating a portion of Hillsman Street located between 416, 420 and 424 Hillsman Street and 513 Brunswick Drive:

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

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Noes:

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// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #14 outlining the petition of First Baptist Church of South Lynchburg for a Conditional use Permit (CUP) at 2431, 2438, 2458, 2467 and 2503 Tazewell Avenue to allow the construction of a church and associated parking in an R-3, Medium-Density Residential District. City Planner Tom Martin gave a summary of the request and stated the Planning Commission recommended approval of the CUP petition. Mr. Scott Beasley representing the petitioner asked for approval of the request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Cary, seconded by Vice Mayor Johnson, Council by the following recorded vote adopted Resolution #R-11-113, as presented, granting the Conditional Use Permit:

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

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Noes:

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// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report # 15 outlining the petition of Ricardo & Cynthia Marshall, Come As You Are Ministries to rezone approximately forty-nine hundredths (.49) acres at 1713 12th Street and 1110 Kemper Street from I-2, Light Industrial District to B-3, Community Business District to allow the use of the existing building as a church and child care facility. City Planner Tom Martin gave a summary of the request and stated the Planning Commission recommended approval of the rezoning request. Mr. and Mrs. Ricardo Marshall, the petitioners, asked for approval of the 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 Perrow, Council by the following recorded vote adopted Ordinance #O-11-114, as presented, approving the petition of Come As You Are Ministries to rezone approximately forty-nine hundredths (.49) acres at 1713 12th Street and 1110 Kemper Street from I-2, Light Industrial District to B-3, Community Business District to allow the use of the existing building as a church and child care facility:

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

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Noes:

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// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #16 outlining the petition of Lynchburg Municipal Employees Federal Credit Union for a Conditional Use Permit (CUP) at 3176 Fort Avenue to allow a comprehensive signage plan which would include a digital display in an R-3, Medium-Density Residential District. City Planner Tom Martin gave a summary of the request and stated the Planning Commission recommended approval of the CUP request. Jane Foster, Manager/CEO, Lynchburg Municipal Employees Federal Credit Union asked for approval of the request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Helgeson, seconded by Council Member Cary, Council by the following

recorded vote adopted Resolution #R-11-115, as presented, granting the Conditional Use Permit:

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

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Noes:

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// In the matter of City Code, a public hearing was held regarding City Council Report #17 regarding amending Section 35.1-22, Buildings, uses and lots, of the Zoning Ordinance. City Planner Tom Martin gave a summary of the request and stated the Planning Commission recommended approval of the Zoning Ordinance request. 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 item came before PDC and made a motion to amend Section 35.1-22, Buildings, uses and lots, of the Zoning Ordinance. The motion did not require a second, and Council by the following recorded vote adopted Ordinance #O-11-116, as presented, amending Section 35.1-22, Buildings, uses and lots, of the Zoning Ordinance:

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

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Noes:

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// In the matter of City Code/Community Development – General, a public hearing was held regarding City Council Report #18 regarding amending the Zoning Ordinance by adding Section 35.1-20.1, Zoning Inspection Warrants. City Attorney Walter Erwin stated when City Council considered the issue of zoning inspection warrants at its meeting in June, Council was provided with a summary explaining the history of this matter and a summary of the proposed ordinance. Mr. Erwin further explained that since the ordinance was originally drafted and presented to City Council, with Council Member Nelson's assistance, it has been revised to include a number of additional safeguards to protect the rights of property owners and tenants. The revisions provide that:

- an inspection warrant can only be sought to investigate complaints alleging a non-permitted use of property or violations of occupancy limits.
- an inspection warrant can only be obtained from a judge and not a magistrate.
- the zoning administrator must give the property owner and tenant's prior notice of his intent to seek an inspection warrant.
- the notice to the property owner and tenants must advise them of the date and time the zoning administrator will appear in court to seek an inspection warrant so they can attend the hearing or file a written statement with the court objecting to the issuance of the inspection warrant.
- an inspection warrant must specify the date and time the inspection will take place and can only take place during daylight business hours.
- the inspection warrant must mail a copy of the inspection warrant to the property owner and post a copy on the door of the property at least 5 business days prior to the inspection.

There were 6 individuals that spoke in favor of the Zoning Inspection Warrants and there were 21 individuals that spoke in opposition regarding this item. Some of their concerns were their rights as a home owner and this was unconstitutional and infringed on citizen rights for privacy. There was no one

else present who wished to speak to this item, and the public hearing was closed. Council Member Helgeson stated that it was wrong to make laws for the least common denominator and asked Council Members to go along with the will of the people in the auditorium and with him and vote this down. Council Member Helgeson made a motion, seconded by Council Member Cary to deny the Zoning Inspection Warrants. Council Member Perrow stated that he agreed with Council Member Helgeson and that he believed that personal liberties absolutely trump neighbors desires or inconveniences. Council Member Cary asked does it make sense to make new policy for one or two cases, and that it did not and further stated that he had serious concerns if this zoning ordinance is approved. After further discussion Council voted on the motion and the motion failed by the following recorded vote:

Ayes: Cary, Helgeson, Perrow 3

Noes: Gillette, Johnson, Nelson, Foster 4

On motion of Council Member Nelson, seconded by Council Member Gillette, Council by the following recorded vote adopted Ordinance #O-11-117, as presented, approving the Zoning Inspection Warrants:

Ayes: Gillette, Johnson, Nelson, Foster 4

Noes: Cary, Helgeson, Perrow 3

// In the matter of Community Development – CDBG, a public hearing was held regarding City Council Report #19 regarding approving the 2010 Consolidated Annual Performance and Evaluation Report (CAPER) for the Community Development Block Grant (CDBG) and HOME Program to the U.S. Department of Housing and Urban Development (HUD). Grants Manager Melva Walker provided a summary of the 2010 Consolidated Annual Performance and Evaluation Report. There was no one present who wished to speak to this item, and the public hearing was closed. On motion of Vice Mayor Johnson, seconded by Council Member Gillette, Council by the following recorded vote adopted Resolution #R-11-118, as presented, approving the 2010 Consolidated Annual Performance and Evaluation Report:

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

Noes: 0

// The closed meeting was moved after the work session.

// On motion of Vice Mayor Johnson, seconded by Council Member Gillette, Council by the following recorded vote elected to hold a closed meeting for consultation with legal counsel and briefings by staff members regarding specific legal matters requiring the provision of legal advice, specifically, the discussion of contractual matters between the City and Centra Health, pursuant to Section 2.2-3711(A.)(7) of the Code of Virginia, 1950:

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 Vice Mayor Johnson, and Council by the following recorded vote adopted the motion:

Ayes: Cary, Helgeson, Johnson, Nelson, Perrow, Foster	7
Noes:	0
Absent: Gillette	1

// The meeting was adjourned at 10:30 P.M.

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 25, 2011**

AGENDA ITEM NO.: 1

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **GLTC**

RECOMMENDATION: None. GLTC is no longer asking for an immediate cash infusion to balance the FY 2012 Budget. While the issue remains on the table, the GLTC Board will instead be considering service reductions.

SUMMARY: Attached please find the latest correspondence from the GLTC Board related to the ongoing fiscal challenges of the organization. Also attached is a letter from First Transit that addresses the findings of the recent financial audit. Finally, a map of the existing routes is included as reference.

Representative of GLTC will be in attendance during Council's work session to continue the discussion.

PRIOR ACTION(S): This issue has been previously discussed during the September 27 and October 11 Council meetings.

FISCAL IMPACT: Undetermined. While the proposed service reductions may technically balance the FY 2012 GLTC Budget, the organization will still need to borrow funds in the last quarter of the fiscal year and will probably end the year with a cumulative deficit of approximately \$400,000.

CONTACT(S): Kimball Payne, 455-3990; Michael J. Carroll, General Manager of GLTC, 455-5084

ATTACHMENT(S): Two letters from GLTC related to potential service reductions; letter from First Transit; routes map.

REVIEWED BY: lkp



October 20, 2011

Mayor Joan Foster and Members of City Council

Dear Madam Mayor and Honorable Members of Council:

Listed below are the proposed service reductions for GLTC, to become effective on January 1, 2012, after public hearings:

Weekdays:

- Eliminate the extra bus which provides 30 minute service on Routes 8 and 11 from 7:00AM – 8:30AM, and again from 3:30 PM to 5:00 PM. Customers will still have 60 minute service throughout the day on these Routes. Projected savings are \$34,855.
- Eliminate the Route 10 bus, which provides 60 minute service between the Plaza and Downtown. Customers will still have regular fixed route service between the Plaza and Downtown via Routes 1A, 1B, 3C and 3D; Reduce the current 30 minute service frequency on Route 2 to 60 minutes, and combine it with Route 9 which will provide 60 minute service for each route. These changes, which for operational reasons, are tied together, will realize a projected savings of \$43,516.

Saturdays:

- As of this writing, the staff is still refining options for consideration, but in general, we intend to reduce the current 60 minute service frequency on Routes 1A, 1B, 3C, 3D, 6 and 7 to 120 minutes. We are also proposing to end Saturday service at 6:30 PM. The decrease in service frequency coupled with the adjustment on the hours of operation is intended to realize a savings of \$100,000.

Sincerely,

Lisa Dibble
President

c: GLTC Board of Directors
Kimball Payne, City Manager
Michael Carroll, General Manager



October 20, 2011

Mayor Joan Foster and Members of Council
900 Church Street
Lynchburg, VA 24504

Dear Madam Mayor and Honorable Members of Council:

To ensure that GLTC will be able to continue to provide a basic level of service that is sustainable, the Board has already taken the following cost-cutting measures which total \$323,447:

- Implemented \$124,415 of administrative staff and program savings.
- Implemented \$76,110 in service reduction savings.
- Implemented a fare increase to realize a projected \$122,922 in new revenue.

As you requested, GLTC's Board of Directors has taken an even closer look at the root causes of GLTC's financial challenges. After a thorough review of additional proposals for cost-savings, which included reductions in administrative and support staff beyond the actions already taken, the Board is proposing, after a unanimous vote, to implement the following additional cost-saving measures:

- Reducing weekday service to realize an additional \$78,371.
- Reducing Saturday service to realize \$100,000 savings.

We feel these reductions, detailed in a separate attachment, will preserve the core of GLTC service, and still provide essential transit services for our customers. These reductions in service were selected carefully to cause our riders the least possible inconvenience. We feel these steps are absolutely necessary and unavoidable in order to ensure the financial stability of GLTC going forward, particularly in light of the expectation that our line of credit will be maxed-out again at year-end if we fail to act now. The things that have caused us to draw on the line in the past have to be changed in order for that not to happen. And we must deal with the shortfall from previous years (\$500,000) that has come out of this year's budget already (because the line of credit is automatically paid down by any funds that come in to the checking account).

We will hold public hearings in November, and take final action at our December Board meeting. The service changes will become effective immediately after January 1, 2012. Should Council choose to provide GLTC with the additional funding previously requested, those funds would be used to reduce the hardship being placed on our riders.

Although these actions address the immediate issue of the current fiscal year's operating budget, they do not fully address GLTC's beginning-of-the-year deficit of \$500,000. The City's Budget Director suggested that the City and GLTC work together to establish a "reserve for contingencies" fund, with an initial contribution of \$500,000. Moving forward with that proposal would be a prudent and sound fiscal decision. We hope you will be supportive of that proposal.

GLTC and the City need to work closely together to develop a shared vision for public transit that provides the amount of service Lynchburg and the surrounding area needs and is sustainable for our customers and our taxpayers. We ask that a method for that constructive dialogue be developed and such a meeting be scheduled as a top priority.

Sincerely,

Lisa S. Dibble
President

C: GLTC Board of Directors
Kimball Payne, City Manager
Michael Carroll, General Manager

October 17, 2011

Mayor Joan Foster and Members of Council
City of Lynchburg
900 Church Street
Lynchburg, VA 24504

First Transit, Inc.
600 Vine Street Suite 1400
Cincinnati, Ohio 45202
Tel 757-291-6559

Dear Madam Mayor and Honorable Members of Council:

I have prepared, on behalf of First Transit, a summary of the action plans related to the recent Audit Report along with a review of the financial management practices that have raised some questions recently

While numerous assessments, reviews and audits have confirmed that there was no financial malfeasance or misstatement of financial reports to the GLTC Board or the City, there were in fact three items identified by the external auditor that were characterized as "Material Weaknesses".. The details regarding each material weakness are as follows:

1. **Monitoring of Cash Balances** On June 8, 2011, a member of the GLTC Finance Section accomplished a balancing of the operating account and determined that there was a shortage of cash to complete the fiscal year. That person then informally approached the City's Finance Department to ascertain the likelihood of a cash transfer sufficient to complete the fiscal year. The General Manager was at a State Transit Meeting on that day and was not able to conduct a thorough review before the request was made. Upon his return to Lynchburg on the 9th, he once again balanced the operating account and determined that there were sufficient funds and that the request was premature and not necessary. Cash balancing has always been a part of GLTC's financial controls but to avoid this type of situation in the future, the frequency of this balancing has been significantly increased to monthly and whenever significant checks will be drawn on the operating account. To our knowledge no similar situation ever occurred prior to or since this event in June of this year.
2. **Monitoring of Grant Applications and Reimbursements** Grant Management involves the approval of the grant and then drawdowns on the approved grant as expenditures are made or immediately anticipated. The Federal grant application for A&E work for the new transfer center was approved by the Federal Transit Administration which allowed federal drawdowns. Once there is federal approval, the State originates their grants and allows drawdowns on State money shortly thereafter. A request for a drawdown of \$ 150,000 was submitted in February 2011 in anticipation of paying an invoice from the architectural firm under contract. This request was not acted upon by the State because the State grant had not yet been activated. Operational funds were used to pay the architectural firm in March. Accruals for the State drawdown were credited to the

capital account and not the operational account which caused the operational account to show a shortage of funds. This is what created the June 8th financial shortage. To prevent this situation in the future, a GLTC Capital Committee consisting of the relevant financial and management personnel has been formed which meets monthly to examine the status of all approved but still unexhausted grants. Additionally the General Manager meets regularly with the Finance Section on the expenditure of capital funds.

3. **Quality of Information Provided to the GLTC Board** The external audit recommendations regarding the improvement of information provided to the Performance Monitoring Committee of the GLTC Board and to the Board itself are reasonable and offer good guidance. We expect that the implementation of these recommendations will improve the quality of financial information provided to the GLTC Board and the public. With the assistance of First Transit financial managers, the specific format of these reports has been modified and I believe improved. They have been provided to the Performance Monitoring Committee at its September meeting and the GLTC Board in October for their use and also for further refinement. As indicated by the Auditor, a report providing the status of capital grants has been developed and will also be provided.

Previous External Audit Reports

It should be noted that the External Audit Report completed in 2010, 2009 and 2008 had no findings of "Material Weakness". Consequently both the management and Board believed that the financial management practices and procedures being used were in keeping with industry best practices.

Recent Management Actions and Initiatives

Over the past three and a half months, an assessment has been conducted of the manner in which the financial management of GLTC has been accomplished. As a consequence of this assessment, First Transit has proposed to the Board the following oversight enhancements and procedural modifications which are directly responsive to the financial reporting and management incident which occurred on June 8th.

1. **Corporate Assessment** Malcolm McCloskey, the Finance Director for the Transit Management Services Division of First Transit, conducted a three day on-site analysis on 19, 20 and 21 July of the processes and procedures that are currently in place within GLTC, formulated conclusions on their adequacy and made recommendations for their improvement. This was provided to the GLTC as part of our management fee.
2. **Payroll** For each pay period beginning in mid-July, the General Manager audits the input of hours worked by the employees and reconciles these inputs with the payroll summary before the payroll checks are produced. Additionally, the

General Manager audits all changes with regard to overtime, wage rate changes, benefit deductions and garnishments.

3. **Capital Funds Management** The First Transit Resident Management Team has assumed responsibility for the inputs and updates to the FTA website and software, TEAM, which is utilized by GLTC to obtain, track, report and receive capital funds. Because FTA has migrated away from paper processes, this website is the tool used by the recipients of federal capital funds to manage this funding.
4. **Financial Management Training** The new Finance Director will continue her training in the financial management of transit systems. She has already completed one course with the National Transit Institute (NTI) and will continue with NTI's financial management series.
5. **Cash Handling** The First Transit Management Team has increased their oversight of the processes utilized to manage the money received from passengers for their bus transportation. Direct observation of the room and the personnel counting the cash fares has been improved. Daily reconciliations occur between the amount of money recorded by the farebox on the bus as being collected and the amount of money actually counted for each day. On a weekly basis, these daily totals are again reviewed and correlated with the amount of money actually deposited in the bank. Finally, the accounting software is reviewed to confirm the valid entry of these deposited amounts into the software.

Because additional training is essential to the further sophistication and improvement of GLTC's financial management system, First Transit arranged for the following additional on-site training steps to be taken:

1. **On-Site Mentoring** Arthur Mergner, a long time employee of First Transit and an individual with 35 years of experience in the financial management of transit systems has come to Lynchburg and worked side-by-side with the financial staff for two and a half weeks. Art has recommended several enhancements that will assist the monitoring and presentation of GLTC financial information. This service was provided as part of our management fee.
2. **Corporate Auditing** Bill Harned, a member of the First Transit Corporate Staff who has considerable expertise in financial management and federal funding processes, will provide periodic visits to GLTC for the purpose of auditing financial records and providing further coaching of the financial staff. Bill has already conducted one of these auditing visits. This service was provided as part of our management fee.

First Transit takes great pride regarding the growth and sophistication of GLTC over the thirty-six years that we have been privileged to be your transit management firm. Yours and our current General Manager, Mike Carroll, has been guiding these enhancements for the last third of this period. Much has been accomplished with your support and vision. Your system has gained national recognition for its accomplishments. In 2009, GLTC was named by the American Public Transportation Association (the predominate national transit association) as the Outstanding Public Transportation System in the nation among all systems in the nation providing more than one million and less than four million annual passenger trips. This Award singled out GLTC to be recognized as "the Best of the Best" in its ridership category. In addition, GLTC has achieved major accomplishments in recent years such as:

1. Obtaining federal and state funding to introduce the hybrid electric bus to the Lynchburg community which will significantly improve air quality in our community and save the transit system fuel and maintenance costs over the life of the bus. With the delivery of the buses currently on order, three quarters of the fixed route buses will be hybrid electric buses.
2. Developing agreements with Liberty University and Lynchburg College which allow students, faculty and employees to utilize GLTC buses thus reducing the number of automobiles on the road and further improving air quality.
3. Obtaining the federal and state funding to design and build a new transit center in the vicinity of the Kemper Street Station. The architectural firm has been hired, has accomplished the preliminary work and is currently developing the final designs. A contingent contract for land purchase has been approved and the final purchase should occur by the end of the calendar year. Construction is anticipated to begin in 2012.
4. Rebranding the transit system under the banner and motto: "Go Green, Ride Blue".
5. Purchased, installed and is now operational with paratransit scheduling software that will allow GLTC to provide elderly and disabled transportation in a more efficient and cost effective manner.
6. Purchased and is installing an Automatic Vehicle Location system for the buses that will allow much better data collection, more efficient operation and better customer service.
7. Secured planning and A&E funds for a new GLTC Operations and Maintenance Center that will better accommodate the size and sophistication of the GLTC bus fleet. An architect has been hired and is currently engaging in preliminary design and environmental work.

We are proud of these achievements. Much has been accomplished during a time of very tight funding. We welcome the oversight and direction from the GLTC Board and Lynchburg City Council and hope that the years of working together to build your transit system demonstrate that by working together we can overcome the most daunting of challenges

First Transit is well aware of the financial challenges facing all levels of government throughout our Country. During these difficult times it has been necessary to review service levels, operating expenses, and revenue sources. Several years ago the GLTC asked First Transit to share in the financial sacrifices being made to maintain a viable public transit service. We are prepared to do so again and will be arranging a meeting with the City Manager and the GLTC Board to discuss this accommodation. We do so willingly and as a long term contractor and partner to the GLTC.

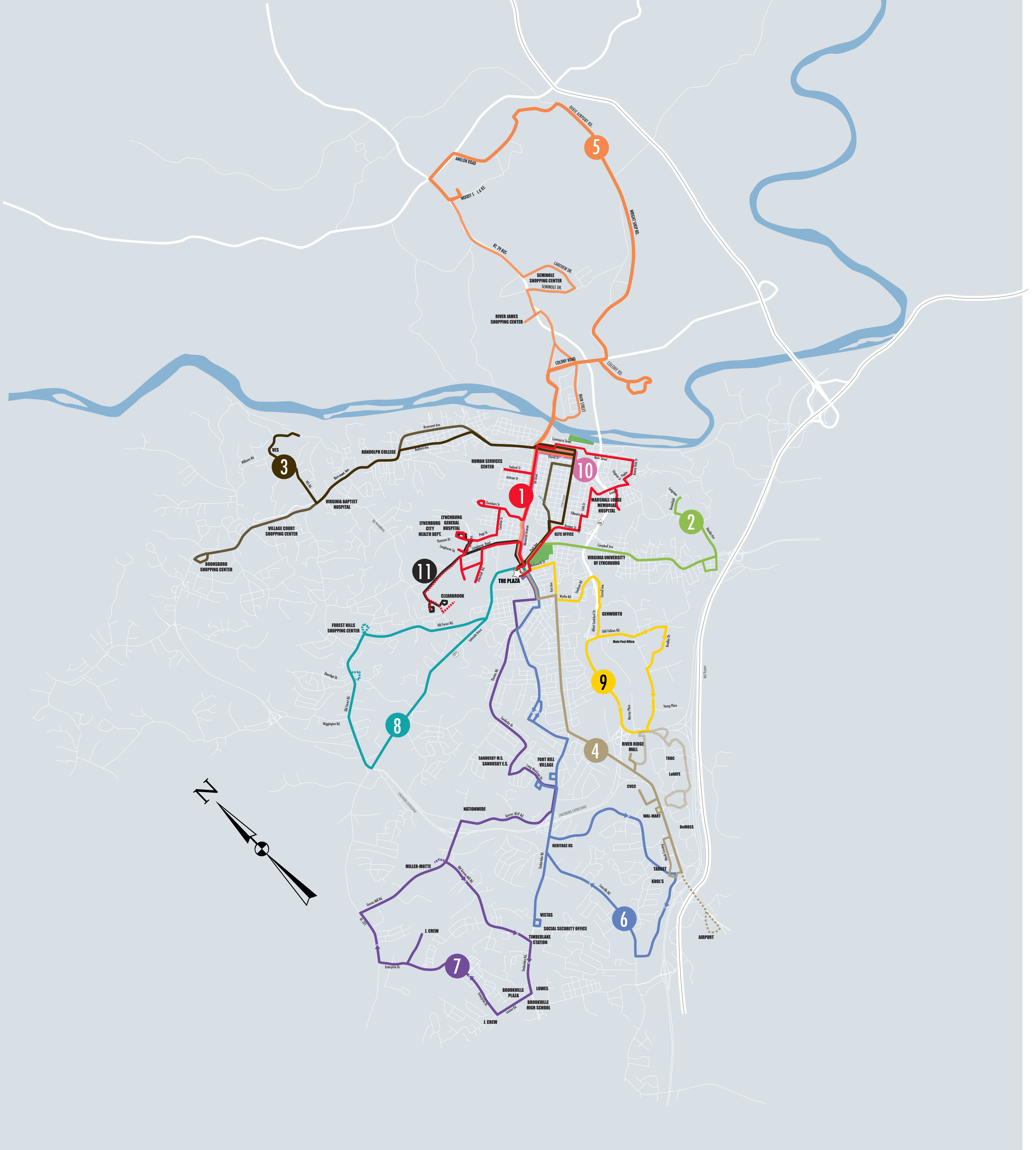
We are committed to the City, its residents, its visitors and its leadership and pledge that we will continue to work with you to make great strides in transit on behalf of the City of Lynchburg.

Sincerely,

A handwritten signature in black ink, appearing to read 'William R. Williamson', with a stylized, flowing script.

William R. Williamson
Region Vice President

:



LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 15, 2011**

AGENDA ITEM NO.: 2

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Proposed 2012 Virginia General Assembly Legislative Agenda**

RECOMMENDATION: Adopt the proposed legislative agenda with any changes Council feels are appropriate.

SUMMARY: The attached proposed legislative agenda for the 2012 session of the Virginia General Assembly has been prepared by Legislative Liaison Linda McMinimy with input from Council and the Leadership Team. Linda will attend Council's work session to discuss the proposed legislative agenda and to receive guidance from Council on any desired changes prior to its adoption.

PRIOR ACTION(S): The proposed legislative agenda is based on those previously adopted by Council amended to reflect current issues.

FISCAL IMPACT: N/A

CONTACT(S): Linda McMinimy, (804) 643-1166; Walter Erwin, 455-3973; Kimball Payne, 455-3990

ATTACHMENT(S): Proposed 2012 Legislative Agenda

REVIEWED BY: lkp

DRAFT

CITY OF LYNCHBURG

2012 LEGISLATIVE AGENDA

The City of Lynchburg is a member of both the Virginia Municipal League and the Virginia First Cities Coalition and supports the legislative agendas of both organizations. The City of Lynchburg 2012 Legislative Agenda is meant to highlight those issues of particular importance to the City.

The Lynchburg City Council understands the fiscal challenges facing the Commonwealth as the 2012 session of the Virginia General Assembly convenes. Those challenges make it even more important that the legislators keep the following principles in mind as they evaluate and vote on legislation and the budget for the upcoming biennium.

PRINCIPLES

- Local governments are instruments of the state, created in large measure to deliver state responsible services in a more efficient and effective manner. This state/local partnership requires an equitable allocation of costs between the two levels of government and across the various jurisdictions of the Commonwealth.
- The state must continue to meet constitutional and statutory responsibilities to adequately fund the state share of state/local services, especially in education, human services, and public safety. Any shortfall in state revenues should not be shifted to local governments.
- Rather than shifting responsibilities for programs that the state is unwilling to fund down to the localities, the state should consider eliminating those programs.
- The state should explore ways to increase the efficiency and effectiveness of the delivery of state services at the local level including the regionalization of service delivery (e.g. Social Services) and the elimination of inefficient structures such as the Compensation Board.
- The General Assembly should defeat proposed legislation that would erode local taxing authority, cap or reduce local revenue sources or that would impose unfunded mandates on localities.
- The General Assembly should support legislation that provides greater authority to localities in implementing sustainability initiatives especially with regard to land use and transportation planning.
- The General Assembly should preserve local zoning and land use authority, allowing flexibility to meet the needs of individual communities.

2012 LEGISLATIVE PRIORITIES

State Aid to Localities: Eliminate the annual \$60 million reduction in State Aid to Localities (ATL). This across the board cut to local core services has been in effect for the last 4 years and has enabled the state to balance its budget during the recession and run a surplus for the last two years, even as local revenues continue to be depressed. The cost to the City of Lynchburg, in FY12 alone, was \$644,424. The four year cost to core services in all localities has been \$220 million dollars. Eliminating the ATL reduction would restore funds to fund state mandated local services.

Comprehensive Services Act (CSA): CSA funding continues to be a serious concern. Actions taken by the General Assembly have increased mandated services and shifted costs to the localities. The General Assembly should refrain from adding additional mandated services and should fund its full share of the CSA program.

Educational Funding: Jobs are the key to economic recovery and adequate education is essential for preparing the current and future workforce. The State should fully fund the Standards of Quality (SOQ), including support staff costs and categorical incentive funds for At-Risk students and restore funding from cuts to education over the last biennium. The state has a constitutional duty to meet its education funding obligations and should refrain from changes in methodology and the division of financial responsibility that result in a further shift of funding responsibility from the state to localities. These shifts do not change what it actually costs to provide education but simply transfer additional costs to local governments, and ultimately to the local real estate tax base.

Local Law Enforcement Funding: The Commonwealth should be equitable in its support for local law enforcement funding both to those localities with police departments (HB 599 funding) and to those in which Sheriff's Departments provide law enforcement (through the Compensation Board). Cities should not bear a disproportionate burden for law enforcement funding through continued reductions in funds provided by HB 599.

Transportation: The General Assembly should ensure that adequate dedicated, non-general fund revenues are available to maintain the current transportation infrastructure, especially street maintenance of bridges, key arterial and collector roadways and non-automobile transportation modes such as public transportation, pedestrian and bikeways and airports.

Identify a sustainable source of operating funds for the Amtrak intercity passenger rail service from Lynchburg to Boston including continued funds for the Bus Bridge to Roanoke. In addition, support extension of passenger rail service from Lynchburg to Roanoke as part of the Trans Dominion Express.

Water Quality: In addition to the City's Combined Sewer Overflow (CSO) Program additional water quality requirements related to the cleanup of the Chesapeake Bay and

its tributaries will significantly impact the costs of stormwater management and wastewater treatment facilities. The City urges support for the following positions:

- Provide \$5.0 million in each year of the biennium for Lynchburg and Richmond's CSO program (\$2.5Million each year for each city).
- Continue to increase funding to the Virginia Revolving Loan (VCWRLF) program and earmark those funds for CSO abatement in order to qualify Lynchburg and Richmond for zero interest rates.
- Support expansion of Virginia's Nutrient Credit Exchange Program to include other sectors such as stormwater as long as it is not to the detriment of the established point source trading or risk a reduction in point source allocations.
- Provide local authority to charge connection and availability or facility fees for stormwater systems similar to those charged by water and wastewater utilities.
- Support reasonable and affordable implementation of any new stormwater management requirements.
- Oppose efforts to implement further point source (wastewater treatment plant) reductions of nutrient discharges beyond those allocations currently in the Chesapeake Bay Nutrient General Permit.
- Support any state or federal funding support for all water quality initiatives, as well as continued funding for the Water Quality Improvement Fund (WQIF).

OTHER LEGISLATIVE POSITIONS

Binding Arbitration: Oppose legislation that mandates binding arbitration, meet and confer requirements, and imposed grievance procedures for local employees.

Communications Sales and Use Tax: Support legislation to reclassify the communications sales and use tax as a local not a state tax.

Economic Development: Provide \$2 million for the Virginia Brownfield Redevelopment Assistance Fund, to continue the redevelopment of brownfield sites.

Eminent Domain: Oppose a constitutional amendment to restrict the local use of eminent domain.

Exemptions: Oppose any legislation that would exempt churches and other religious and non-profit organizations from neutral, generally applicable local ordinances, and in particular local health, safety and zoning ordinances."

Employee Retirement and Benefits: Support the local option of participating in the Virginia Sickness and Disability Program.

Line of Duty Act: Support initiatives that return program funding responsibility to the state. Should this unfunded mandate continue, give localities the authority to establish these benefits rather than participate in the state program.

Mental Health/Mental Retardation Services: Community Service Boards (CSB's) should be required to provide mental health services to children as mandated by state law.

Prevention: Restore state funds for prevention services.

Region 2000: Maintain funding for the Center for Advanced Engineering and Research (CAER)

Social Services: Maintain funding for workforce re-training through appropriate agencies, retaining VIEW staff and funding in Social Services. This program has successfully helped TANF recipients secure and maintain jobs.

State Aid to Public Libraries: Retain state aid for libraries. Public libraries are experiencing unprecedented demand for their services due to the recession. In FY 2011 state aid was provided at a level of only 56% of that mandated by the Code of Virginia. Further cuts will threaten the future viability of local libraries.

Substance Abuse Treatment: Restore state funding for substance abuse treatment programs. Such funding could be provided to Community Service Boards, programs such as "The Healing Place" or other pilot programs.

Taxes on Local Services: Oppose the imposition of a state fee, tax or surcharge on water, sewer, and solid waste or on any other local government funds or services.

Taxes- Machinery and Tools: Oppose legislation that would reduce or eliminate a localities authority to impose a machinery and tools or business license tax.

Taxes- Business License: Oppose legislation that would reduce or eliminate a localities authority to impose a business license tax.

Taxes- Transient Occupancy and On-line Travel Companies: Support legislation to ensure that transient occupancy taxes are based on the cost of the room as paid by the consumer. On-line travel companies collect and remit transient occupancy taxes based on the wholesale room price hotels and motels paid by the travel companies not the room price paid by the consumer.

Telecommunications: Maintain local authority over zoning, land use, rights-of-way and taxation. Limit new state regulation preempting local authority regarding the use and compensation of local rights of way for telecommunications.

Virginia Retirement System: Support legislation that provides localities with greater flexibility in making adjustments to VRS benefits in order to reduce the increasing costs of the program, including but not limited to legislation to allow localities the option to require employees hired before July 1, 2010 to pay the 5% employee share of VRS.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 25, 2011**

AGENDA ITEM NO.: 3

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Adoption of a Revision to City Council's Vision Statement re Good Government**

RECOMMENDATION: Adopt the revised language.

SUMMARY: During Council's retreat it was suggested that the "Good Government" component of Council's Vision Statement be revised to acknowledge the City's role in regional initiatives.

Based on Council's direction the following language is proposed:

Good Government

City government will deliver, in an equitable manner, public services through the effective and efficient stewardship of resources. We will also engage in regional efforts that advance the interests of our citizens.

PRIOR ACTION(S): October 18, 2011, Council directed that language be drafted to revise the vision statement to reflect participation in regional initiatives.

FISCAL IMPACT: None

CONTACT(S): Leslie King, 455-4212

ATTACHMENT(S): Resolution

REVIEWED BY: lkp

RESOLUTION

BE IT RESOLVED THAT the Lynchburg City Council Vision statement is here by amended to add the following to the section on "Good Government": **We will also engage in regional efforts that advance the interests of our citizens.**

Adopted:

Certified:

Clerk of Council

167L

LYNCHBURG CITY COUNCIL VISION

We will work to ensure an environment in which all of the residents of Lynchburg are free to pursue their dreams, hopes, and aspirations through our understanding and commitment to meet the public's needs in the areas of:

Community Character

The character of our City is defined by the values and behaviors of its residents and its natural and built environments. We are a beautiful, safe and comfortable community with hospitable, friendly, and caring citizens who are free to pursue their values of faith and family according to their individual preferences.



Economic Prosperity

Our City will maintain a vibrant, industrious community that will expand economic opportunities for our citizens. We embrace policies that will enhance economic prosperity with the support of a strong Industrial Development Authority, emphasis on education, workforce development, and a continued commitment to business-friendly initiatives.



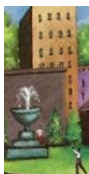
Good Government

City government will deliver, in an equitable manner, public services through the effective and efficient stewardship of resources.



Multicultural Vibrancy

Lynchburg acknowledges and values its rich cultural, ethnic, racial, and religious diversity while promoting a respectful and cohesive community.



A Compelling Destination

The City is a regional draw for entertainment, shopping and business. Our unique historic heritage and tourism attractions draw a national audience. With its breadth of recreational experiences, centers of interactive living history, and opportunities for educational excellence, our City appeals to all generations.

Adopted December 2006

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 25, 2011**

AGENDA ITEM NO.: 12

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Redistricting – Ward and Precinct Boundaries**

RECOMMENDATION: After a public hearing, approve the revised Ward and Precinct Boundaries

SUMMARY: As a result of population changes identified in the 2010 Census, boundary adjustments are necessary to Ward and Precinct Boundaries. Guidelines for redistricting advise that the population for wards should be within a five percent (5%) of the ward's ideal population relative to the total population of the City. The ideal population of each ward would be eighteen thousand eight hundred and ninety-two (18,892) individuals. Boundary adjustments also cannot result in "retrogression" or a condition where the minority population does not have the same voting strength.

Table 1 indicates the current population of the City's four (4) wards, the adjustments necessary to meet +/- five percent (5%) deviation guideline and the current percentage of the minority population:

Existing Ward Population

Ward	Total Population	Minimum Necessary Adjustment	Minority Population
I	18,481	N/A	21.69%
II	15,167	+ 2780	73.74%
III	22,129	- 2292	29.12%
IV	19,791	N/A	26.56%
17,947		18,892	19,837
-5% of Ideal		Ideal	+5% of Ideal

Table 1

For Ward II and Ward III to be in compliance with the +/- five percent (5%) guideline, Ward II would require a minimum population increase of two thousand seven hundred eighty (2,780) individuals while Ward III would require a minimum population decrease of two thousand two hundred ninety-two (2,292) individuals. To achieve this +/- five percent (5%) guideline, it is recommended to move seven hundred sixty-one (761) residents from the area east of Wadsworth, Lancaster and Callahan Streets that are currently within Ward III, Precinct III-1 to Ward II, Precinct II-2. The current polling place for these residents is the Lynchburg Public Library. After boundary adjustments, the effected residents would have a new polling place of R.S. Payne Elementary School. (**See Attached Detail Map 1**) It is also recommended to move two thousand twenty-four (2,024) residents currently in Ward III, Precinct III-2, to Ward II, which would create the new Precinct II-4. The polling place would remain at Fairview Christian Church. (**See Attached Detail Map 2**) Table 2 indicates the population of the City's four (4) wards and minority population after the proposed revisions:

Proposed Ward Population

Ward	Total Population	Minority Population
I	18,481	21.69%
II	17,952	69.45%
III	19,344	26.67%
IV	19,791	26.56%
17,947	18,892	19,837
-5% of Ideal	Ideal	+5% of Ideal

Table 2

In addition to the changes to the precincts listed above, a portion of Precinct III-4 would be used to create a new precinct with the designation III-2. The proposed Precinct III-2 would contain the area south of Candler's Mountain Road and east of the Norfolk Southern Railroad. This new precinct would serve Liberty University and substantially reduce the number of voters at Heritage Elementary. The Vines Center has been identified as the polling place for this new precinct. **(See Attached Detail Map 3)**

The newly adopted State Senate Boundary currently splits Ward I, Precinct I-1. It is proposed that the northern portion of Precinct I-1 be combined with Precinct I-2. **(See Attached Detail Map 4)** The attached "Registered Voters By Precinct" table lists the current and proposed registered/active voters by precinct. **(See Attached Table "Registered Voters by Precinct")**

The Electoral Board has reviewed the proposed changes and is in agreement with them. A representative of the Electoral Board will be in attendance during Council's work session to answer any questions. City staff has also conducted the following informational meetings: October 6, 2011, Ward II – Bass Elementary; October 13, 2011, Ward I – Bedford Hills Elementary; October 20, 2011, Ward III – Lynchburg Public Library.

Following adoption by Council, the proposed Ward and Precinct Boundary adjustments would be submitted to the Department of Justice for preclearance in November, with an anticipated approval of January 2012. Provided the adjustments are accepted by the Department of Justice, the revisions would be in effect for the March 2012, Republican Primary, May 8, 2012, Council Election and the November 6, 2012 Presidential Election.

PRIOR ACTION(S): February 8, 2011, Council briefed by the City Attorney on the upcoming redistricting process; April 12, 2011, Council briefed by the City Planner on the redistricting tool; April 26, 2011, Council briefed on the necessary changes resulting from the decennial census; June 14, 2011, Council authorized public outreach to explain the proposed changes and receive feedback.

FISCAL IMPACT: None

CONTACT(S): Kim Payne, City Manager – 455-3990
Walter Erwin, City Attorney – 455-3973
Tom Martin, City Planner -- 455-3900
Shaun Conway, GIS Specialist I -- 455-3946

ATTACHMENT(S):

- Overview Map
- Detail Map 1
- Detail Map 2
- Detail Map 3
- Detail Map 4
- Table Registered Voters by Precinct
- Citywide Ward and Precinct Map
- Ordinance

REVIEWED by: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTIONS 14-17, 14-18, 14-19, 14-20 14-32, 14-33, 14-34 AND 14-35 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTION RELATING TO THE CITY'S ELECTION WARDS, ELECTION PRECINCTS AND VOTING PLACES.

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

1. That Sections 14-17, 14-18, 14-19, 14-20 14-32, 14-33, 14-34 and 14-35 of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

Ward Boundaries

Sec. 14-17. First ward.

The first ward of the city shall include all that portion of the city bounded as follows:

Beginning at a point of the intersection of the centerline of Graves Mill Road and the 1976 Corporate Limits Line, said point being the southwestern most point in the First Ward; and running in a northerly direction following the City's Corporate Limits to the point where the City's Corporate Limits and the Norfolk Southern Railroad intersect; thence proceeding in a southerly direction following the centerline of the Norfolk Southern Railroad to the point that the centerline of the Norfolk Southern Railroad and the centerline of the Blackwater Creek Bikeway intersect; thence proceeding in a westerly direction following the centerline of the Blackwater Creek Bikeway to the point that the centerline of the Blackwater Creek Bikeway and the centerline of the Norfolk Southern Railroad meet; thence proceeding in a westerly direction following the centerline of the Norfolk Southern Railroad to the point that the centerline of the Norfolk Southern Railroad and the centerline of Ivy Creek intersect; thence proceeding in a northerly direction following the meandering of the centerline of Ivy Creek to the point that an extension of the centerline of Club Drive and the centerline of Ivy Creek intersect; thence proceeding in a northeasterly direction following the centerline of Club Drive to the point that the centerline of Club Drive and the centerline of Landon Street meet; thence proceeding in a northeasterly direction following the centerline of Landon Street to the point that the centerline of Landon Street and the centerline of Langhorne Road intersect; thence proceeding in a northerly direction following the centerline of Langhorne Road to the point that the centerline of Langhorne Road and the centerline of Rivermont Terrace meet; thence proceeding in a northerly direction following the centerline of Rivermont Terrace to the point that the centerline of Rivermont Terrace and the centerline of Rivermont Avenue intersect; thence proceeding in a westerly direction following the centerline of Rivermont Avenue to the point that the centerline of Rivermont Avenue and the centerline of Link Road intersect; thence proceeding in a southwesterly direction following the centerline of Link Road to the point that the centerline of Link Road and the centerline of Ivy Creek intersect; thence proceeding in a southwesterly direction following the meandering of the centerline of Ivy Creek to the point that the centerline of an unnamed branch of Ivy Creek intersect; thence proceeding in a southeasterly direction following the meandering of the creek to the point that the centerline of the unnamed branch of Ivy Creek and the centerline of a westerly extension

of Devonshire Road intersect; thence proceeding in a southerly direction following the centerline of Devonshire Road to the point that the centerline of Devonshire Road and the centerline of Old Forest Road intersect; thence proceeding in a southwesterly direction following the centerline of Old Forest Road to the point that the centerline of Old Forest Road and the centerline of Forest Brook Road intersect; thence proceeding in a southerly direction following the centerline of Forest Brook Road to the point that the centerline of Forest Brook Road and the centerline of Lakeside Drive intersect; thence proceeding in a westerly direction following the centerline of Lakeside Drive to the point that the centerline of Lakeside Drive and the centerline of Wyndale Drive intersect; thence proceeding in a southwesterly direction following the centerline of Wyndale Drive to the point that the centerline of Wyndale Drive and the centerline of Fleetwood Drive intersect; thence proceeding in a southeasterly direction following the centerline of Fleetwood Drive to the point that an extension of the centerline of Fleetwood Drive and the centerline of Blackwater Creek intersect; thence proceeding in a westerly direction following the meandering of the centerline of Blackwater Creek to the point of confluence between Blackwater Creek and Tomahawk Creek; thence proceeding in a westerly direction following the meandering of the centerline of Tomahawk Creek to the point that the centerline of Tomahawk Creek and the centerline of McConville Road intersect; thence proceeding in a southeasterly direction following the centerline of McConville Road to the point that the centerline of McConville Road and the centerline of Graves Mill Road intersect; thence proceeding in a westerly direction following the centerline of Graves Mill Road to the point that the centerline of Graves Mill Road and the 1976 Corporate Limits intersect, said point being the beginning and ending point of the First Ward.

Sec. 14-18. Second ward.

The second ward of the city shall include all that portion of the city bounded as follows:

Beginning at the point of the intersection of the City's Corporate Limits and the centerline of the Norfolk Southern Railroad, said point being the northern most point in the second ward; thence proceeding in a southeasterly direction following the City's Corporate Limits to the point that the City's Corporate Limits and the centerline of Martin Street intersect; thence proceeding in a northwesterly direction following the centerline of Martin Street to the point that the centerline of Martin Street and the centerline of US460 Richmond Highway intersect; thence proceeding in an easterly direction following the centerline of US460 Richmond Highway to the point that the centerline of the US460 Richmond Highway and the centerline of Campbell Avenue intersect; thence proceeding in a northwesterly direction following the centerline of Campbell Avenue to the point that the centerline of Campbell Avenue and the centerline of Florida Avenue intersect; thence proceeding in a northerly direction following the centerline of Florida Avenue to the point that the centerline of Florida Avenue and the centerline of the Norfolk and Southern Railroad intersect; thence proceeding in a westerly direction following the centerline of the Norfolk and Southern Railroad to the point that the centerline of the Norfolk and Southern Railroad and the centerline of the North / South line of the Norfolk and Southern Railroad intersect; thence proceeding in a northerly direction following the centerline of the Norfolk and Southern Railroad to the point that the centerline of the Norfolk Southern Railroad and the centerline of the Lynchburg Expressway intersect; thence proceeding in a westerly direction following the centerline of the Lynchburg Expressway to the point that the centerline of the Lynchburg Expressway and an extension of the centerline of Cliff Street intersect; thence proceeding in a northwesterly

direction following the centerline of Cliff Street to the point that the centerline of Cliff Street and the centerline of Stephenson Avenue intersect; thence proceeding in a northerly direction following the centerline of Stephenson Avenue to the point that the centerline of Stephenson Avenue and the centerline of Twelfth Street intersect; thence proceeding in an easterly direction following the centerline of Twelfth Street to the point that the centerline of Twelfth Street and the centerline of Campbell Avenue intersect; thence proceeding in a northwesterly direction following the centerline of Langhorne Road to the point that the centerline of Langhorne Road and the centerline of Memorial Avenue intersect; thence proceeding in a westerly direction following the centerline of Memorial Avenue to the point that the centerline of Memorial Avenue and the centerline of Lakeside Drive intersect; thence proceeding in a northwesterly direction following the centerline of Lakeside Drive to the point that the centerline of Lakeside Drive and an extension of the centerline of an unnamed branch of Blackwater Creek intersect, said point being in the vicinity of the intersection of the centerline of Lakeside Drive and the centerline of Alleghany Avenue; thence proceeding in a northerly direction following the meandering of the centerline of the unnamed branch of Blackwater Creek to the confluence of the unnamed branch of Blackwater Creek and Blackwater Creek; thence proceeding in a northerly direction following the meandering of the centerline of Blackwater Creek to the point that the centerline of Blackwater Creek and the centerline of Langhorne Road intersect; thence proceeding in northerly direction following the centerline of Langhorne Road to the point that the centerline of Langhorne Road and the centerline of the Norfolk Southern Railroad intersect; thence proceeding in an easterly direction following the centerline of the Norfolk and Southern Railroad to the point that the centerline of the Norfolk and Southern Railroad and the centerline of the Blackwater Creek Bikeway meet; thence proceeding in an easterly direction following the centerline of the Blackwater Creek Bikeway to the point that the centerline of the Blackwater Creek Bikeway and the centerline of the Norfolk Southern Railroad intersect; thence proceeding in a northerly direction following the centerline of the Norfolk and Southern Railroad to the point that the centerline of the Norfolk and Southern Railroad and the City's Corporate Limits intersect, said point being the beginning and ending point of the Second Ward.

Sec. 14-19. Third ward.

The third ward of the city shall include all that portion of the city bounded as follows:

Beginning at a point of the intersection of the centerline of Langhorne Road and the centerline of Memorial Avenue, said point being the northern most point in the Third Ward; and running in a southeasterly direction following the centerline of Langhorne Road to the point that the centerline of Langhorne Road and the centerline of Twelfth Street intersect; thence proceeding in a westerly direction following the centerline of Twelfth Street to the point that the centerline of Twelfth Street and the centerline of Stephenson Avenue intersect; thence proceeding in a southeasterly direction following the centerline of Stephenson Avenue to the point that the centerline of Stephenson Avenue and the centerline of Cliff Street intersect; thence proceeding in a southeasterly direction following the centerline of Cliff Street to the point that the centerline of Cliff Street and the centerline of the Lynchburg Expressway intersect; thence proceeding in an easterly direction following the centerline of the Lynchburg Expressway to the point that the centerline of the Lynchburg Expressway and the centerline of the North / South line of the Norfolk Southern Railroad intersect; thence proceeding in a southerly direction following the centerline of the North / South line of the Norfolk Southern Railroad to the

point that the centerline of the North / South line of the Norfolk Southern Railroad and the centerline of the East / West line of the Norfolk Southern Railroad intersect; thence proceeding in an easterly direction following the centerline of the East / West line of the Norfolk Southern Railroad to the point that the centerline of the East / West line of the Norfolk Southern Railroad and the centerline of Florida Avenue intersect; thence proceeding in a southwesterly direction following the centerline of Florida Avenue to the point that the centerline of Florida Avenue and the centerline of Campbell Avenue intersect; thence proceeding in a southeasterly direction following the centerline of Campbell Avenue to the point that the centerline of Campbell Avenue and the centerline of US460 Richmond Highway intersect; thence proceeding in a westerly direction following the centerline of US460 Richmond Highway to the point that the centerline of US460 Richmond Highway and the centerline of Martin Street intersect; thence proceeding in a southeasterly direction following the centerline of Martin Street to the point that the centerline of Martin Street and the City's Corporate Limits intersect; thence proceeding in a westerly direction following the City's Corporate Limits to the point that the City's Corporate Limits and the centerline of Timberlake Road intersect; thence proceeding in a northeasterly direction following the centerline of Timberlake Road to the point that the centerline of Timberlake Road and the centerline of Fort Avenue intersect; thence proceeding in a northeasterly direction following the centerline of Fort Avenue to the point that the centerline of Fort Avenue and the centerline of Oakridge Boulevard intersect; thence proceeding in a westerly direction following the centerline of Oakridge Boulevard to the point that the centerline of Oakridge Boulevard and the centerline of Sussex Street intersect; thence proceeding in a northeasterly direction following the centerline of Sussex Street to the point that the centerline of Sussex Street and the centerline of Richmond Street intersect; thence proceeding in a northeasterly direction following the centerline of Richmond Street to the point that the centerline of Richmond Street and the centerline of Rockbridge Avenue intersect; thence proceeding in a northwesterly direction following the centerline of Rockbridge Avenue to the point that the centerline of Rockbridge Avenue and the centerline of Lakeside Drive intersect; thence proceeding in an easterly direction following the centerline of Lakeside Drive to the point that the centerline of Lakeside Drive and the centerline of Memorial Avenue intersect; thence proceeding in a northeasterly direction following the centerline of Memorial Avenue to the point that the centerline of Memorial Avenue and the centerline of Langhorne Road intersect, said point being the beginning and ending point of the Third Ward.

Sec. 14-20. Fourth ward.

The fourth ward of the city shall include all that portion of the city bounded as follows:

Beginning at the point of the intersection of the 1976 Corporate Limits and the centerline of Timberlake Road, said point being the southern most point in the Fourth Ward; and running in a westerly direction following the 1976 Corporate Limits Line to the point that the 1976 Corporate Limits and the centerline of Graves Mill Road intersect; thence proceeding in an easterly direction following the centerline of Graves Mill Road to the point that the centerline of Graves Mill Road and the centerline of McConville Road intersect; thence proceeding in a northwesterly direction following the centerline of McConville Road to the point that the centerline of McConville Road and the centerline of Tomahawk Creek intersect; thence proceeding in an easterly direction following the meandering of the centerline of Tomahawk Creek to the point of confluence between Tomahawk Creek and Blackwater Creek; thence proceeding in an easterly direction

following the meandering of the centerline of Blackwater Creek to the point that an extension of Fleetwood Drive and the centerline of Blackwater Creek intersect; thence proceeding in a northwesterly direction following the centerline of Fleetwood Drive to the point that the centerline of Fleetwood Drive and the centerline of Wyndale Drive intersect; thence proceeding in an easterly direction following the centerline of Wyndale Drive to the point that the centerline of Wyndale Drive and the centerline of Lakeside Drive intersect; thence proceeding in an easterly direction following the centerline of Lakeside Drive to the point that the centerline of Lakeside Drive and the centerline of Forest Brook Road intersect; thence proceeding in a northerly direction following the centerline of Forest Brook Road to the point that the centerline of Forest Brook Road and the centerline of Old Forest Road intersect; thence proceeding in a northeasterly direction following the centerline of Old Forest Road to the point that the centerline of Old Forest Road and the centerline of Devonshire Road intersect; thence proceeding in a northerly direction following the centerline of Devonshire Road to the point of that a westerly extension of Devonshire Road and the centerline of a unnamed branch of Ivy Creek intersect; thence proceeding in a northerly direction following the meandering of the creek to the point that the centerline of the unnamed branch of Ivy Creek and the centerline of Ivy Creek intersect; thence proceeding in an easterly direction following the meandering of the centerline of Ivy Creek to the point that the centerline of Ivy Creek and Link Road intersect; thence proceeding in a northeasterly direction following the centerline of Link Road to the point that the centerline of Link Road and the centerline of Rivermont Avenue intersect; thence proceeding in an easterly direction following the centerline of Rivermont Avenue to the point that the centerline of Rivermont Avenue and the centerline of Rivermont Terrace intersect; thence proceeding in a southerly direction following the centerline of Rivermont Terrace to the point that the centerline of Rivermont Terrace and the centerline of Langhorne Road intersect; thence proceeding in a southerly direction following the centerline of Langhorne Road to the point that the centerline of Langhorne Road and the centerline of Landon Street intersect; thence proceeding in a westerly direction following the centerline of Landon Street to the point that the centerline of Landon Street and the centerline of Club Drive intersect; thence proceeding in a southwesterly direction following the centerline of Club Drive to the point that an extension of the centerline of Club Drive and the centerline of Ivy Creek intersect; thence proceeding in a southeasterly direction following the meandering of the centerline of Ivy Creek to the point that the centerline of Ivy Creek and the centerline of Langhorne Road intersect; thence proceeding in a southerly direction following the centerline of Langhorne Road to the point that the centerline of Langhorne Road and the centerline of Blackwater Creek intersect; thence proceeding in a southerly direction following the meandering of the centerline of Blackwater Creek to the point that the centerline of Blackwater Creek and the centerline of a unnamed branch of Blackwater Creek intersect; thence proceeding in a southeasterly direction following the meandering of the centerline of a unnamed branch of Blackwater Creek to the point that an extension of the unnamed Branch of Blackwater Creek and the centerline of Lakeside Drive intersect, said point being in the vicinity of the intersection of the centerline of Lakeside Drive and the centerline of Alleghany Avenue; thence proceeding in a southwesterly direction following the centerline of Lakeside Drive to the point that the centerline of Lakeside Drive and the centerline of Rockbridge Avenue intersect; thence proceeding in a southeasterly direction following the centerline of Rockbridge Avenue to the point that the centerline of Rockbridge Avenue and the centerline of Richmond Street intersect; thence proceeding in a southwesterly direction following the centerline of Richmond Street to the point that the centerline of Richmond Street and the centerline of Sussex Street intersect; thence proceeding in a southwesterly direction following the centerline

of Sussex street to the point that the centerline of Sussex Street and the centerline of Oakridge Boulevard intersect; thence proceeding in an easterly direction following the centerline of Oakridge Boulevard to the point that the centerline of Oakridge Boulevard and the centerline of Fort Avenue intersect; thence proceeding in a southwesterly direction following the centerline of Fort Avenue to the point that the centerline of Fort Avenue and the centerline of Timberlake Road intersect; thence proceeding in a southwesterly direction following the centerline of Timberlake Road to the point that the centerline of Timberlake Road and the 1976 Corporate Limits intersect, said point being the beginning and ending point of the Fourth Ward.

Election Precincts and Voting Places

Sec. 14-32. First ward.

The first ward shall be divided into five (5) election precincts, the boundaries of which shall be as follows:

(1) First precinct. All that portion of the first ward beginning at a point, said point being the intersection of the Corporate Limits of the City of Lynchburg and the centerline of Graves Mill Road, thence proceeding in an easterly direction along the centerline of Graves Mill Road to its point of intersection with the centerline of McConville Road, thence proceeding in a northerly direction along the centerline of McConville Road to its point of intersection with the centerline of Tomahawk Creek, thence proceeding in an easterly direction along the centerline of Tomahawk Creek to its point of intersection with the centerline of Blackwater Creek, thence proceeding in an easterly direction along the centerline of Blackwater Creek to its point of intersection with the centerline of Fleetwood Drive extended, thence proceeding in a northerly direction along the centerline of Fleetwood Drive extended three hundred ninety-five (395) feet to the terminus of the centerline of Fleetwood Drive, thence proceeding in a northerly direction along the centerline of Fleetwood Drive to its point of intersection with the centerline of Wyndale Drive, thence proceeding in an easterly direction along the centerline of Wyndale Drive to its point of intersection with the centerline of Lakeside Drive, thence proceeding in an easterly direction along the centerline of Lakeside Drive to its point of intersection with the centerline of Forest Brook Road, thence proceeding in a northerly direction along the centerline of Forest Brook Road to its point of intersection with the centerline of Old Forest Road, thence proceeding in a northeasterly direction along the centerline of Old Forest Road to its point of intersection with the centerline of Devonshire Road, thence proceeding in a northwesterly direction along the centerline of Devonshire Road to its point of intersection with the centerline of Kettering Lane, thence proceeding in a northwesterly direction one thousand eight hundred fifteen (1815) feet along the centerline of Devonshire Road extended to its point of intersection with the centerline of the Ivy Creek Tributary, thence proceeding in a northwesterly direction along the centerline of the Ivy Creek Tributary to its point of intersection with the centerline of Ivy Creek, thence proceeding in a westerly direction along the centerline of Ivy Creek, to its point of intersection with the centerline of an unnamed trail located within Peakview Park, thence proceeding in a westerly direction along the centerline of the unnamed trail in Peakview Park to its point of intersection with the centerline of Ivy Creek Lane, thence proceeding in a westerly direction along the centerline of Ivy Creek Lane to its point of intersection with the centerline of Wiggington Road, thence proceeding in a northwesterly direction along the centerline of Wiggington Road to its point of intersection with the centerline of Burnham Lane, thence proceeding in a northerly

direction along the centerline of Burnham Lane to its point of intersection with the centerline of Mercury Street, thence proceeding in a westerly direction along the centerline of Mercury Street to its point of intersection with the centerline of Saturn Street, thence proceeding in a southerly direction along the centerline of Saturn Street to its point of intersection with the centerline of Wiggington Road, thence proceeding in a northwesterly direction along the centerline of Wiggington Road to its point of intersection with the centerline of Chadwick Drive, thence proceeding in a southwesterly direction along the centerline of Chadwick Drive to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in a southerly direction along the Corporate Limits of the City of Lynchburg to the point of beginning. The voting place in said first precinct of the first ward shall be located at Moose Lodge #715, 2307 Lakeside Drive.

(2) Second precinct. All that portion of the first ward beginning at a point, said point being the intersection of the Corporate Limits of the City of Lynchburg and the centerline of Chadwick Drive, thence proceeding in a northwesterly direction along the Corporate Limits of the City of Lynchburg to its point of intersection with the centerline of Boonsboro Road, thence proceeding in a southeasterly direction along the centerline of Boonsboro Road to its point of intersection with the centerline of Link Road, thence proceeding in a southwesterly direction along the centerline of Link Road to its point of intersection with the centerline of Ivy Creek, thence proceeding in a northwesterly direction along the centerline of Ivy Creek to its point of intersection with the centerline of an unnamed trail located within Peaksview Park, thence proceeding in a westerly direction along the centerline of the unnamed trail in Peaksview Park to its point of intersection with the centerline of Ivy Creek Lane, thence proceeding in a westerly direction along the centerline of Ivy Creek Lane to its point of intersection with the centerline of Wiggington Road, thence proceeding in a northwesterly direction along the centerline of Wiggington Road to its point of intersection with the centerline of Burnham Lane, thence proceeding in a northerly direction along the centerline of Burnham Lane to its point of intersection with the centerline of Mercury Street, thence proceeding in a westerly direction along the centerline of Mercury Street to its point of intersection with the centerline of Saturn Street, thence proceeding in a southerly direction along the centerline of Saturn Street to its point of intersection with the centerline of Wiggington Road, thence proceeding in a northwesterly direction along the centerline of Wiggington Road to its point of intersection with the centerline of Chadwick Drive, thence proceeding in a southwesterly direction along the centerline of Chadwick Drive to the point of beginning. The voting place in said second precinct of the first ward shall be located at Bedford Hills School, Morningside Drive and Indian Hill Road.

(3) Third precinct. All that portion of the first ward beginning at a point, said point being the intersection of the Corporate Limits of the City of Lynchburg and the centerline of Boonsboro Road, thence proceeding in a southeasterly direction along the centerline of Boonsboro Road to its point of intersection with the centerline of Rivermont Avenue, thence proceeding in an easterly direction along the centerline of Rivermont Avenue to its point of intersection with the centerline of VES Road, thence proceeding in a northerly direction along the centerline of VES Road to its point of intersection with the centerline of Hydro Street, thence proceeding in a Northerly Direction along the centerline of Hydro Street to its point of intersection with the centerline of Sugar Tree Branch, thence proceeding in an easterly direction along the centerline of Sugar Tree Brach to its point of intersection with the western bank of the James River, thence proceeding in an easterly direction along the centerline of Sugar Tree Branch extended three hundred six

(306) feet to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in a Northerly direction along the Corporate Limits of the City of Lynchburg to the point of beginning. The voting place in said third precinct of the first ward shall be located at First Presbyterian Church, 1215 Virginia Episcopal School Road.

(4) Fourth precinct. All that portion of the first ward beginning at a point, said point being the intersection of the centerline of Rivermont Avenue and the centerline of VES Road, thence proceeding in a northerly direction along the centerline of VES Road to its point of intersection with the centerline of Hydro Street, thence proceeding in a northerly direction along the centerline of Hydro Street to its point of intersection with the centerline of Sugar Tree Branch, thence proceeding in an easterly direction along the centerline of Sugar Tree Branch to its point of intersection with the western bank of the James River, thence proceeding in an easterly direction along the centerline of Sugar Tree Branch extended three hundred six (306) feet to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in a southerly direction along the Corporate Limits of the City of Lynchburg to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a southwesterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of Rivermont Avenue, thence proceeding in an westerly direction along the centerline of Rivermont Avenue to the point of beginning. The voting place in said fourth precinct of the first ward shall be located at Rivermont Presbyterian Church, 2424 Rivermont Avenue.

(5) Fifth precinct. All that portion of the first ward beginning at a point, said point being the intersection of the centerline of Ivy Creek and the centerline of the abandoned Norfolk and Southern Railroad, thence proceeding in a northeasterly direction along the centerline of the abandoned Norfolk and Southern Railroad to its point of intersection with the centerline of the Blackwater Creek Bikeway, thence proceeding in a northeasterly direction along the centerline of the Blackwater Creek Bikeway to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a northwesterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of Rivermont Avenue, thence proceeding in a westerly direction along the centerline of Rivermont Avenue to its point of intersection with the centerline of Rivermont Terrace, thence proceeding in a southerly direction along the centerline of Rivermont Terrace to its point of intersection with the centerline of Langhorne Road, thence proceeding in a southerly direction along the centerline of Langhorne Road to its point of intersection with the centerline of Landon Street, thence proceeding in a westerly direction along the centerline of Landon Street to its point of intersection with Club Drive, thence proceeding in a southwesterly direction along the centerline of Club Drive to its terminus, thence proceeding in a southwesterly direction ninety-three (93) feet along the centerline of Club Drive extended to its point of intersection with the centerline of Ivy Creek, thence proceeding in a southeasterly direction along the centerline of Ivy Creek to its point of beginning. The voting place in said fifth precinct of the first ward shall be located at First Christian Church, 3109 Rivermont Avenue.

Sec. 14-33. Second ward.

The second ward shall be divided into four (4) election precincts, the boundaries of which shall be as follows:

(1) First precinct. All that portion of the second ward beginning at a point, said point being the intersection of the centerline of Langhorne Road and the centerline of the abandoned Norfolk and Southern Railroad, thence proceeding in a northeasterly direction along the centerline of the abandoned Norfolk and Southern Railroad to its point of intersection with the centerline of the Blackwater Creek Bikeway, thence proceeding in a northeasterly direction along the centerline of the Blackwater Creek Bikeway to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a northwesterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in a southeasterly direction along the Corporate Limits of the City of Lynchburg to its point of intersection with the centerline of eighth street extended, thence proceeding in a southwesterly direction six hundred forty-five (645) feet along the centerline of Eighth street extended to the terminus of the centerline of Eighth street, thence proceeding in a southwesterly direction along the centerline of Eighth street to its point of intersection with the centerline of Park Avenue, thence proceeding in a southerly direction along the centerline of Park Avenue to its point of intersection with the centerline of Floyd Street, thence proceeding in a northwesterly direction along the centerline of Floyd Street to its point of intersection with the centerline of Eighth Street, thence proceeding in a southwesterly direction along the centerline of Eighth Street to its point of intersection with the centerline of Buchanan Street, thence proceeding in a northwesterly direction along the centerline of Buchanan Street, to its point of intersection with the centerline of Kemper Street, thence proceeding in a southwesterly direction along the centerline of Kemper Street two hundred four (204) feet to a point, said point being the ninety degree (90) turn in Kemper Street, thence proceeding in a southwesterly direction six hundred eighteen (618) feet to a point, said point being the terminus of the centerline of Eighth Street, thence proceeding in a southwesterly direction along the centerline of Eighth Street to its point of intersection with the centerline of Orchard Street, thence proceeding in a southerly direction along the centerline of Orchard Street to its point of intersection with the centerline of Kingston Avenue, thence proceeding in a southwesterly direction along the centerline of Kingston Avenue to its point of intersection with the centerline of Langhorne Road, thence proceeding in a northwesterly direction along the centerline of Langhorne Road to its point of intersection with the centerline of Memorial Avenue, thence proceeding in a southwesterly direction along the centerline of Memorial Avenue to its point of intersection with the centerline of Lakeside Drive, thence proceeding in a northwesterly direction along the centerline of Lakeside Drive to its point of intersection with the centerline of the Blackwater Creek Tributary, thence proceeding in a northwesterly direction along the centerline of the Blackwater Creek Tributary to its point of intersection with the centerline of Blackwater Creek, thence proceeding in a northerly direction along the centerline of Blackwater Creek, to its point of intersection with the centerline of Langhorne Road, thence proceeding in a northerly direction along the centerline of Langhorne Road to the point of beginning. The voting place in said first precinct of the second ward shall be located at St. Paul's Episcopal Church, 605 Clay Street.

(2) Second precinct. All that portion of the second ward beginning at a point said point being the Corporate Limits of the City of Lynchburg to its point of intersection with the centerline of eighth street extended, thence proceeding in a southwesterly direction six hundred forty-five (645) feet along the centerline of Eighth street extended to the terminus of the centerline of Eighth street, thence proceeding in a southwesterly direction along the centerline of Eighth street to its point of intersection with the

centerline of Park Avenue, thence proceeding in a southerly direction along the centerline of Park Avenue to its point of intersection with the centerline of Floyd Street, thence proceeding in a northwesterly direction along the centerline of Floyd Street to its point of intersection with the centerline of Eighth Street, thence proceeding in a southwesterly direction along the centerline of Eighth Street to its point of intersection with the centerline of Buchannan Street, thence proceeding in a northwesterly direction along the centerline of Buchannan Street, to its point of intersection with the centerline of Kemper Street, thence proceeding in a southwesterly direction along the centerline of Kemper Street two hundred four (204) feet to a point, said point being the ninety degree (90) turn in Kemper Street, thence proceeding in a southwesterly direction six hundred eighteen (618) feet to a point, said point being the terminus of the centerline of Eighth Street, thence proceeding in a southwesterly direction along the centerline of Eighth Street to its point of intersection with the centerline of Orchard Street, thence proceeding in a southerly direction along the centerline of Orchard Street to its point of intersection with the centerline of Kingston Avenue, thence proceeding in a southwesterly direction along the centerline of Kingston Avenue to its point of intersection with the centerline of Langhorne Road, thence proceeding in a northwesterly direction along the centerline of Langhorne Road to its point of intersection with the centerline of Memorial Avenue, thence proceeding in a southwesterly direction along the centerline of Memorial Avenue to its point of intersection with the centerline of Wadsworth Street, thence proceeding in a southeasterly direction along the centerline of Wadsworth Street to its point of intersection with the centerline of Fort Avenue, thence proceeding in a southwesterly direction along the centerline of Fort Avenue to its point of intersection with the centerline of Lancaster Street, thence proceeding in a southeasterly direction along the centerline of Lancaster Street to its point of intersection with the centerline of Rives Street, thence proceeding in a southwesterly direction along the centerline of Rives Street to its point of intersection with the centerline of Gordon Street, thence proceeding in a southeasterly direction along the centerline of Gordon Street to its point of intersection with the centerline of Stadium Road, thence proceeding in an easterly direction along the centerline of Stadium Road to its point of intersection with the centerline of the southbound lane of the Lynchburg Expressway, thence proceeding in a southwesterly direction along the centerline of the southbound lane of the Lynchburg Expressway to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in an easterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of the eastern most track of the Norfolk and Southern Railroad, thence proceeding in a northerly direction along the centerline of the eastern most track of the Norfolk and Southern Railroad to its point of intersection with the centerline of Fishing Creek, thence proceeding in a northeasterly direction seven hundred thirty-four (734) feet to the Corporate Limits of the City of Lynchburg, thence proceeding in a northeasterly direction along the Corporate Limits of the City of Lynchburg to the point of beginning. The voting place in said second precinct of the second ward shall be located at Robert S. Payne Elementary School Gymnasium, 1201 Floyd Street.

(3) Third precinct. All that portion of the second ward beginning at a point, said point being the intersection of the centerline of the Norfolk and Southern Railroad (east /west line) and the centerline of the eastern most track of the centerline of the Norfolk and Southern Railroad (north/south line) thence proceeding in a northerly direction along the centerline of the eastern most track of the Norfolk and Southern Railroad to its point of intersection with the centerline of Fishing Creek, thence proceeding in a northeasterly direction seven hundred thirty-four (734) feet to the Corporate Limits of the City of

Lynchburg, thence proceeding in a southeasterly direction along the Corporate Limits of the City of Lynchburg to its point of intersection with the centerline of Martin Street, thence proceeding in a northwesterly direction along the centerline of Martin Street to its point of intersection with the centerline of the eastbound lane of Richmond Highway, thence proceeding in an easterly direction along the centerline of the eastbound lane of Richmond Highway to its point of intersection with the centerline of the northbound lane of Campbell Avenue, thence proceeding in a northwesterly direction along the centerline of the northbound lane of Campbell Avenue to its point of intersection with the centerline of Florida Avenue, thence proceeding in an northeasterly direction along the centerline of Florida Avenue to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a northwesterly direction along the centerline of the Norfolk and Southern Railroad to the point of beginning. The voting place in said third precinct of the second ward shall be located at the Jubilee Family Development Center, 1512 Florida Avenue.

(3) Fourth precinct. All that portion of the second ward beginning at a point, said point being the point of intersection between the centerline of the eastbound lane of Richmond Highway and the centerline of the Norfolk and Southern Railroad, thence proceeding in an easterly direction along the centerline of the eastbound lane of Richmond Highway to its point of intersection with the centerline of the northbound lane of Campbell Avenue, thence proceeding in a northwesterly direction along the centerline of the northbound lane of Campbell Avenue to its point of intersection with the centerline of Florida Avenue, thence proceeding in an northeasterly direction along the centerline of Florida Avenue to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a northwesterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of Rutherford Street extended seventy-five (75) feet, thence proceeding in a southerly direction fifty-five (55) feet along the centerline of Rutherford Street extended to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in an easterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of Carroll Avenue, thence proceeding in a southwesterly direction along the centerline of Carroll Avenue to its point of intersection with the centerline of Albert Lankford Drive, thence proceeding in a southwesterly direction along the centerline of Albert Lankford Drive to its point of intersection with the centerline of Odd Fellows Road, thence proceeding in a southeasterly direction along the centerline of Odd Fellows Road to its point of intersection with the centerline of Perkins Street, thence proceeding in a northerly direction along the centerline of Perkins Street to its point of intersection with the centerline of Mayflower Drive, thence proceeding in an easterly direction along the centerline of Mayflower Drive to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in an easterly direction along the centerline of the Norfolk and Southern Railroad to the point of beginning. The voting place in said fourth precinct of the second ward shall be located at Fairview Christian Church, 2107 Campbell Avenue.

Sec. 14-34. Third ward.

The third ward shall be divided into five (5) election precincts, the boundaries of which shall be as follows.

(1) First precinct. All that portion of the third ward beginning at a point, said point being the intersection of the centerline of Rockbridge Avenue and the centerline of Lakeside

Drive, thence proceeding in a northeasterly direction along the centerline of Lakeside Drive to its point of intersection with the centerline of Memorial Avenue, thence proceeding in a southwesterly direction along the centerline of Memorial Avenue to its point of intersection with the centerline of Wadsworth Street, thence proceeding in a southeasterly direction along the centerline of Wadsworth Street to its point of intersection with the centerline of Fort Avenue, thence proceeding in a southwesterly direction along the centerline of Fort Avenue to its point of intersection with the centerline of Lancaster Street, thence proceeding in a southeasterly direction along the centerline of Lancaster Street to its point of intersection with the centerline of Rives Street, thence proceeding in a southwesterly direction along the centerline of Rives Street to its point of intersection with the centerline of Gordon Street, thence proceeding in a southeasterly direction along the centerline of Gordon Street to its point of intersection with the centerline of Stadium Road, thence proceeding in an easterly direction along the centerline of Stadium Road to its point of intersection with the centerline of the southbound lane of the Lynchburg Expressway, thence proceeding in a southerly direction along the centerline of the southbound lane of the Lynchburg Expressway to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a southwesterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of Edley Place extended, thence proceeding in a northwesterly direction ninety-seven (97) feet to the terminus of the centerline of Edley Place, thence proceeding in a northwesterly direction along the centerline of Edley Place to its point of intersection with Fort Avenue, thence proceeding in a northeasterly direction along the centerline of Fort Avenue to its point of intersection with the centerline of Oakridge Boulevard, thence proceeding in a northwesterly direction along the centerline of Oakridge Boulevard to its point of intersection with the centerline of Sussex Street, thence proceeding in a northeasterly direction along the centerline of Sussex Street to its point of intersection with the centerline of Richmond Street, thence proceeding in a northeasterly direction along the centerline of Richmond Street to its point of intersection with the centerline of Rockbridge Avenue, thence proceeding in a northwesterly direction along the centerline of Rockbridge Avenue to the point of beginning. The voting place in said first precinct of the third ward shall be located at the Lynchburg Public Library, 2315 Memorial Avenue.

(2) Second precinct. All that portion of the third ward beginning at a point, said point being the intersection of the Corporate Limits of the City of Lynchburg and the centerline of Candler's Mountain Road, thence proceeding in a northerly direction along the centerline of Candler's Mountain Road to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a southwesterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in a northeasterly direction along the Corporate Limits of the City of Lynchburg to the point of beginning. The voting place of said second precinct of the third ward shall be located at the Vines Center 2001 University Boulevard.

(3) Third precinct. All that portion of the third ward beginning at a point, said point being the intersection of the Corporate Limits of the City of Lynchburg and the centerline of Candler's Mountain Road, thence proceeding in a northerly direction along the centerline of Candler's Mountain Road to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a southwesterly direction two thousand fifty-five (2055) feet along the centerline of the Norfolk and Southern Railroad to a point, thence proceeding in a northwesterly direction four hundred twenty-five (425) feet to a

point, said point being on the centerline of the perimeter road of River Ridge Mall, thence proceeding in a northwesterly direction along the centerline of the perimeter road of River Ridge Mall to its point of intersection with the centerline of Glass Avenue, thence proceeding in a westerly direction along the centerline of Glass Avenue to its terminus, thence proceeding two hundred twenty-three (223) feet along the centerline of Glass Avenue extended to its point of intersection with the centerline of Rock Castle Creek, thence proceeding in a northwesterly direction along the centerline of Rock Castle Creek to its point of intersection with the centerline of Burton Creek, thence proceeding in a northwesterly direction along the centerline of Burton Creek to its point of intersection with the centerline of the westbound lane of Fort Avenue, thence proceeding in a northeasterly direction along the westbound lane of Fort Avenue to its point of intersection with the centerline of Edley Place, thence proceeding in a southeasterly direction along the centerline of Edley Place to its terminus, thence proceeding ninety-seven (97) feet along the centerline of Edley Place extended to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in a northeasterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of Rutherford Street extended, thence proceeding in a southerly direction fifty-five (55) feet along the centerline of Rutherford Street extended to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in an easterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of Carroll Avenue, thence proceeding in a southwesterly direction along the centerline of Carroll Avenue to its point of intersection with the centerline of Albert Lankford Drive, thence proceeding in a southwesterly direction along the centerline of Albert Lankford Drive to its point of intersection with the centerline of Odd Fellows Road, thence proceeding in a southeasterly direction along the centerline of Odd Fellows Road to its point of intersection with the centerline of Perkins Street, thence proceeding in a northerly direction along the centerline of Perkins Street to its point of intersection with the centerline of Mayflower Drive, thence proceeding in an easterly direction along the centerline of Mayflower Drive to its point of intersection with the centerline of the Norfolk and Southern Railroad, thence proceeding in an easterly direction along the centerline of the Norfolk and Southern Railroad to its point of intersection with the centerline of the eastbound lane of Richmond Highway, thence proceeding in an easterly direction along the centerline of the eastbound lane of Richmond Highway to its point of intersection with the centerline of Martin Street, thence proceeding in a southeasterly direction along the centerline of Martin Street to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in an southwesterly direction along the Corporate Limits of the City of Lynchburg to the point of beginning. The voting place in said third precinct of the third ward shall be located at Sheffield School, 115 Kenwood Place.

(4) Fourth precinct. All that portion of the third ward beginning at a point, said point being the intersection of the Corporate Limits of the City of Lynchburg and the centerline of the Norfolk and Southern Railroad, thence proceeding in a northerly direction eight thousand eighty-four (8084) feet along the centerline of the Norfolk and Southern Railroad to a point, thence proceeding in a northwesterly direction four hundred twenty-five (425) feet to a point, said point being on the centerline of the perimeter road of River Ridge Mall, thence proceeding in a northwesterly direction along the centerline of the perimeter road of River Ridge Mall to its point of intersection with the centerline of Glass Avenue, thence proceeding in a westerly direction along the centerline of Glass Avenue to its terminus, thence proceeding two hundred twenty-three (223) feet along the centerline of Glass Avenue extended to its point of intersection with the centerline of

Rock Castle Creek, thence proceeding in a northwesterly direction along the centerline of Rock Castle Creek to its point of intersection with the centerline of Burton Creek, thence proceeding in a northwesterly direction along the centerline of Burton Creek to its point of intersection with the centerline of the westbound lane of Fort Avenue / Timberlake Road, thence proceeding in a southwesterly direction along the centerline of the westbound lane of Timberlake Road to its point of intersection with the centerline of Leesville Road, thence proceeding in a southwesterly direction along the centerline of Leesville Road to its point of intersection with the centerline of Del Ray Circle, thence proceeding in a southeasterly direction along the centerline of Del Ray Circle to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in a northeasterly direction along the Corporate Limits of the City of Lynchburg to the point of beginning. The voting place in said fourth precinct of the third ward shall be located at Heritage Elementary School, 501 Leesville Road.

(5) Fifth precinct. All that portion of the third ward beginning at a point, said point being the intersection of the centerline of the westbound lane of Timberlake Road and Leesville Road thence proceeding in a southwesterly direction along the centerline of Leesville Road to its point of intersection with the centerline of Del Ray Circle, thence proceeding in a southeasterly direction along the centerline of Del Ray Circle to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in a southwesterly direction along the centerline of the Corporate Limits of the City of Lynchburg to its point of intersection with the centerline of the westbound lane of Timberlake Road, thence proceeding in a northeasterly direction along the centerline of the westbound Lane of Timberlake Road to the point of beginning. The voting place of said fifth precinct of the third ward shall be located at Heritage United Methodist Church, 582 Leesville Road.

Sec. 14-35. Fourth ward.

The fourth ward shall be divided into four (4) election precincts, the boundaries of which shall be as follows:

(1) First precinct. All that portion of the fourth ward beginning at a point, said point being the intersection of the Corporate Limits of the City of Lynchburg and the centerline of Graves Mill Road, thence proceeding in an easterly direction along the centerline of Graves Mill Road to its point of intersection with the centerline of McConville Road, thence proceeding in a northerly direction along the centerline of McConville Road to its point of intersection with the centerline of Tomahawk Creek, thence proceeding in an easterly direction along the centerline of Tomahawk Creek to its point of intersection with the centerline of Burton Creek, thence proceeding in a southerly direction along the centerline of Burton Creek to its point of intersection with the centerline of the westbound lane of Timberlake Road, thence proceeding in a southwesterly direction along the centerline of the westbound lane of Timberlake Road to its point of intersection with the Corporate Limits of the City of Lynchburg, thence proceeding in a westerly direction along the Corporate Limits of the City of Lynchburg to the point of beginning. The voting place of said first precinct of the fourth ward shall be located at the Elks Lodge, 6235 Old Mill Road.

(2) Second precinct. All that portion of the fourth ward beginning at a point, said point being the intersection of the centerline of Tomahawk Creek, Burton Creek and the centerline of Blackwater Creek, thence proceeding in an easterly direction along the

centerline of Blackwater Creek to its point of intersection with the Blackwater Creek Tributary, thence proceeding in a southeasterly direction along the centerline of the Blackwater Creek Tributary to its point of intersection with the centerline of Heath Avenue extended, thence proceeding in a southerly direction two hundred thirty-four (234) feet along the centerline of Heath Avenue extended to the terminus of the centerline of Heath Avenue, thence proceeding in a southerly direction along the centerline of Heath Avenue to its point of intersection with the centerline of Fort Avenue, thence proceeding in a southwesterly direction along the centerline of Fort Avenue to its point of intersection with the centerline of Burton Creek, thence proceeding in a northerly direction along the centerline of Burton Creek, to the point of beginning. The voting place in said second precinct of the fourth ward shall be located at Sandusky Middle School, 805 Chinook Place.

(3) Third precinct. All the portion of the fourth ward lying at a point, said point being the intersection of the centerline of Wyndale Drive and the centerline of Fleetwood Avenue, thence proceeding in a southeasterly direction along the centerline of Fleetwood Avenue to its terminus, thence proceeding in a southerly direction three hundred ninety-five (395) feet along the centerline of Fleetwood Drive extended to its point of intersection with the centerline of Blackwater Creek, thence proceeding in a northeasterly direction along the centerline of Blackwater Creek to its point of intersection with the Blackwater Creek Tributary, thence proceeding in a southeasterly direction along the centerline of the Blackwater Creek Tributary to its point of intersection with the centerline of Heath Avenue extended, thence proceeding in a southerly direction two hundred thirty-four (234) feet along the centerline of Heath Avenue extended to the terminus of the centerline of Heath Avenue, thence proceeding in a southerly direction along the centerline of Heath Avenue to its point of intersection with the centerline of Fort Avenue, thence proceeding in a northeasterly direction along the centerline of Fort Avenue to its point of intersection with the centerline of Oakridge Boulevard, thence proceeding in a westerly direction along the centerline of Oakridge Boulevard to its point of intersection with the centerline of Sussex Street, thence proceeding in a northeasterly direction along the centerline of Sussex Street to its point of intersection with the centerline of Richmond Street, thence proceeding in a northeasterly direction along the centerline of Richmond Street to its point of intersection with the centerline of Rockbridge Avenue, thence proceeding in a northwesterly direction along the centerline of Rockbridge Avenue to its point of intersection with the centerline of Lakeside Drive, thence proceeding in a southwesterly direction along the centerline of Lakeside Drive to its point of intersection with the centerline of Wyndale Drive, thence proceeding in a southwesterly direction along the centerline of Wyndale Drive to the point of beginning. The voting place in said third precinct of the fourth ward shall be located at Memorial Christian Church, 512 Perrymont Avenue.

(4) Fourth precinct. All that portion of the fourth ward beginning at a point, said point being the intersection of the centerline of Rivermont Avenue and the centerline of Rivermont Terrace, thence proceeding in a southerly direction along the centerline of Rivermont Terrace to its point of intersection with the centerline of Langhorne Road, thence proceeding in a southerly direction along the centerline of Langhorne Road to its point of intersection with the centerline of Landon Street, thence proceeding in a westerly direction along the centerline of Landon Street to its point of intersection with Club Drive, thence proceeding in a southwesterly direction along the centerline of Club Drive to its terminus, thence proceeding in a southwesterly direction ninety-three (93) feet along the centerline of Club Drive extended to its point of intersection with the

centerline of Ivy Creek, thence proceeding in a southeasterly direction along the centerline of Ivy Creek to its point of intersection with the centerline of the abandoned Norfolk and Southern Railroad, thence proceeding in a northeasterly direction along the centerline of the abandoned Norfolk and Southern Railroad to its point of intersection with the centerline of Langhorne Road, thence proceeding in a southerly direction along the centerline of Langhorne Road to its point of intersection with the centerline of Blackwater Creek, thence proceeding in a westerly direction along the centerline of Blackwater Creek to its point of intersection with the Blackwater Creek Tributary, thence proceeding in an easterly direction along the centerline of the Blackwater Creek Tributary to its point of intersection with the centerline of Lakeside Drive, thence proceeding in a southwesterly direction along the centerline of Lakeside Drive to its point of intersection with the centerline of Forest Brook Road, thence proceeding in a northerly direction along the centerline of Forest Brook Road to its point of intersection with the centerline of Old Forest Road, thence proceeding in a northeasterly direction along the centerline of Old Forest Road to its point of intersection with Devonshire Road, thence proceeding in a northwesterly direction along the centerline of Devonshire Road to its point of intersection with Kettering Lane, thence proceeding in a northwesterly direction one thousand eight hundred fifteen (1815) feet along the centerline of Devonshire Road extended to its point of intersection with the centerline of the Ivy Creek Tributary, thence proceeding in a northwesterly direction along the centerline of the Ivy Creek Tributary to its point of intersection with the centerline of Ivy Creek, thence proceeding in a northeasterly direction along the centerline of Ivy Creek to its point of intersection with the centerline of Link Road, thence proceeding in a northeasterly direction along the centerline of Link Road to its point of intersection with Rivermont Avenue, thence proceeding in an easterly direction to the point of beginning. The voting place in said fourth precinct of the fourth ward shall be located at Linkhorne Middle School, 2525 Linkhorne Drive.

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

Adopted:

Certified:

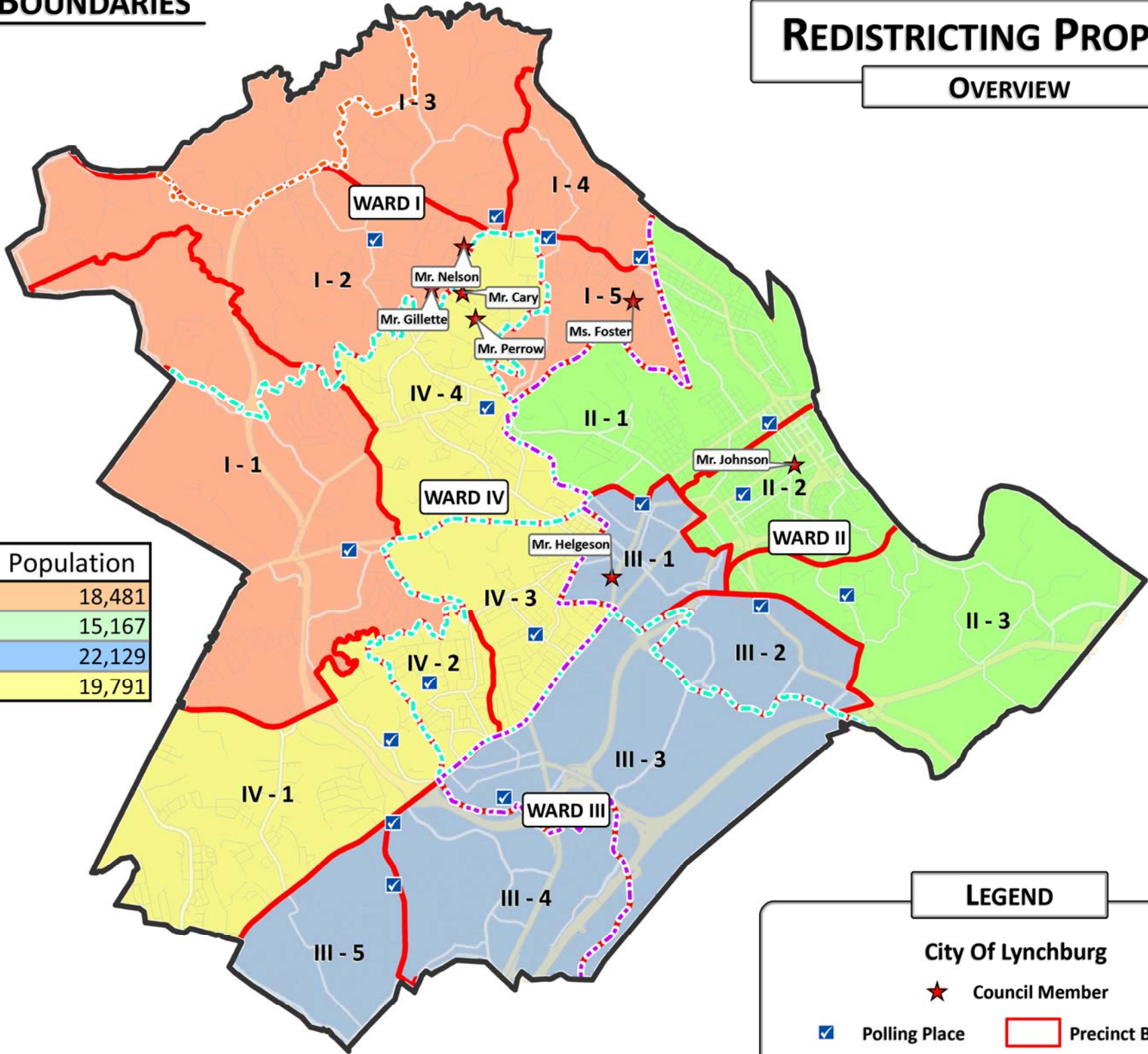
Clerk of Council

165L

CURRENT BOUNDARIES

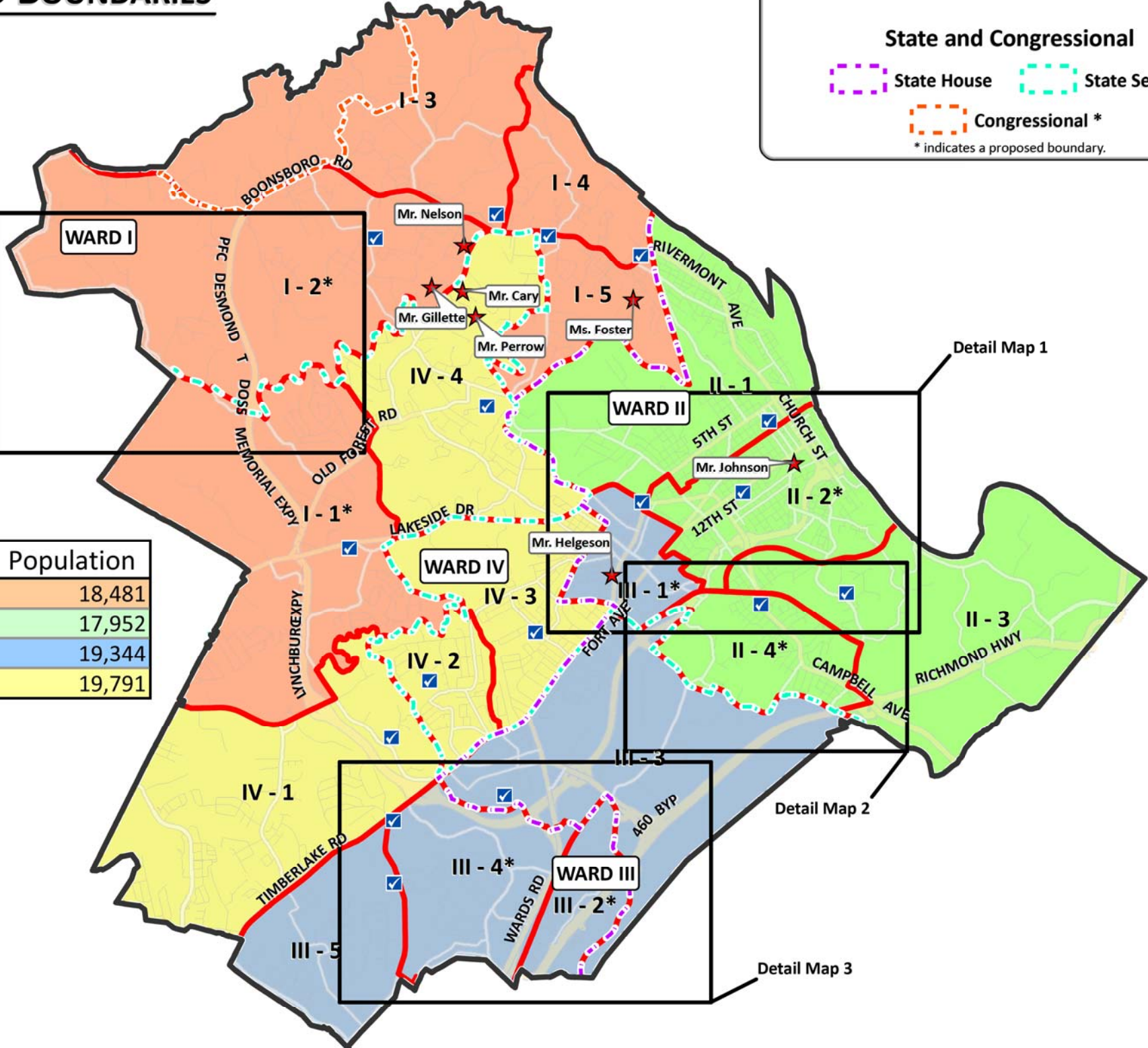
REDISTRICTING PROPOSAL
OVERVIEW

Ward	Population
Ward I	18,481
Ward II	15,167
Ward III	22,129
Ward IV	19,791



PROPOSED BOUNDARIES

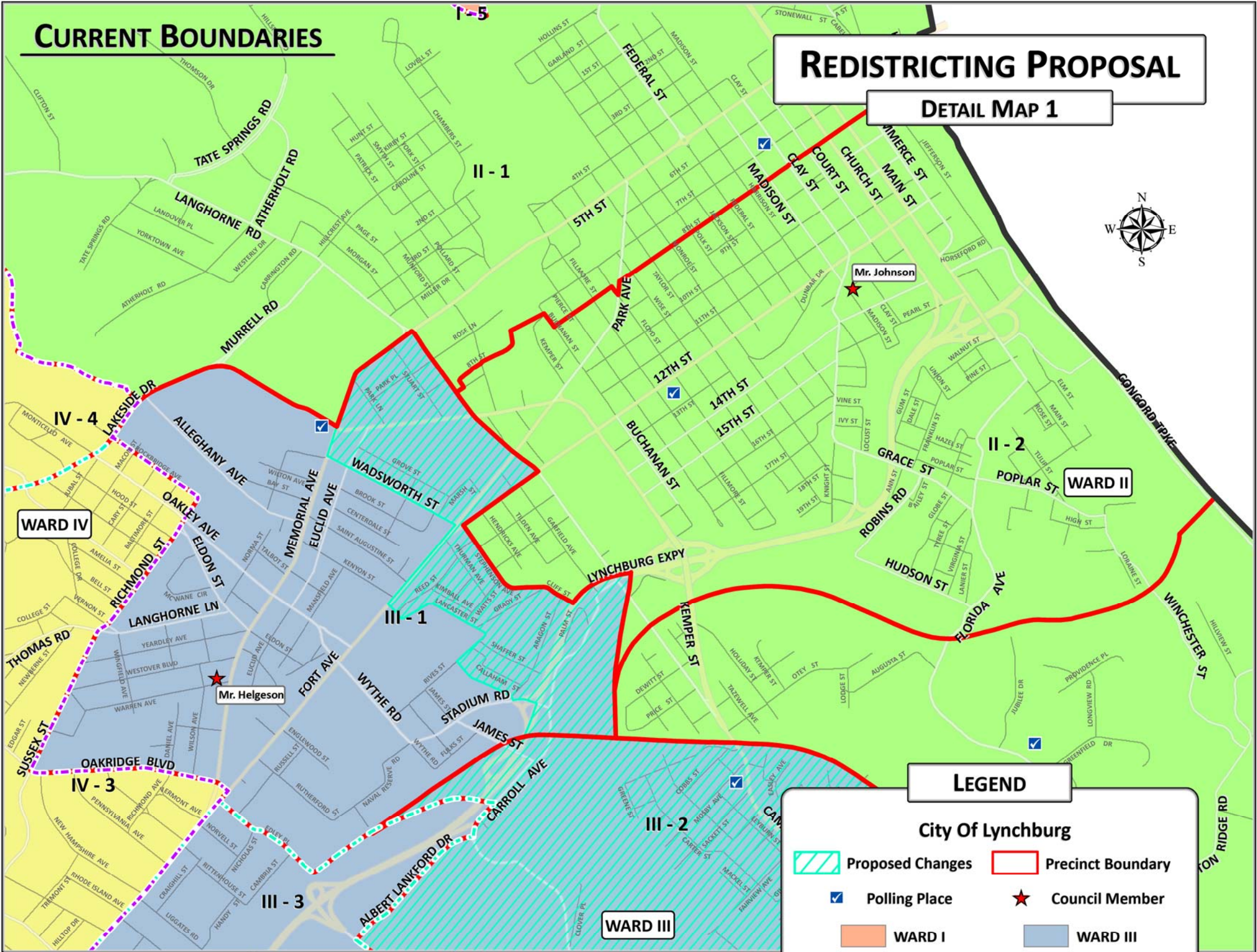
Ward	Population
Ward I	18,481
Ward II	17,952
Ward III	19,344
Ward IV	19,791



CURRENT BOUNDARIES

REDISTRICTING PROPOSAL

DETAIL MAP 1



LEGEND

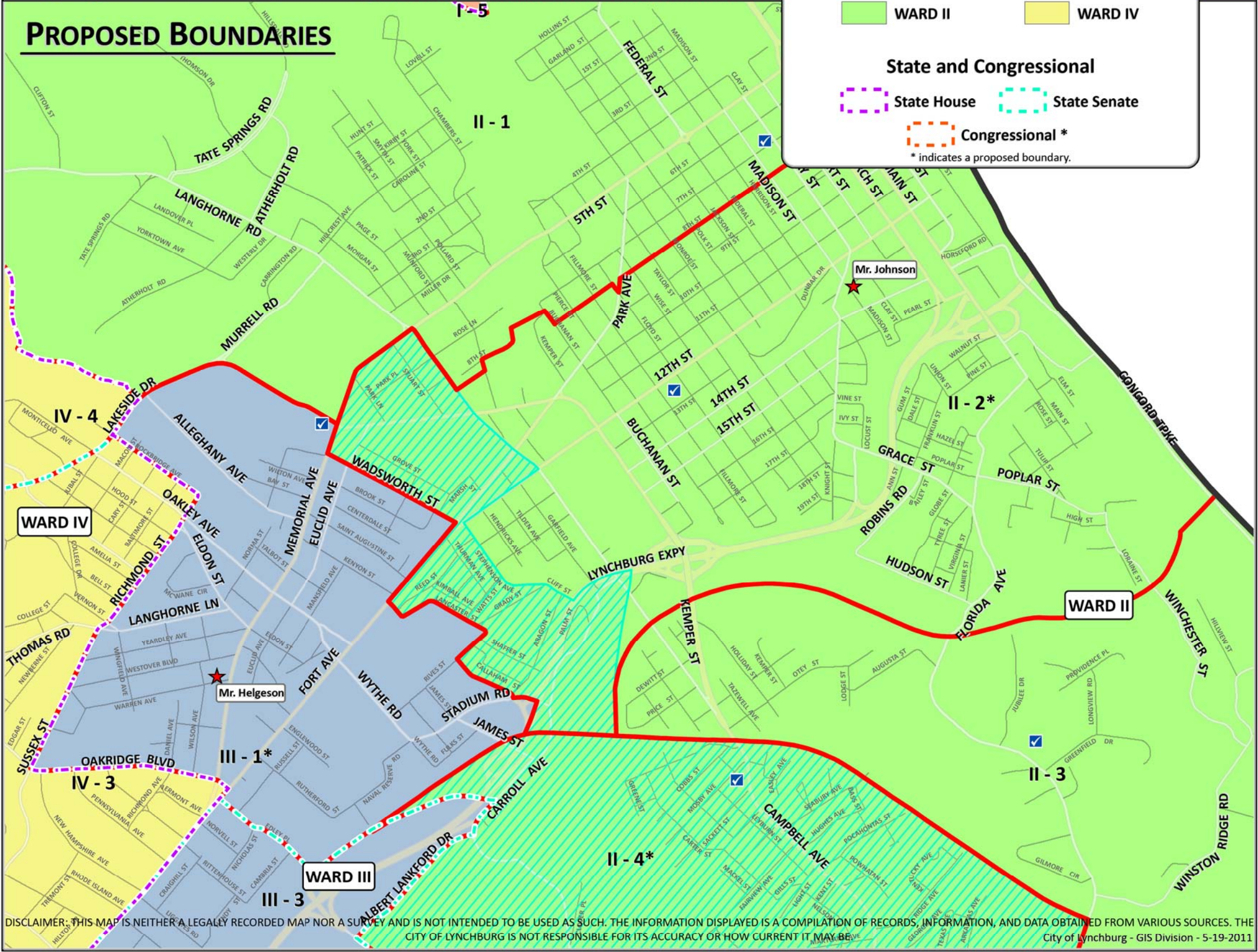
City Of Lynchburg

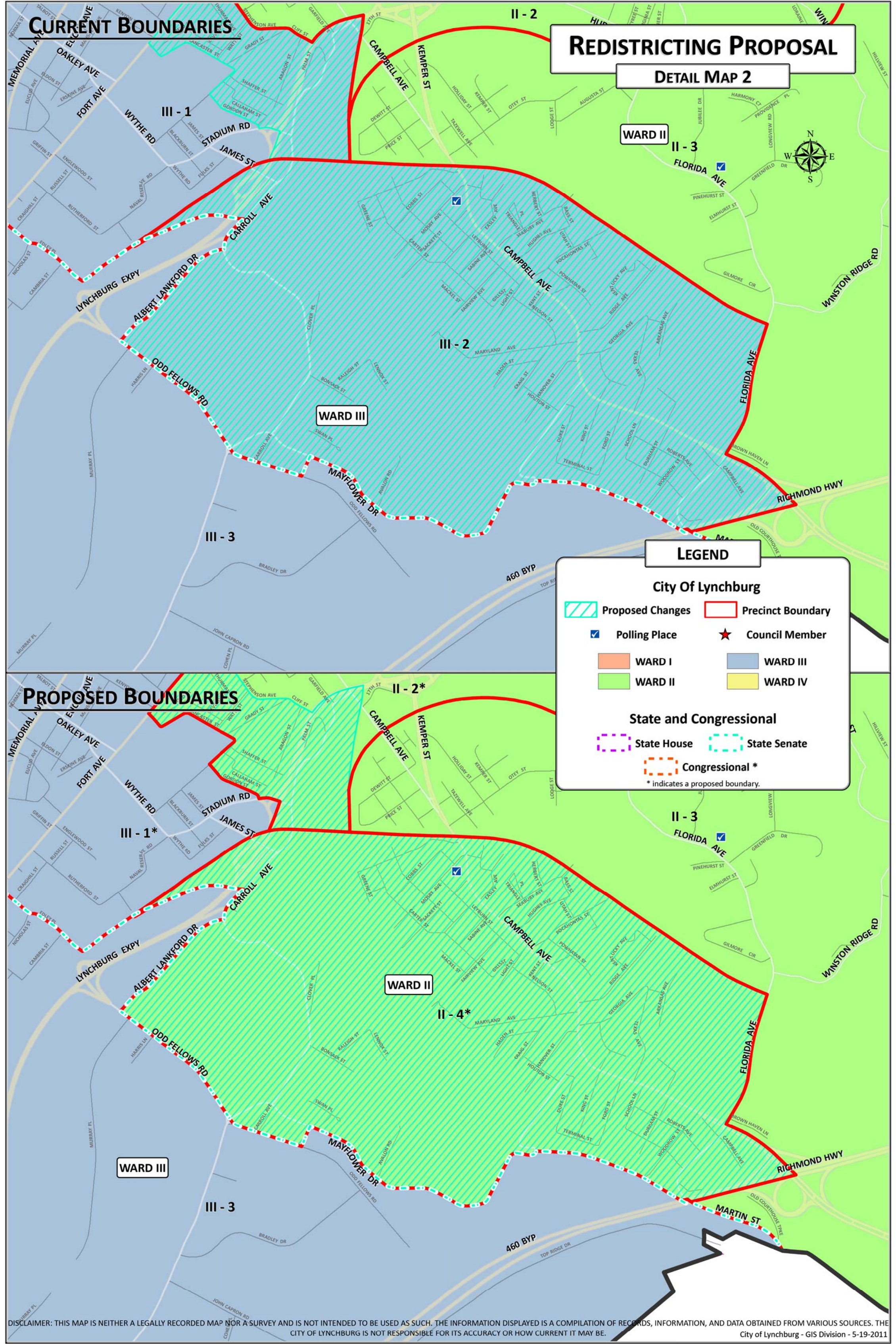
- Proposed Changes
- Polling Place
- WARD I
- WARD II
- Precinct Boundary
- Council Member
- WARD III
- WARD IV

State and Congressional

- State House
- State Senate
- Congressional *
- * indicates a proposed boundary.

PROPOSED BOUNDARIES





CURRENT BOUNDARIES

REDISTRICTING PROPOSAL
DETAIL MAP 2

WARD II

WARD III

PROPOSED BOUNDARIES

LEGEND

- City Of Lynchburg**
- Proposed Changes
 - Polling Place
 - WARD I
 - WARD II
 - Precinct Boundary
 - Council Member
 - WARD III
 - WARD IV
- State and Congressional**
- State House
 - State Senate
 - Congressional *
- * indicates a proposed boundary.

CURRENT BOUNDARIES

REDISTRICTING PROPOSAL

DETAIL MAP 3

WARD IV

IV - 1

IV - 2

IV - 3

III - 3

WARD III

III - 4

III - 5

LEGEND

City Of Lynchburg

- Proposed Changes
- Precinct Boundary
- Polling Place
- Council Member
- WARD I
- WARD III
- WARD II
- WARD IV

State and Congressional

- State House
- State Senate
- Congressional *
- * indicates a proposed boundary.

PROPOSED BOUNDARIES

WARD IV

IV - 1

IV - 2

IV - 3

III - 3

WARD III

III - 4*

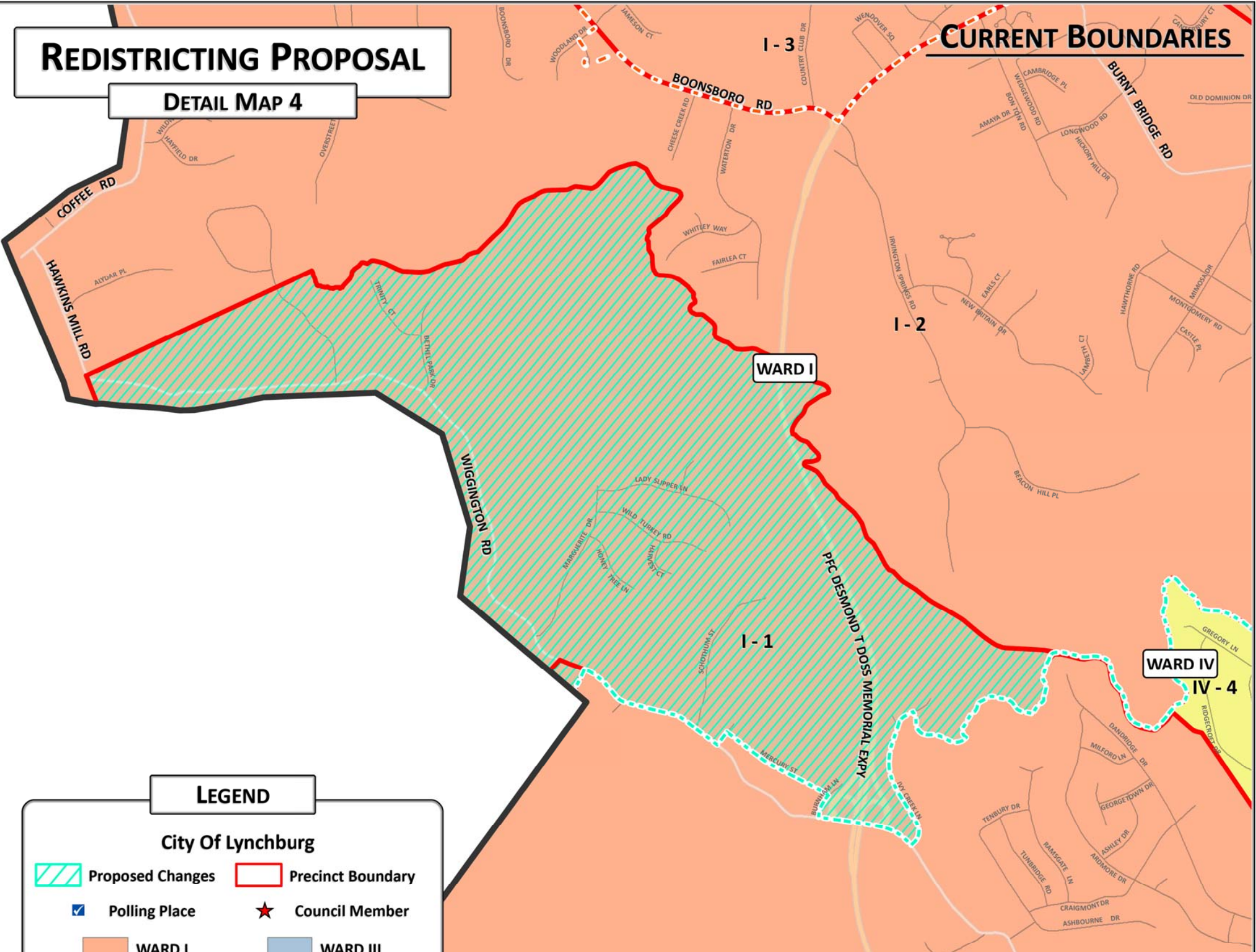
III - 5

III - 2*

REDISTRICTING PROPOSAL

DETAIL MAP 4

CURRENT BOUNDARIES



LEGEND

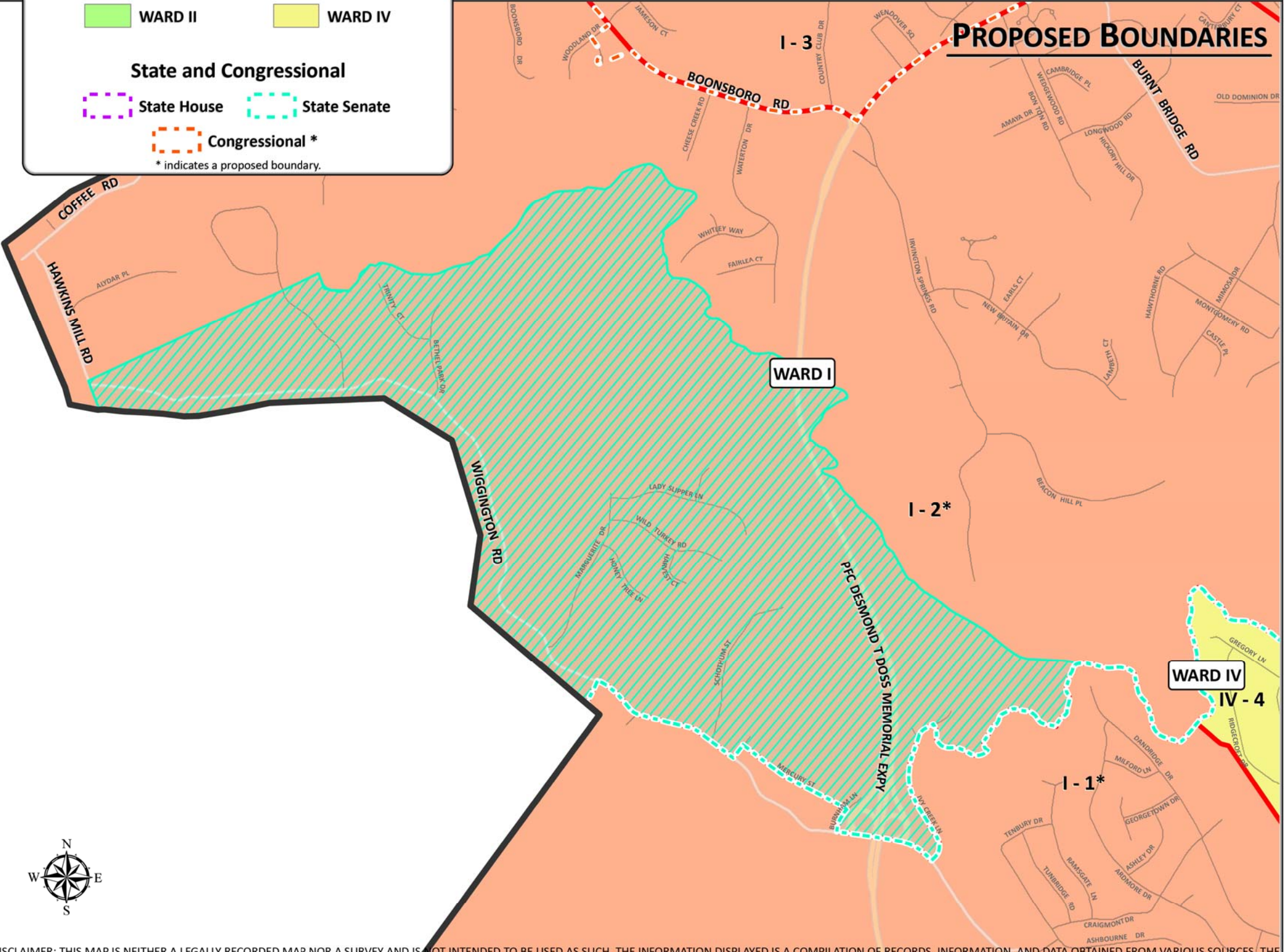
City Of Lynchburg

- Proposed Changes
- Precinct Boundary
- Polling Place
- Council Member
- WARD I
- WARD III
- WARD II
- WARD IV

State and Congressional

- State House
 - State Senate
 - Congressional *
- * indicates a proposed boundary.

PROPOSED BOUNDARIES

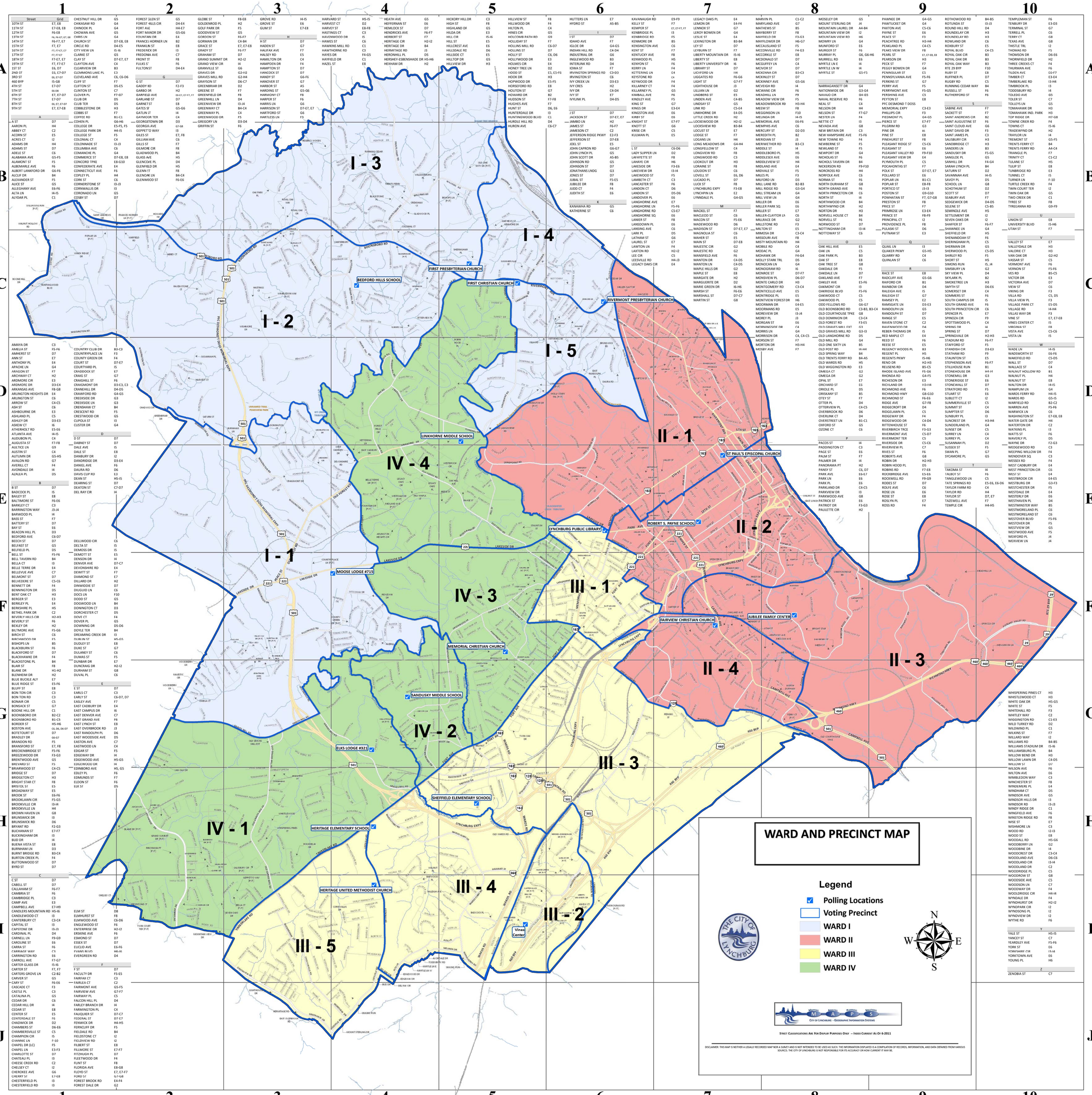


REDISTRICTING PROPOSAL

REGISTERED VOTERS BY PRECINCT

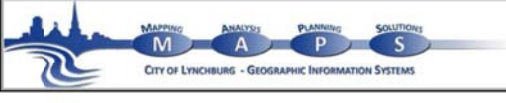
Current			Proposed			Notes
Precinct	Registered Voters	Active Reg. Voters	Precinct	Registered Voters	Active Reg. Voters	
I - 1	4830	4647	I - 1	4386	4229	444 Voters to I - 2, 418 Active
I - 2	3101	2992	I - 2	3545	3410	444 Voters From I - 1, 418 Active
I - 3	2541	2498	I - 3	2541	2498	
I - 4	1517	1429	I - 4	1517	1429	
I - 5	1739	1674	I - 5	1739	1674	
II - 1	4393	4219	II - 1	4393	4219	
II - 2	2761	2661	II - 2	3181	3055	420 Voters from III - 1, 394 Active
II - 3	1234	1188	II - 3	1234	1188	
II - 4	N/A	N/A	II - 4	1134	1077	Was previously Precinct III - 2
III - 1	2219	2096	III - 1	1799	1702	420 Voters to III - 1, 394 Active
III - 2	1134	1077	III - 2	4122	4095	4122 Voters from III - 4, 4095 Active
III - 3	1882	1791	III - 3	1882	1791	
III - 4	5909	5798	III - 4	1787	1703	4122 Voters to newly created III - 2, 4095 Active
III - 5	2617	2527	III - 5	2617	2527	
IV - 1	3921	3749	IV - 1	3921	3749	
IV - 2	1722	1646	IV - 2	1716	1640	
IV - 3	3902	3701	IV - 3	3908	3707	
IV - 4	3301	3184	IV - 4	3301	3184	

** Registered Voter counts are currently being validated between the City GIS Division and the City Registrar's Office.



WARD AND PRECINCT MAP

- Legend
- ☒ Polling Locations
 - ☐ Voting Precinct
 - WARD I
 - WARD II
 - WARD III
 - WARD IV



Source: City of Lynchburg, Virginia. Data as of 6-2011.

DISCLAIMER: THIS MAP IS A LEGALLY RECORDED MAP AND A SURVEY AND IS NOT INTENDED TO BE USED AS SUCH. THE INFORMATION DEPICTED IS A COMPILATION OF RECORDS, INFORMATION, AND DATA OBTAINED FROM VARIOUS SOURCES. THE CITY OF LYNCHBURG AND ITS EMPLOYEES DO NOT REPRESENT THE CITY'S LIABILITY FOR ANY ERRORS OR OMISSIONS.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 25, 2011**

AGENDA ITEM NO.: 13

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Ntelos Cable Television Franchise Request**

RECOMMENDATION: No action required at this meeting. Council will conduct a public hearing on this matter and Council will be asked to take action on the amended franchise request at its meeting of November 8th.

SUMMARY: Ntelos has requested that its cable television franchise be amended to expand its franchise area in order to provide cable television services to areas in the city beyond the Cornerstone neighborhood. The purpose of this item is to conduct a public meeting on the proposed amendment.

If Council approves this request to amend the Ntelos franchise without a buildout requirement, it is anticipated that Council will expected to also remove the buildout requirement from the Comcast franchise.

PRIOR ACTION(S): In November, 2007, Ntelos was granted a cable television franchise agreement which specified a franchise area limited to the Cornerstone neighborhood development area; August 9, 2011, Council was briefed on the proposed change to the franchise (Council report attached).

FISCAL IMPACT: None

CONTACT(S): Mike Goetz, 455-6002

ATTACHMENT(S): Ordinance to Amend Ntelos Cable Television Franchise; current franchise plus 1st amendment, August 9, 2011 Council report.

REVIEWED BY: lkp

**AN ORDINANCE FOR A SECOND AMENDMENT TO THE CABLE FRANCHISE AGREEMENT
BETWEEN THE CITY OF LYNCHBURG, VIRGINIA AND NTELOS MEDIA INC. APPROVED BY
LYNCHBURG CITY COUNCIL ON OCTOBER 9, 2007 AND FIRST AMENDED ON MAY 13, 2008**

WHEREAS, on October 9, 2007, the City and NTELOS Media, Inc., d/b/a as NTELOS entered into a Franchise Agreement to construct and operate a cable television system within the Cornerstone Traditional Neighborhood Development, which Franchise Agreement was later amended by a First Amendment dated May 13, 2008; and,

WHEREAS, the City and NTELOS desire to expand the scope of the original Franchise Agreement and the First Amendment dated May 13, 2008, in order to allow NTELOS to construct and operate a cable television system anywhere within the boundaries of the City of Lynchburg;

NOW, THEREFORE, the City and NTELOS do hereby mutually agree to and do hereby amend the October 9, 2007 Franchise Agreement and the May 13, 2008 First Amendment as follows:

A. Section 1.13 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is deleted and replaced with the following:

1.13 "Original Franchise Area" means the Cornerstone Traditional Neighborhood Development as described in the Lynchburg City Council resolution R-06-75 adopted on June 27, 2006, as set forth in Exhibit 1.

B. Section 1.25 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is added:

1.25 "Extended Franchise Area" means the present legal boundaries of the City of Lynchburg, Virginia, as of the Effective Date, outside of the Original Franchise Area, and shall also include any additions thereto, by annexation or other legal means.

C. Section 4.1.1 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is deleted and replaced with the following:

4.1.1 The Franchisee shall make Cable Service available to every residential dwelling unit within the "Original Franchise Area" where the minimum density is at least thirty (30) dwelling units per mile when measured from the existing Cable System. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes within the Original Franchise Area located within 150 feet of the Franchisee's distribution cable.

D. Section 4.1.3 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is added:

4.1.3 The Franchisee may, in its sole discretion, make Cable Service available within the Extended Franchise Area without an obligation to satisfy a build-out requirement. Where the Franchisee chooses to make Cable Service available within the Extended Franchise Area, Sections 1, 2, 3, 4.2 through 4.8, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of this Franchise Agreement shall apply. If any citizen, business, or the City requests that Cable Service be provided to an unserved location within the Extended Franchise Area, the Franchisee shall provide a response within 45 days to as to the feasibility, in the

Franchisee's sole determination, of satisfying the request. If the Franchisee determines that the request is not feasible, the Franchisee shall have no obligation to satisfy the request.

E. Section 11.6 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is deleted and replaced with the following:

- 11.6 Service to School and Government Buildings. Franchisee shall provide, without charge, one Cable Service outlet activated for basic service to each fire station, public school, police station, public library, court house, jail and any other building used for government purposes (which includes buildings leased by the City for governmental purposes as well as buildings owned by the City) located within the Original Franchise Area. The Franchisee also agrees to use reasonable best efforts to provide one Cable Service outlet activated for basic service, if requested by the City and if already served by the Franchisee's broadband infrastructure at the time of the City's request, to any municipal facility located outside of the Franchise Area.

Except as modified herein, all the terms and conditions set forth in the October 9, 2007 Franchise Agreement and the May 13, 2008 First Amendment to the Franchise Agreement between the City and NTELOS shall remain in full force and effect throughout the remaining term of the Franchise.

This Second Amendment to Franchise shall be and become effective and shall constitute a contract of Franchise between the City and NTELOS upon its execution by the City Manager and by a duly authorized official of NTELOS.

Adopted:

Certified:

Clerk of Council

EXECUTION AND ACCEPTANCE

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest:

City of Lynchburg, Virginia

By: _____

L. Kimball Payne, City Manager

Attest:

NTELOS Media Inc

By: _____

NTELOS Media Inc., President--Wireline

**CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN
THE CITY OF LYNCHBURG, VIRGINIA
AND
NTELOS MEDIA, INC.
D/B/A NTELOS**

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CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Lynchburg, VA, a political subdivision of the Commonwealth of Virginia (hereinafter, “City”) and NTELOS Media Inc. d.b.a NTELOS (hereinafter, “Franchisee” or “NTELOS”).

The City, having determined that the financial, legal and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Code of Virginia, Article 1.2, § 15.2-2108.19, and the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”), unless otherwise defined herein.

1.1 “Act” means the Communications Act of 1934.

1.2 “Affiliate”, in relation to any Person, means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3 “Basic service tier” means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental channels required to be carried in the basic tier.

1.4 “Cable Operator” means any Person or group of Persons that (A) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or (B) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System. Cable Operator does not include a provider of wireless or direct-to-home satellite transmission service.

1.5 “Cable Service” means the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

1.6 “Cable System” or “System” means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control

equipment that is designed to provide Cable Service that includes video programming and that is provided to multiple Subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC § 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) or any portion of a System that serves fewer than 50 Subscribers in any locality, where such portion is part of a larger System franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

1.7 “Customer” or “Subscriber” means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee’s express permission.

1.8 “Effective Date” means the date on which this Cable Franchise Agreement, with any necessary executed signatures, is enacted into law.

1.9 “FCC” means the Federal Communications Commission or successor governmental entity thereto.

1.10 “Force majeure” means an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee’s facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

1.11 “Franchise” means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System in the public rights-of-way.

1.12 “Franchise Agreement” or “Agreement” shall mean this Cable Franchise Agreement and any amendments or modifications hereto.

1.13 “Franchise Area” means the Cornerstone Traditional Neighborhood Development as described in the Lynchburg City Council resolution R-06-075 adopted on June 27, 2006, as set forth in Exhibit 1.

1.14 "Franchising Authority" means the City or the lawful successor, transferee, designee, or assignee thereof.

1.15 "Franchisee" shall mean NTELOS Media Inc. d.b.a. NTELOS.

1.16 "Gross revenue" means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the cable operator and derived from the operation of the cable system to provide cable services in the franchise area; however, "gross revenue" shall not include: (i) refunds or rebates made to subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the cable system, but not including revenue received from home shopping channels for the use of the cable service to sell merchandise; (iii) any tax, fee, or charge collected by the cable operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group; (iv) program launch fees; (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) a sale of cable service for resale or for use as a component part of or for the integration into cable services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the cable service; (vii) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the cable operator to provide cable service; and (viii) revenue derived from services classified as noncable services under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the cable operator to noncable services in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

1.17 "Ordinance" includes a resolution.

1.18 "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

1.19 "Public rights-of-way" (PROW or Public Way) means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the City or the Commonwealth of Virginia now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system. No reference herein, or in any franchise, to a "public rights-of-way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Franchisee shall be deemed to gain only those rights to use as are properly in the city and as the City may have the undisputed right and power to give. For purposes of this Franchise, the term

“public right-of-way” shall also include any other parcels of property that are owned by the City.

1.20 “Interactive on-demand services” means a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

1.21 “Service Interruption” means a service outage affecting less than five subscribers, or a loss or degradation of either video or audio for one or more channels for one or more subscribers.

1.22 “Service Outage” means the complete loss of cable service to five or more subscribers served by the same trunk, node, or feeder line for a period of 15 minutes or more.

1.23 “Transfer” means any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise granted under this Franchise Agreement are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another Affiliate of the Franchisee; (b) transfer of an interest in the Franchise granted under this Franchise Agreement or the rights held by the Franchisee under the Franchise granted under this Franchise Agreement to the parent of the Franchisee or to another Affiliate of the Franchisee; (c) any action that is the result of a merger of the parent of the Franchisee; (d) any action that is the result of a merger of another Affiliate of the Franchisee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.

1.24 “Video programming” means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

All terms used herein, unless otherwise defined, shall have the same meaning as set forth in Sections 15.2-2108.19 *et seq.* of the Code of Virginia, and if not defined therein, then as set forth in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 *et seq.*, and if not defined therein, their common and ordinary meaning. In addition, references in this Ordinance to any federal or state law shall include amendments thereto as are enacted from time-to-time.

SECTION 2 - Grant of Authority

2.1 The Franchising Authority hereby grants to the Franchisee under the Code of Virginia and the Cable Act a nonexclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System and to provide such Cable Services over the Cable System as may be lawfully allowed. This agreement neither authorizes the Franchisee to use the PROW for purposes of providing any service other than Cable Service, nor prohibits the Franchisee from doing so. The Franchisee's authority to provide non-Cable Services shall be subject to applicable law and Section 35-24 of the City Code.

2.2 Term of Franchise. The term of the Franchise granted hereunder shall be Fifteen (15) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Code of Virginia and the Cable Act.

2.3 Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Article 1.2 of Chapter 21 of Title 15.2 of the Code of Virginia and Section 626 of the Cable Act, as amended.

2.4 Reservation of Authority. Nothing in this Franchise Agreement shall be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority.

2.5 Competitive Equity.

2.5.1 If the City grants a competitive franchise which, in the reasonable opinion of the Franchisee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Franchisee may notify the City that it wishes to renegotiate certain specified provisions of the Franchise Agreement. Within 30 days after the Franchisee provides such notice, both parties must begin to negotiate in good faith, and either party to this Franchise Agreement may request changes to amend this Agreement so that neither the Franchisee's Franchise Agreement nor that of the competitor contains terms that are more favorable or less burdensome than the other. For purposes of this section, the franchises must be viewed as a whole, not on a provision-by-provision basis, and the franchises must be compared with due regard for the circumstances existing at the time each franchise was granted.

2.5.2 In the event an application for a new cable television franchise is filed with the Franchising Authority proposing to serve the Franchising Area, in whole or in part, the Franchising Authority shall serve or require to be served a copy of such

application upon the Franchisee by registered or certified mail or via nationally recognized overnight courier service.

2.5.3 In the event that a cable provider provides Cable Service to the residents of the city under a federal franchise that is unavailable to the Franchisee, the Franchisee shall have a right to request amendments to this Franchise Agreement that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the Franchisee shall file a petition seeking to amend the Franchise Agreement. Such petition shall: (1) indicate the presence of a competitor that has a federal franchise; (2) identify the basis for Franchisee's belief that certain provisions of the Franchise Agreement place Franchisee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. City Council shall hold a public hearing to evaluate the petition and hear views of interested parties. The Franchising Authority shall not unreasonably withhold consent to the Franchisee's petition.

SECTION 3 – Construction and Maintenance of the Cable System

3.1 Permits and General Obligations. The Franchisee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2 Conditions of Street Occupancy.

3.2.1 New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify the Franchisee of the availability of such funding and make such funds available to the Franchisee. It is understood that there is no guarantee by the Franchising Authority that any public funds will be available to help defray the cost of altering or relocating the Cable System to conform to new grades or lines.

3.2.2 Relocation at request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3 Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. The City Engineer shall make the final determination as to acceptability of repair and/or replacement of damaged facilities. In performing any excavation work in the public rights-of-way, the Franchisee will comply with all of the requirements of Chapter 35, or any subsequently adopted Chapter, of the City Code.

3.2.4 Safety Requirements. The Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations and with the National Electrical Safety Code (National Bureau of Standards)" and "National Electrical Code (National Bureau of Fire Underwriters). The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5 Trimming of Trees and Shrubbery. The Franchisee shall have the responsibility and authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any damage caused by such trimming. Prior to trimming or pruning of any City of Lynchburg street trees or shrubbery, the City's Public Works Urban Forester shall be contacted.

3.2.6 Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System's transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any

part thereof, aerially or underground. Nothing in this Section shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7 All excavation and reconstruction work by a Franchisee in the public rights-of-way must be in compliance with the requirements of chapter 35, article III. excavations, of the City Code, including all of the standards referenced therein, and all applicable VDOT standards. It shall be the responsibility of a Franchisee to obtain any required permits, to review all applicable excavation, reconstruction, restoration, repair and permitting requirements, and to become familiar with such requirements before beginning any excavation, reconstruction, restoration or repair work in the public rights-of-way or private property.

3.2.8 Any equipment or facilities installed by a Franchisee in the public rights-of-way shall be installed, located, erected, constructed, reconstructed, replaced, restored, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not (1) to endanger or interfere in any manner with improvements the City or VDOT may deem appropriate to make; or (2) to interfere with the rights of any private property owner; or (3) to hinder or obstruct pedestrian or vehicular traffic.

3.2.9 Whenever the City or VDOT shall determine that it is necessary in connection with the repair, relocation, or improvement of the public rights-of-way, the City or VDOT may require by written notification that any properties or facilities of the Franchisee be removed or relocated. Within sixty (60) days after receipt of notification, unless the City or VDOT extends such period for good cause shown, the Franchisee shall remove or relocate its facilities to such place and under such terms and conditions as specified by the City or VDOT. The Franchisee shall bear all expenses associated with the removal and relocation except that the City or VDOT will issue, without charge to the Franchisee, whatever local permits are required for the relocation of Franchisee's facilities. If the Franchisee does not complete its removal or relocation within sixty (60) days or such other period as authorized by the City or VDOT, the City or VDOT may take such actions as necessary to effect such removal or relocation at the Franchisee's expense.

3.2.10. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. It is understood that there is no guarantee by the Franchising Authority that any public or private funds will be available to help defray the cost of such undergrounding or beautification projects.

SECTION 4 - Service Obligations

4.1 General Service Obligation.

4.1.1 The Franchisee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile when measured from the existing Cable System. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within 150 feet of the Franchisee's distribution cable.

4.1.2 The Franchisee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Franchisee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above. Such additional charge shall be paid by the developer or landowner or customer requesting Cable Service in an area that does not meet the density and distance standards.

4.2 New Developments. Franchisee agrees to use commercially reasonable efforts to inform itself of all newly planned developments within the Franchise Area and to work with developers to cooperate in pre-installation of facilities to support Cable Service. Should, through new construction, an area within the Franchise Area meet the density requirement, the Franchisee shall provide Cable Service to such area within six months of receiving notice from the City that the density requirement has been met.

4.3 Programming. The Franchisee shall offer to all Customers a diversity of video programming services.

4.4 No Discrimination. The Franchisee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied, unless such Person has engaged in theft of Franchisee's cable services, vandalism of its property or harassment of its representatives. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice. A Franchisee shall assure that access to cable services is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

4.5 Subscriber Surveys: Upon the request of the City, but not more than once every three years, the Franchisee shall conduct a Subscriber satisfaction survey pertaining to quality of service, which may be transmitted to Subscribers in the Franchisee's invoice

for Cable Services. The results of such survey shall be provided to the City on a timely basis.

4.6 Performance Evaluation Sessions: The City and the Franchisee may hold scheduled performance evaluation sessions. If the City requests a performance evaluation session, such session shall be scheduled within thirty (30) days of the City's request.

4.6.1. Performance Evaluation sessions may be held no more than once every three years during the Term of the Franchise. All such evaluation sessions shall be publicized in advance and be open to the public.

4.6.2. The Franchisee shall reasonably cooperate with the evaluation and shall, subject to the proprietary information provision of Section 8.7 of this Agreement, supply with the City with all relevant information requested.

4.6.3. If the evaluation indicates a need for modification of the Agreement, the City shall attempt to negotiate the identified changes with the Franchisee. Any changes agreed to by the City and the Franchisee shall be approved by the City Council before they become effective.

4.7 Provisions of Maps to the City: The Franchise shall provide to the City annually updated maps of the Franchise Area which shall clearly delineate the following:

4.7.1. Areas within the Franchise Area where Cable Service will be available to Subscribers.

4.7.2 Areas covered by the Franchise where the Cable System cannot be extended due to lack of present or planned development, with such areas clearly marked.

4.7.3 Additional Maps: Should the City request access to more detailed maps of the Cable System that are too voluminous or for security reasons cannot be copied and moved, then the Franchisee shall permit the City to review such maps and may require that any inspection take place at a specified location in Central Virginia.

4.8 Changes in Service: Franchisee agrees to give the City Manager thirty (30) days prior written notice of changes in the mix, or quality of the Cable Services.

SECTION 5 - Public, Educational and Governmental Access Channels

5.1 Franchisee shall designate capacity on up to three (3) channels for public, educational and/or governmental access video programming provided by the Franchising Authority or its designee, such as a public access organization or educational institution. Use of a channel position for public, educational and governmental ("PEG") access shall be provided on the most basic tier of service offered by Franchisee in accordance with the Cable Act, Section 611, and Article 1.2 of the Code of Virginia, and as further set forth

below. “Channel position” means a number designation on the Franchisee’s channel lineup regardless of the transmission format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. In the event any Access channel is reassigned, the Franchisee shall provide the City with at least 90 days notice before reassigning the channel, and shall pay the reasonable costs of any advertising and promotional materials required due to the reassignment. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of a channel position, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for Educational and Governmental Access Channel use.

5.2 Public Access. A “Public Access Channel” is a channel position designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis. A Public Access Channel may not be used to cablecast programs for profit, or for nonpolitical or commercial fundraising in any fashion.

5.3 Educational Access. An “Educational Access Channel” is a channel position designated for noncommercial use by educational institutions such as public or private schools (but not “home schools”), community colleges, and universities.

5.4 Government Access. A “Governmental Access Channel” is a channel position designated for noncommercial use by the Franchising Authority for the purpose of showing the public local government at work.

5.5 NTELOS shall make all necessary arrangements with other Franchisees located in the City for the purpose of ensuring the carriage of all PEG access channels.

5.5.1 Franchisee shall ensure that all PEG access channel signals carried on its system, regardless of the method used to acquire the PEG channels, comply with all applicable FCC signal quality and technical standards for all classes of signals. The technical and signal quality of all PEG access channel signals shall be preserved.

5.5.2 Franchisee shall install and maintain the equipment required for interconnection at a location with the City (the “Interconnection Point”), and shall regularly test the equipment located at the Interconnection Point to ensure it is in full working order and capable of transmitting the PEG channels in accordance with industry standard specifications for sound and picture quality and signal degradation. The PEG origination locations are as follows:

1. City Hall, 900 Church Street, for the Government channel

2. Lynchburg City Schools Administration, 915 Court Street, for the Education channel
3. A location to-be-determined for the Public Access channel.

5.6 Franchisee shall pay to the City a one-time capital grant to be used for the purposes of upgrading and maintaining the equipment necessary to support PEG operations. However, this one-time capital grant shall only be payable if, and when, the incumbent cable provider reaches agreement on a franchise with the City which contains a provision for a one-time capital grant. The amount due from the Franchisee shall be the equivalent amount as the incumbent's grant on a per-subscriber basis, based on the Franchisee's estimated number of subscribers in the Franchise Area, not to exceed \$6 per subscriber.

5.7 The parties agree that such one-time capital grant neither constitutes nor is part of any Franchise fee, and all such costs fall within one or more of the exceptions listed in 47 U.S.C. § 542.

5.8 The City may, after a public hearing and upon a finding that the existing PEG channels are substantially utilized within the meaning of Section 15.2-2108.22(1) of the Code of Virginia, require by ordinance that the Franchisee provide an additional PEG channel or channels, up to a maximum of three (3) additional PEG channels, provided that the total number of PEG channels, including the additional PEG channels, shall not exceed seven (6).

SECTION 6 - Communications Tax and Franchise Fees

6.1. Communications Tax: Franchisee shall comply with the provisions of Section 58.1-645 et seq. of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"), and Sections 6.2 through 6.6 of the Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, is imposed on the sale of cable services by the Franchisee to subscribers in the city.

6.2. Payment of Franchise Fee to City: In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, Franchisee shall pay to the City a Franchise fee of five percent (5%) of annual Gross Revenue, beginning on the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 6.2 through 6.6 of this Agreement shall take effect. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than

ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 6.3 below.

6.3. **Supporting Information:** Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation, and a breakdown by major revenue categories (such as Basic Service, premium service, etc.). The City shall have the right to reasonably request further supporting information for each Franchise fee payment, subject to the proprietary information provision of Section 8.7.

6.4. **Limitation on Franchise Fee Actions:** The period of limitation for recovery of any Franchise fee payable hereunder shall be five (5) years from the date on which payment by Franchisee is due.

6.5. **Bundled Services:** This Section 6.5 shall only apply if state or federal law does not otherwise address the computation of franchise fees or gross revenues in connection with the provision of Cable Service as part of a bundle or package with any Non-Cable Service. If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement. In the event that the Franchisee or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, a *pro rata* share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and it is reasonable, the *pro rata* share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, the parties agree that tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this section.

SECTION 7 - Customer Service Standards; Customer Bills; and Privacy Protection

7.1 **Customer Service Standards.** The Franchisee shall comply in all respects with the current customer service requirements established by the FCC. To the extent those customer service requirements are altered, modified, or amended by the FCC during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended requirements within a reasonable period after such requirements become effective. Franchisee shall be subject to the following customer service standards consistent with 47 U.S.C. §§ 76.309, 1602, 1603, 1618 and 1619.

7.1.1 Franchisee will maintain a local or toll-free telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

7.1.1.1 Trained representatives will be available to respond to customer telephone inquiries during normal business hours.

7.1.1.2 After normal business hours, the access line may be answered by a service or automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative on the next business day.

7.1.2 Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions as measured on a quarterly basis.

7.1.3 Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

7.1.4 Franchisee shall accurately collect and maintain data to measure its compliance with the telephone answering standards in Sections 7.1.2 and 7.1.3.

7.1.5 Installations, Outages, and Service Calls. Under normal operating conditions, each of the following standards will be met no less than ninety five percent (95%) of the time as measured on a quarterly basis.

7.1.5.1 Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are within 150 feet of the existing distribution system.

7.1.5.2 Excluding conditions beyond the control of the Franchisee, the Franchisee will begin repairs on Service Outages promptly and in no event later than twenty-four (24) hours after the outage becomes known.

7.1.5.3 The Franchisee must begin working to correct Service Interruptions within 24 hours, including weekends, of receiving a subscriber call for a Service Interruption.

7.1.6 Franchisee shall accurately collect and maintain data to measure its compliance with subparagraph 7.1.5.

7.1.7 The "appointment window" alternatives for installations, service calls and other installation activities will either be at a specific time or, at maximum, a four-hour time block during normal business hours. Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

7.1.8 A Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Franchisee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled as necessary, at a time which is convenient for the customer.

7.1.9 Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and service maintenance policies;
- (iv) Instructions on how to use the cable service;
- (v) Channel positions of programming carried on the system;
- (v) Refund policy; and
- (vii) Billing and complaint procedures, including the Franchisee's office hours, telephone number, and address of the local cable office.

7.1.10 Franchisee shall be required to submit quarterly reports to the Franchising Authority, in accordance with Section 8.8 – Reporting, to allow it to monitor Franchisee's compliance with quarterly customer service standards.

7.2 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 7.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

7.3 Franchisee shall notify subscribers of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Franchisee. In addition, a Franchisee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by Section 7.1.10.

7.4 In case of a billing dispute, a Franchisee must respond to a written complaint from a subscriber within thirty (30) days.

7.5 Refund checks will be issued promptly, but not later than either:

7.5.1 The customer's next billing cycle following resolution of the request, or thirty (30) days, whichever is earlier, or

7.5.2 The return of the equipment supplied by a Franchisee if service is terminated.

7.6 Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

7.7 Franchisee shall maintain an office in the Lynchburg area for, at minimum, the payment of bills, delivery and return of subscriber equipment, requests for installation, disconnection, and reinstatement of cable service, addressing of subscriber inquiries, and receipt of subscriber complaints, and shall be open during normal business hours.

7.8 A Franchisee shall provide parental control devices to all subscribers who wish to be able to block out any objectionable channel(s) of programming from the cable service entering the subscriber's home.

7.9 Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 8 - Oversight and Regulation by Franchising Authority

8.1 Oversight of Franchise. In accordance with applicable law, the Franchising Authority shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Franchisee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement.

8.2 Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

8.3 Books and Records. Subject to the confidentiality requirements of Section 8.7 of this Agreement, the City, or such Person or Persons designated by the City, shall have the right to inspect and copy records and the right to audit and to recomputed any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of franchise fees, the City shall notify the Franchisee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The City, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party. Subject to the confidentiality requirements of Section 8.7 of this Franchise, the Franchisee shall be responsible for providing to the City all records necessary to confirm the accurate payment of franchise fees. The Franchisee shall maintain such records for five (5) years. The City's audit expenses shall be borne by the City unless the audit determines the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be

paid by the Franchisee to the City within thirty (30) days following written notice to the Franchisee by the City of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid by Franchisee to the City, such amount shall be subject to an interest charge in accordance with the City's standard rate for computing interest charges on late payments.

8.4 Records Required: Franchisee shall at all times maintain:

8.4.1. Records of all written complaints for a period of three years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

8.4.2. Records of outages for a period of three years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.4.3. Records of service calls for repair and maintenance for a period of three years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.4.4. Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

8.4.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service in areas not currently served.

8.5 Federal Communications (FCC) Testing: Within fourteen (14) days of a written request by the City, a written report of test results of FCC performance testing will be provided to the City Manager / Designee.

8.6 File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations. Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days' written notice to the Franchisee, the City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the franchise area at any time during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of

this franchise. Such notice shall specifically reference the section or subsection of the franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for franchise compliance purposes longer than five (5) years.

8.7 Proprietary Information:

8.7.1 Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to submit information to the City that it reasonably deems to be proprietary or confidential in nature, nor submit to the City any of its or an affiliate's books and records not relating to the provision of Cable Service in the franchise area, except as provided herein. Such confidential information shall be subject to the following, to be applied as is most practicable for the purposes of this Agreement:

8.7.1.1 To the extent an exemption under the Virginia Freedom of Information Act permits the City to maintain the confidentiality of submitted information and the Franchisee submits such information to the City, the City shall maintain the confidentiality of such information and not disclose it to any public request;

8.7.1.1 To the extent the information provided to an accountant, attorney, consultant, or any other agent of the City ("City Consultant") would not be subject to public disclosure under the Virginia Freedom of Information Act and the City instructs the Franchisee to provide such information to the City Consultant as may be required by this Agreement, the Franchisee shall provide such information to the City Consultant and the City shall not take possession of the information nor engage in any act that would jeopardize the confidentiality of such information; or,

8.7.1.3 Franchisee must provide the following documentation to the City:

- (i) specific identification of the information;
- (ii) statement attesting to the reason(s) the Franchisee believes the information is confidential; and
- (iii) statement that the documents are available at the Franchisee's designated offices for inspection by the City.

8.7.2 At all times, the City shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans, or other City-requested documents that are provided pursuant to the Agreement to the extent they are designated as such by the Franchisee. Nothing in this Section shall be read to require the Franchisee to violate federal or state law protecting Subscriber privacy.

8.8 Reporting. The Franchisee shall submit the following reports regarding annual financial information and quarterly customer service information:

8.8.1 Annual Reports. No later than ninety (90) days after the end of its fiscal year, a Franchisee shall submit a written report to the City, which shall include:

8.8.1.1 A summary of the number of complaints received, summarized by type of complaint (e.g. billing, installation, construction, front counter or telephone answering problems, programming, repair, and other complaints) and the nature of the remedial efforts, if any, undertaken by the Franchisee to address recurring complaints that are not resolved individually on a case-by-case basis;

8.8.1.2 A report from the previous calendar year showing Franchisee's total operating revenues from each type of cable service, its gross revenue, and the amount of the Franchisee fees paid to the State and any PEG surcharge fees paid to the City. The report shall include a report from an independent auditor or a duly authorized officer of the Franchisee who has reviewed the financial statements of Franchisee for the year, and found that Franchisee's gross revenue, as defined in this ordinance, are as reported in the annual report;

8.8.1.3 A list of major cable-related projects undertaken in the past year and planned for the current year, including construction and upgrade schedules for any new, relocated, or upgraded aerial or underground facilities;

8.8.2 Quarterly Reports. Unless this requirement is waived in whole or in part by the City, no later than thirty (30) days after the end of each calendar quarter, the Franchisee shall submit a written report to the City, in a form reasonably satisfactory to the City, which shall include:

8.8.2.1 A report showing the number of service calls received by type during that quarter, including any property damage to the extent such information is available to the Franchisee, and any line extension requests received during that quarter;

8.8.2.2 A report showing the number of outages for that quarter, identifying separately each outage of one or more nodes for more than one hour at a time, the date and time it occurred, the date and time when repairs began, its duration, the map area, and, when available to the Franchisee, number of homes affected.

8.8.2.3 A report showing the Franchisee's performance with respect to Section 7.1 of this Agreement and all applicable customer service standards established in 47 C.F.R. §76.309(c), signed by an officer or employee certifying its performance with these customer service standards. Included in this report will be the following information:

- i) Percentage of telephone calls that were answered within 30 seconds
- ii) Percentage of telephone calls received that were abandoned before being answered by a live operator

- iii) Average hold time for telephone calls received
- iv) Percentage of time when all incoming trunk lines were in a busy condition
- v) Percentage of standard installations performed within seven business days
- vi) Percentage of repair calls for Service Interruptions responded to within 24 hours.

8.8.3 If the Franchisee is unable to certify full compliance for any calendar quarter, it must indicate in its filing each standard with which it is in compliance and in noncompliance, the dates of noncompliance, the reason for the noncompliance and a remedial plan. The Franchisee's failure to file a compliance certificate or noncompliance statement as required herein shall subject the Franchisee to the liquidated damages established in this ordinance. The Franchisee shall keep such records as are reasonably required to enable the City to determine whether the Franchisee is substantially complying with all such customer service standards, and shall maintain adequate procedures to demonstrate substantial compliance.

8.8.4 The Franchisee shall submit to the City copies of each petition, application, report, and communication that directly and materially affects the provision of Cable Service within the Franchise Area that are transmitted by the Franchisee to any federal, state, or other regulatory commissions, agencies or courts.

SECTION 9 – Transfer or Change of Control of Cable System or Franchise

9.1 No transfer of this Franchise shall occur without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld, delayed or conditioned. No transfer shall be made to a Person, group of Persons or Affiliate that is not legally, technically and financially qualified to operate the Cable System and satisfy the obligations hereunder.

SECTION 10 - Insurance and Indemnity

10.1 The Franchisee shall indemnify, hold harmless and defend the City, its officers, employees, and agents (hereinafter referred to as "indemnities"), from and against:

10.1.1 Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed

upon, incurred by or asserted against the indemnitees by reason of any act or omission of the Franchisee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Franchisee's cable system caused by Franchisee, its contractors, subcontractors or agents or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation.

10.1.2 Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the indemnitees by reason of any claim or, lien arising out of work, labor, materials or supplies provided or supplied to the Franchisee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Franchisee's cable system in the city.

10.1.3 Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any financing or securities offering by Franchisee or its affiliates for violations of the common law or any laws, statutes or regulations of the Commonwealth of Virginia or of the United States, including those of the Federal Securities and Exchange Commission, whether by the Franchisee or otherwise.

10.2 Damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the Franchisee to secure consents from the owners, authorized distributors or licensees, or programs to be delivered by the Franchisee's cable system.

10.3 The Franchisee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any City-owned or controlled property, including streets and public rights-of-ways, and the Franchisee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Franchisee's cable system or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the indemnitees that arises or is related to wanton or willful negligence by the indemnitees.

10.4 In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the indemnitees, and at the

Franchisee's sole cost and expense, resist and defend the same, provided further, however, that the Franchisee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the City Attorney or his or her designee.

10.5 The City shall give the Franchisee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this section.

10.6 Nothing in this ordinance or in a franchise is intended to, or shall be construed or applied to, express or imply a waiver by the City of statutory provisions, privileges or immunities of any kind or nature as set forth in the Code of Virginia, including the limits of liability of the City as exists presently or as may be increased from time to time by the legislature. Nothing in a franchise or this ordinance shall constitute a waiver of the City's statutory provisions, privileges or immunities, including the City's sovereign immunity, of any kind or nature.

10.7 The Franchisee shall maintain, and by its acceptance of a franchise hereunder specifically agrees that it will maintain throughout the term of the franchise, general comprehensive liability insurance insuring the Franchisee. All liability insurance shall include an endorsement in a specific form which names as joint and several insured's the City and the City's officials, employees and agents, with respect to all claims arising out of the operation and maintenance of the Franchisee's cable system in the city. Liability insurance mentioned herein below shall be in the minimum amounts of:

10.7.1 \$5,000,000.00 for bodily injury or death to anyone person, within the limit of ten million dollars (\$10,000,000) for bodily injury or death resulting from any one accident;

10.7.2 \$5,000,000.00 for property damage, including damage to the City's property, from any one accident;

10.7.3 \$5,000,000.00 for all other types of liability resulting from any one occurrence;

10.7.4 Workers Compensation Insurance as required by the Commonwealth of Virginia;

10.7.5 A Franchisee shall carry and maintain in its own name automobile liability insurance with a limit of \$5,000,000 for each person and \$5,000,000 for each accident for property damage with respect to owned and non-owned automobiles for the operation of which the Franchisee is responsible;

10.7.6 Throughout the term of this franchise, at intervals of no more than once every five years, the City may hire an independent insurance consultant to review the amounts of the insurance policies and if the consultant determines the amounts of the insurance coverage are inadequate, the insurance coverage shall be increased in accordance with the consultant's recommendations; and

10.7.7 Coverage for copyright infringement.

10.8 The inclusion of more than one (1) insured shall not operate to increase the limit of the Franchisee's liability, and that insurer waives any right on contribution with insurance which may be available to the City.

10.9 All policies of insurance required by this section shall be placed with companies which are qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a General Rating of "A-" and a Financial Size Category of "A:X" as determined by Best Insurance Rating Services.

10.10 Certificates of insurance obtained by the Franchisee in compliance with this section must be approved by the City Attorney, and such insurance policy certificate of insurance shall be filed and maintained with the City's Risk Manager during the term of the franchise. The Franchisee shall immediately advise the City Attorney of any litigation that may develop that would affect this insurance.

10.11 Should the City find an insurance document to be in non-compliance, then it shall notify the Franchisee, and the Franchisee shall be obligated to cure the defect.

10.12 Neither the provisions of this section, nor any damages recovered by the City thereunder, shall be construed to nor limit the liability of the Franchisee under any franchise issued hereunder or for damages.

10.13 The insurance policies provided for herein shall name the City, its officers, employees and agents as additional insured's, and shall be primary to any insurance or self-insurance carried by the City. The insurance policies required by this section shall be carried and maintained by the Franchisee throughout the term of the franchise and such other period of time during which the Franchisee operates or is engaged in the removal of its cable system. Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the City, by registered mail, of written notice of such intention to cancel or not to renew.

10.14 Nothing in this section shall require a Franchisee to indemnify, hold harmless or defend the City, its officials, employees or agents, from any claims or lawsuits arising out of the City's award of a franchise to another person.

SECTION 11 - System Description and Service

11.1 System Characteristics: Franchisee's Cable System, which is a fiber to the premises architecture using Internet Protocol technology, shall meet or exceed the following requirements:

11.1.1. Within twenty four (24) months of the granting of this franchise, the System shall provide a minimum of 860 MHz in bandwidth capacity capable of carrying one hundred (100) channels of video programming.

11.1.2. The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service. The digital offerings shall include some high definition Cable Service.

11.1.3. The Cable Service shall be operated in a manner such that it is in compliance with FCC standards and requirements with respect to interference. The Cable System shall be operated in such a manner as to minimize interference with the reception of off-the-air signals by a Subscriber. The Franchisee shall insure that signals carried by the Cable System, or originating outside the Cable System wires, cable, fibers, electronics and facilities, do not ingress, or egress into or out of the Cable System in excess of FCC standards. In particular, the Franchise shall not operate the Cable System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or an airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.

11.2. Interconnection: The Franchise may design its Cable System so that it will interconnect with other cable systems and open video systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

11.3. Standby Power: The Franchisee shall provide standby power generating capacity at the headend and at all hubs. The Franchisee shall maintain motorized standby power generators capable of at least twenty-four (24) hours duration at the headend and all hubs, with automatic response systems to alert the local management center when commercial power is interrupted. The power supplies serving the distribution plant shall be capable of providing power to the Cable System for not less than two (2) hours in the event of an electrical outage.

11.4. Technical Standards: The Cable System shall meet or exceed the applicable technical standards set forth in 47 C.F.R. § 76.601.

11.5. Leased Access Channels: The Franchisee shall provide Leased Access Channels as required by federal law.

11.6 Service to School and Government Buildings. Franchisee shall provide, without charge, one Cable Service outlet activated for basic service to each fire station, public school, police station, public library, court house, jail and any other building used for government purposes (which includes buildings leased by the City for governmental purposes as well as buildings owned by the City) located within the Franchise Area. The Franchisee also agrees to use reasonable best efforts to provide one Cable Service outlet activated for basic service, if requested by the City and if already served by the

Franchisee's broadband infrastructure at the time of the City's request, to any municipal facility located outside of the Franchise Area.

11.7 Emergency Powers. In the event of an emergency, or where a Franchisee's cable system creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Franchisee shall remove or relocate any or all parts of Franchisee's cable system at the request of the City. If the Franchisee fails to comply with the City's request, the City may remove or relocate any or all parts of the Franchisee's cable system upon reasonable notice to the Franchisee.

11.8 Emergency Alert System.

11.8.1 A Franchisee shall install and thereafter maintain for use by the City, an Emergency Alert System (EAS).

11.8.2 The EAS shall at all times be operated in accordance with FCC rules and the Virginia EAS Plan. If the City determines that it is in the public interest to implement franchise emergency override capabilities in addition to those required by federal and state law, and provided that the additional franchise emergency override capabilities are technically feasible and can be deployed at a reasonable cost, Grantee shall deploy such additional capabilities at its sole cost within twelve (12) months of a request by the City.

11.8.3 The City or other designated body responsible under any approved state or local EAS plan shall provide reasonable notice to the Franchisee prior to any test of the EAS. The Franchisee shall cooperate with the City or other designated body responsible under any approved state or local EAS plan in any such test.

11.8.4 Franchisee shall maintain the EAS and shall periodically upgrade the EAS at the Franchisee's sole expense to ensure that the EAS technology remains consistent and compatible with prevailing technology and applicable law.

SECTION 12 - Enforcement of Franchise

12.1 If, pursuant to any required public hearing, the City determines that the Franchisee has failed to materially comply with this franchise, Article 1.2 (§§ 15.2-2108 *et seq.*) of Chapter 121 of Title 15.2 of the Code of Virginia, or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 or any regulation promulgated thereunder, the City may impose any penalty for a violation of the terms of an ordinance franchise that it may impose for a comparable violation under the terms of a negotiated franchise or applicable Virginia or City law, including, without limitation, revocation of the franchise.

12.2 Within thirty (30) days after the award of a franchise, the Franchisee shall deposit with the City a performance bond or an irrevocable letter of credit from a financial institution running to the City in the amount of fifty thousand dollars (\$50,000.00.). The bond or letter of credit shall be used to insure the faithful performance by the Franchisee of all of the provisions of its franchise and this ordinance, Sections 15.2-2108.19 *et seq.* of the Code of Virginia, and the mandatory requirements of 47 U.S.C. §§ 521-573 and any rules promulgated thereunder, and compliance with all lawful orders, permits, and directions of any agency, commission, board, department, division, or office of the City or VDOT having jurisdiction over the acts of the Franchisee, or defaults under a franchise or the payment by a Franchisee of any penalties, liquidated damages, claims, liens, and taxes due the City which arise by reason of the construction, operation, or maintenance of Franchisee's cable system in the city, including , including restoration of the public rights-of-way and the cost of removal or abandonment of any property of a cable operator.

12.3 Any bond obtained by a Franchisee must be placed with a company which is qualified to write bonds in the Commonwealth of Virginia, such bond shall be subject to the approval of the City Attorney and shall contain the following endorsement (or the substantive equivalent of such language as agreed upon by the City):

“It is hereby understood and agreed that this bond may not be cancelled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not renew.”

12.4 Any letter of credit must be issued by a federally insured commercial lending institution and shall be subject to the approval of the City Attorney.

12.4.1 The letter of credit may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager or his designee, certifying that the Franchisee has failed to comply with this ordinance after having been given due notice and opportunity to cure the failure to comply. Such certificate shall also state the specific reasons for the failure of compliance, and stating the basis of the amount being drawn.

12.4.1.1 The City may withdraw money from the letter of credit in accordance with the procedures set forth in this section.

12.4.1.2 The City shall provide the Franchisee with written notice informing the Franchisee that such amounts are due to the City. The written notice shall describe, in reasonable detail, the reasons for the assessment. In accordance with Section 12.7, the Franchisee shall cure every failure cited by the City or notify the City that there is a dispute as to whether Franchisee believes such amounts are due the City. Such notice by the Franchisee to the City shall specify with particularity the basis of Franchisee's belief that such monies are not due the City.

12.4.1.3 Upon the delivery of the necessary documents to the lending institution, the City has the right to immediate payment from the issuer bank of the amount from the letter of credit necessary to cure the default.

12.4.1.4 Any letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit may not be canceled by the issuer bank nor the intention not to renew be stated by the issuer bank until sixty (60) days after receipt by the City, by registered mail, return receipt requested, of a written notice of such intention to cancel or not to renew."

12.5 Any bond or letter of credit shall be recoverable by the City for all damages and costs, whether direct or indirect, resulting from the failure of a Franchisee to well and faithfully observe and perform any provision of this ordinance.

12.6 The bond or letter of credit shall be maintained at the amount established herein for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this ordinance. The Franchisee shall promptly replace any amounts withdrawn from the bond or letter of credit.

12.7 Non-compliance procedures.

12.7.1 Should the Franchising Authority believe that the Franchisee has not complied with any of the provisions of this Franchise Agreement, it shall: (i) informally discuss the matter with the Franchisee and (ii) notify the Franchisee in writing of the exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The Franchisee shall have fifteen (15) days from receipt of this written notice to: (a) respond to the Franchising Authority, if the Franchisee contests, in whole or in part, the assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 15-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. The Franchising Authority shall schedule a public hearing in the event that the Franchisee fails to respond to the written notice pursuant to these procedures or in the event that the alleged default is not remedied within thirty (30) days of the date projected above if the Franchising Authority intends to continue its investigation into the default. The Franchising Authority shall provide the Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place, and purpose.

12.7.2 In the event the Franchisee fails to cure the default within fifteen (15) days, fails to file a timely written response, or fails to timely complete the remediation, the City, if it wishes to continue its investigation into the default, shall schedule a public hearing. The Franchisee shall be notified in writing at least thirty (30) business days prior to the public hearing and shall be provided an opportunity to be heard at the public hearing. The notice shall specify the time, place, and purpose of the public hearing. The City shall: (1) provide public notice of the hearing in compliance with Virginia law; (2) hear any person interested in the violation under review; and (3) provide the Franchisee with an opportunity to be heard.

12.7.3 The City shall, within a reasonable time after the closure of the public hearing, issue findings and conclusions in writing, setting forth the basis for the findings, the proposed cure plan and time line for curing the violation, if the violation can be cured, and the penalties, damages and applicable interest, if any, owed.

12.7.4 Subject to applicable federal and Virginia law and the provisions of this ordinance, if the City determines pursuant to a public hearing that a Franchisee is in violation of any provision of this ordinance, Article 1.2 (§§ 15.2-2108 *et seq.*) of Chapter 121 of Title 15.2 of the Code of Virginia, or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 or any regulation promulgated thereunder, the City may apply one or a combination of the following remedies: (i) seek specific performance or other equitable relief; (ii) commence an action at law; (iii) apply penalties in accordance with Section 12.8, if applicable; or (iv) apply liquidated damages in accordance with Section 12.8, if applicable.

12.7.5 The City may designate the cable administrator or other designee to conduct the hearings and issue findings and conclusions under this subsection. If the City does so, the Franchisee may appeal the determination of the cable administrator or other City designee to the City Council. Such an appeal shall be heard at a lawfully noticed public hearing.

12.7.6 In the event a Franchisee submits notification of unwillingness to comply with any additional service availability requirements as contained in Section 12.2-8 of this Ordinance, or fails to comply with these additional service requirements, the Franchisee's franchise may be terminated after written notice and a public hearing.

12.8 Penalties and Liquidated Damages. Because it may be difficult to calculate the harm to the Franchising Authority in the event of a breach of this Franchise Agreement by Franchisee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section is intended to preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach. Liquidated damages shall not be assessed until the Franchising Authority has completed the procedures set forth in Section 12.7 hereof, including holding a public hearing, and has notified the Franchisee, by certified or registered mail, of the proposed liquidated damage, specifying the violation at issue. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to submit payment. If the Franchisee does not make payment within that period, the Franchising Authority may obtain the amount assessed from the Franchisee's performance bond.

12.8.1 The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Franchising Authority.

12.8.2 Franchisee may appeal (by pursuing judicial relief or other relief afforded by the Franchising Authority) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Franchisee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.

12.8.3 Liquidated damages may be assessed for the following violations of this Franchise Agreement, in the following amounts:

12.8.3.1 Failure to comply with PEG access requirements: \$400, for each violation for each day the violations continues;

12.8.3.2 Failure to render payments due to the Franchising Authority: Three-tenths of one percent (0.3%) of the unpaid amount for each day the violation continues, in addition to any monetary payment due and interest, in accordance with the City's standard rate for computing interest charges on late payments.

12.8.3.3 Failure to supply information, reports, or filings lawfully required: \$400, for each violation for each day the violation continues.

12.8.3.4 Failure to comply with customer service standards: \$400, for each violation for each day the violation continues, except where compliance is measured quarterly, in which case damages shall be as specified in Section 12.8.3.5.

12.8.3.5 Failure to comply with customer service standards with which compliance is measured on a quarterly basis: \$500 for the first violation in which such standards were not met; \$1,000 for any violation within 18 months after the first; and \$2,500 for any violation within 18 months after the second or any subsequent violation.

12.8.3.6 For failure to comply with any other requirement of this ordinance, applicable Virginia law or the Cable Act: \$400 a day for each violation for each day the violation continues.

12.8.3.7 The Franchisee shall not be charged with multiple violations for a single act or event affecting a single subscriber or for a single act or event affecting multiple subscribers on the same day.

12.8.3.8 The City may reduce or waive any of the above liquidated damages if it determines, in its discretion, that such waiver is in the public interest.

12.8.3.9 If a court of competent and binding jurisdiction determines that liquidated damages cannot be imposed by this ordinance rather than by contract, the foregoing liquidated damages shall be construed to be penalties to the full extent allowed and contemplated by Section 15.2-2108.22(6) of the Code of Virginia

12.9 Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of

the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

12.9.1 in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

12.9.2 where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

SECTION 13 - Inspection of facilities

13.1 Franchisee shall comply with all applicable federal, state and local construction and engineering codes and regulations, currently in force or hereafter applicable, to the construction, operation or maintenance of its cable system within the city. The City shall have the right to review a Franchisee’s construction plans and specifications to assure compliance with the required standards. After construction has been completed, the City shall have the right to inspect all construction or installation work performed pursuant to the franchise and to conduct any tests it deems necessary to ensure compliance with the terms of this ordinance and all applicable federal, state and local building and engineering codes. However, the City shall not be required to review or approve construction plans and specifications or to make any inspections. The Franchisee shall be solely responsible for taking all steps necessary to assure compliance with applicable standards and to ensure that its cable system is installed in a safe manner and pursuant to the terms of the franchise and applicable law.

SECTION 14 - Miscellaneous Provisions

14.1 Force Majeure. The Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by events which constitute a Force Majeure, as defined in the Agreement.

14.2 Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

City Manager
City of Lynchburg
900 Church Street
Lynchburg, VA 24504

To the Franchisee:

NTELOS
VP Legal & Regulatory
401 Spring Lane
Waynesboro, VA 22980

with a copy to:

NTELOS
Manager-Regulatory
1154 Shenandoah Village Drive
Waynesboro, VA 22980

14.3 Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Franchisee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

14.4 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

14.5 Governing Law. This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia, as applicable to contracts entered into and performed entirely within the Commonwealth.

14.6 Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an

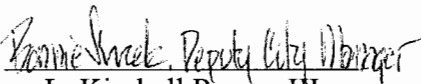
appropriate resolution or order by the Franchising Authority, as required by applicable law.

14.7 No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

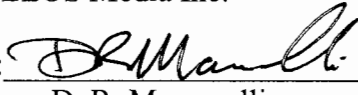
14.8 No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Franchisee may have under federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

City of Lynchburg, Virginia:

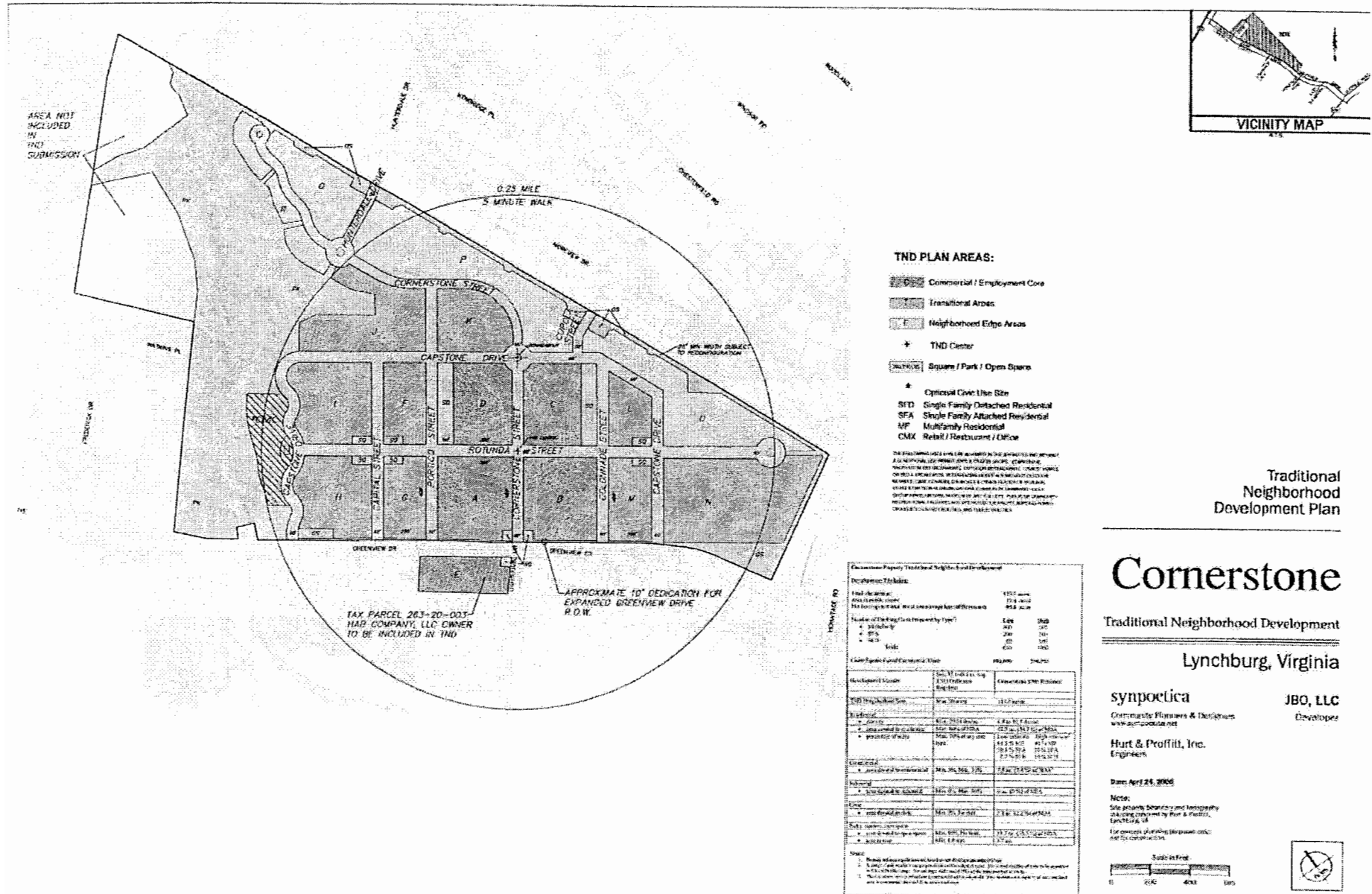
By: 
Name: L. Kimball Payne, III
Title: City Manager

NTELOS Media Inc.

By: 
Name: D. R. Maccarelli
Title: President

EXHIBITS

Exhibit One: Franchise Area



**FIRST AMENDMENT TO CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF
LYNCHBURG, VIRGINIA AND NTELOS MEDIA INC. APPROVED BY LYNCHBURG CITY
COUNCIL ON OCTOBER 9, 2007.**

WHEREAS, on October 9, 2007, the City and NTELOS Media, Inc., d/b/a as NTELOS entered into a Franchise Agreement to construct and operate a cable television system within the Cornerstone Traditional Neighborhood Development; and,

WHEREAS, on February 12, 2008, the City and Comcast of Georgia/Virginia, Inc, d/b/a Comcast entered into a Franchise Agreement to construct and operate a cable television system within the City of Lynchburg; and,

WHEREAS, there are some slight differences in the terms and conditions contained in the October 9, 2007 Franchise between the City and NTELOS and the February 12, 2008 Franchise Agreement between the City and Comcast and,

WHEREAS, the provisions of Article 1.2 of Title 15.2 of the Code of Virginia provide that all cable television companies must be treated the same under local Franchise Agreements, so the City and NTELOS wish to amend the October 9, 2007 Franchise Agreement between the City and NTELOS so the terms and conditions of such Franchise Agreement are consistent with the terms and conditions of the February 12, 2008 Franchise Agreement between the City and Comcast.

NOW, THEREFORE, the City and NTELOS do hereby mutually agree to and do hereby amend the October 9, 2007 Franchise Agreement as follows:

A. Section 5.1 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

- 5.1 Franchisee shall designate capacity on up to three (3) channels for public, educational and/or governmental access video programming provided by the Franchising Authority or its designee, such as a public access organization or educational institution. Use of a channel position for public, educational and governmental ("PEG") access shall be provided on the most basic tier of service offered by Franchisee in accordance with the Cable Act, Section 611, and Article 1.2 of the Code of Virginia, and as further set forth below. "Channel position" means a number designation on the Franchisee's channel lineup regardless of the transmission format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. In the event any Access channel is reassigned, the Franchisee shall provide the City with at least 30 days notice before reassigning the channel, and shall pay the reasonable costs of any advertising and promotional materials required due to the reassignment. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of a channel position, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for Educational and Governmental Access Channel use. On the Effective Date, Franchisee shall provide two (2) PEG access channels for the purposes of providing governmental and educational channels. On the Effective Date, a public access channel will be required only if a public access organization is

operational, producing programming content for cablecast, and is providing all communications facilities needed for delivering a public access signal to Franchisee's headend. If such a public access organization is not meeting such requirements as of the Effective Date, within ninety (90) days after a public access organization meets such requirements and requests use of the third PEG channel, Franchisee shall make available one (1) additional channel for PEG access programming.

B. Section 5.6 of the October 9, 2007 Franchise Agreement is deleted.

C. Section 5.7 of the October 9, 2007 Franchise Agreement is deleted.

D. Section 11.1.1 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

11.1.1 Within twenty-four (24) months of the granting of this franchise, the System shall provide bandwidth capacity capable of carrying one hundred (100) channels of video programming.

E. Section 12.7.1 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.7.1 Should the Franchising Authority believe that the Franchisee has not complied with any of the provisions of this Franchise Agreement, it shall: (i) informally discuss the matter with the Franchisee and (ii) notify the Franchisee in writing of the exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The Franchisee shall have thirty (30) days from receipt of this written notice to: (a) respond to the Franchising Authority, if the Franchisee contests, in whole or in part, the assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. The Franchising Authority shall schedule a public hearing in the event that the Franchisee fails to respond to the written notice pursuant to these procedures or in the event that the alleged default is not remedied within thirty (30) days of the date projected above if the Franchising Authority intends to continue its investigation into the default. The Franchising Authority shall provide the Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place, and purpose.

F. Section 12.7.2 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.7.2 In the event the Franchisee fails to cure the default within thirty (30) days, fails to file a timely written response, or fails to timely complete the remediation, the City, if it wishes to continue its investigation into the default, shall schedule a public hearing. The Franchisee shall be notified in writing at least thirty (30) business days prior to the public hearing and shall be provided an opportunity to be heard at the public hearing. The notice shall specify the time, place, and purpose of the public hearing. The City shall: (1) provide public notice of the hearing in compliance with Virginia law; (2) hear any person interested in the violation under review; and (3) provide the Franchisee with an opportunity to be heard.

G. Section 12.8.3.1 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.8.3.1 Failure to comply with PEG access requirements: \$200, for each violation for each day the violations continues;

H. Section 12.8.3.4 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.8.3.4 Failure to comply with customer service standards: \$200, for each violation for each day the violation continues, except where compliance is measured quarterly, in which case damages shall be specified in Section 12.8.3.5.

I. Section 12.8.3.6 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.8.3.6 For failure to comply with any other requirement of this ordinance, applicable Virginia law or the Cable Act: \$100 a day for each violation for each day the violation continues.

Except as modified herein, all the terms and conditions set forth in the October 9, 2007 Franchise Agreement between the City and NTELOS shall remain in full force and effect throughout the remaining term of the Franchise.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest:

City of Lynchburg, Virginia:

By: _____
Name: L. Kimball Payne, III
Title: City Manager

Attest:

NTELOS Media Inc.

By: _____
Name: D.R. Maccarelli
Title: President

AN ORDINANCE AMENDING THE OCTOBER 9, 2007 CABLE TELEVISION
FRANCHISE BETWEEN NTELOS Media, INC., D/B/A AS NTELOS, AND
THE CITY OF LYNCHBURG

WHEREAS, on October 9, 2007, the City and NTELOS Media, Inc., d/b/a as NTELOS entered into a Franchise Agreement allowing NTELOS to construct and operate a cable television system within the Cornerstone Traditional Neighborhood Development; and,

WHEREAS, on February 12, 2008, the City and Comcast of Georgia/Virginia, Inc, d/b/a Comcast entered into a Franchise Agreement to construct and operate a cable television system within the City of Lynchburg; and,

WHEREAS, there are some slight differences in the terms and conditions contained in the October 9, 2007 Franchise between the City and NTELOS and the February 12, 2008 Franchise Agreement between the City and Comcast and,

WHEREAS, the provisions of Article 1.2 of Title 15.2 of the Code of Virginia provide that all cable television companies must be treated the same under local Franchise Agreements, so the City and NTELOS wish to amend the October 9, 2007 Franchise Agreement between the City and NTELOS so the terms and conditions of such Franchise Agreement are consistent with the terms and conditions of the February 12, 2008 Franchise Agreement between the City and Comcast.

NOW, THEREFORE, BE IT ORDAINED, that the Lynchburg City Council, does hereby find that the public welfare will be enhanced by the amendment of the October 9, 2007 Franchise Agreement between the City and NTELOS and the Lynchburg City Manager is hereby authorized to sign the amendment to the Cable Television Franchise Agreement between the City and NTELOS.

Adopted:

Certified:

Clerk of Council

055L

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **August 9, 2011**

AGENDA ITEM NO.: 4

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **nTelos Cable Television Franchise Request**

RECOMMENDATION: No action required.

SUMMARY: Director of Information Technology Mike Goetz will brief City Council on a request from nTelos to expand their cable television franchise area to allow them to provide cable television services to areas in the city beyond the Cornerstone neighborhood. Staff wants Council to be aware of this interest by nTelos as it is prepared to enter into negotiations regarding an expanded franchise which would be brought to Council for consideration at a later date. Any provisions in an nTelos franchise that were less restrictive than Comcast's franchise would have to be granted to Comcast as well.

Attached is a background document prepared by Mr. Goetz that provides additional information.

PRIOR ACTION(S): In November, 2007, nTelos was granted a cable television franchise agreement which specified a franchise area limited to the Cornerstone neighborhood development area.

FISCAL IMPACT: None.

CONTACT(S): Mike Goetz, 455-6002

ATTACHMENT(S): Background document.

REVIEWED BY: lkp

nTelos Request to Amend Cable TV Franchise Agreement

Background

In November, 2007, nTelos was granted a cable television franchise agreement which specified a franchise area limited to the Cornerstone neighborhood development area. This was done to facilitate the desires of nTelos and the developer of Cornerstone to provide fiber-to-the-premises (FTTP) services to the residences and businesses located there. FTTP services typically include video/cable TV, Internet, and telephone services delivered at very high speeds over a fiberoptic cable that is installed directly to the home or business. Since nTelos' desired service offering included cable TV service, a cable TV franchise was required.

At the time the nTelos franchise was negotiated, the incumbent cable TV provider (Adelphia) was in bankruptcy, and the company was in the process of being acquired by Comcast. Adelphia's franchise agreement had expired, but the franchise was considered to be in a holdover-tenant status – meaning that the terms and conditions of the franchise would continue, until and unless the City took action to terminate the franchise. Adelphia/Comcast's franchise contained a build-out provision based upon a "density requirement." In essence, this provision requires the franchisee to provide cable TV service wherever there are at least 30 homes per street-mile (i.e., the "density requirement") within their authorized franchise area. (Adelphia/Comcast's franchise area was defined in their franchise as the entire city.) Under federal law, the City is obligated to facilitate a level playing field between multiple cable TV franchise holders, ensuring that one franchisee is not granted more favorable provisions over another. Since Adelphia/Comcast's franchise contained a build-out provision and a density requirement, nTelos' franchise had to contain the same.

It was nTelos' position that it could only provide FTTP services in a cost-effective manner to the Cornerstone area (a greenfield development), and that it could not commit to providing service beyond that area, due to the additional costs required to build out to existing homes or neighborhoods. In the negotiations of nTelos' franchise, it was determined that the level playing field obligation could be met, incorporating the same build-out and density requirement provision in the nTelos franchise as existed in the Adelphia/Comcast franchise, by limiting the franchise area to just Cornerstone. This allowed nTelos to meet the franchise requirements and still provide FTTP services in a cost-effective manner.

It should be noted that FTTP services typically require a fiberoptic-based backbone infrastructure, with a fiberoptic cable connecting to each home or business being served. As such, FTTP services typically can only be provided in a cost-effective manner if: (a) the desired home/business to be served is located close to the fiberoptic-based backbone infrastructure, and (b) the cost or difficulty to construct a fiberoptic cable connection to the home/residence is not prohibitive.

nTelos' Request

Since 2000, nTelos has invested significantly in Lynchburg to expand its fiberoptic backbone infrastructure. They purchased the fiberoptic network that was owned by the City, added onto it, and enhanced its capabilities. They are now a significant provider of broadband services to much of Lynchburg. Increasingly, nTelos has been asked by its customers outside of Cornerstone, primarily businesses and high-density residential locations, to provide cable TV service in addition to the Internet and telephone services they currently receive. However, nTelos' cable TV franchise agreement currently prevents them from offering cable TV service outside of Cornerstone.

nTelos and City staff have had informal discussions for over a year exploring ways in which nTelos might be granted the authority to provide the cable TV services being requested by their customers. One concept that appears to be mutually acceptable between nTelos and City staff is to amend nTelos' franchise to expand their franchise area to the entire city, but remove the build-out provision. nTelos formally contacted the City in May, 2011, expressing their desire to amend their franchise in this way.

It is recognized that, due to federal level playing field requirements, if this amendment is granted to nTelos, the City must be willing to amend Comcast's franchise in the same way, if Comcast desires.

Issues and Considerations

1. If the build-out provision is dropped from nTelos' and Comcast's franchise agreements, the City will no longer have the authority to require either company to provide cable TV service to an unserved area if it is developed to the point where it meets the density requirement. However, this risk is tempered by: (a) practically speaking, there are few areas in Lynchburg which are not currently served and envisioned to be built out to the 30-homes-per-street-mile standard, and (b) if such developments were to occur, it is highly likely that at least one of the cable companies would find it profitable to serve them.
2. There would be nothing in Comcast's cable franchise agreement that would prevent them from stopping service to a location they currently serve. However, this seems highly unlikely. Having incurred the cost to build out to a residence or business, it would be a poor business decision to walk away from a revenue-generating location.
3. It is highly unlikely that Lynchburg will ever see a second cable TV provider willing to over-build and provide cable TV service to all of Lynchburg. The City has formerly contacted all the major cable TV providers in the past and requested that they serve Lynchburg, but these requests have been ignored. Given the relatively small market size of the city, it is probably not reasonable to expect that our customer base could support the cost to build and operate two cable TV systems that cover the entire city.
4. Competitive video services are growing. Satellite TV service is an option in many parts of the city, and video services delivered via broadband are also expanding. Allowing nTelos' request will expand the availability of high-speed fiberoptic-

based broadband services and, therefore, expand access to broadband-delivered video services to more businesses and residences.

5. In order to try to ensure an acceptable level of responsiveness on the part of the cable companies in evaluating requests to serve unserved areas, City staff recommends including a provision in the franchise agreements requiring the cable companies to evaluate and respond to all requests for service to unserved areas within a specific, reasonable time frame.

July 27, 2011

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 25, 2011**

AGENDA ITEM NO.: 14

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

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

RECOMMENDATION: Pending comments at the public hearing 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: Council has previously been briefed on the existing and future stormwater management needs and pending regulations associated with the Chesapeake Bay clean-up efforts. A stormwater utility and enterprise fund are recommended in order to effectively and efficiently address these needs. A fee based on the amount of impervious area on individual properties is recommended as it would apply to all developed properties within the City and is regarded as the most equitable method of funding the stormwater management needs of the City.

PRIOR ACTION(S): 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: Generate approximately \$2.54 million in revenues for a stormwater enterprise fund to be utilized for stormwater related operations, maintenance, and capital expenses.

CONTACT(S): Tim Mitchell, Director of Utilities 455-4252
Jim Talian, Water Quality Manager 455-3953

ATTACHMENT(S):

1. Proposed Ordinance: Chapter 16.3 – Stormwater Utility, Sections 16.3-1 through 16.3-11
2. Stormwater Presentation

REVIEWED BY: lkp

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

(11) “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) “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, including condominium unit owners, of developed residential property, developed multi-family residential property and developed nonresidential property, all as more fully described in sub-paragraph (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 management, protection, control, regulation, use and enhancement 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 responsibilities 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 established. The single-family unit (SFU) area is hereby established to be 2,672 square feet of impervious surface area.

(b) SFU rate established. The single-family unit rate for stormwater service charges applied to other residential and nonresidential development is hereby established to be \$4 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:

	Impervious Area On Property (Square Feet)	Percentage of SFUs
<u>Detached Single-Family Residential</u>		
Small Tier	1,300 or less	50%
Medium Tier	1,301 to 4,300	100%
Large Tier	4,301 or more	160%
<u>Other Residential Development (SFUs/Dwelling unit)</u>		
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 penalties.

(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 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 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 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



City of Lynchburg

Stormwater Management

City Council Presentation

October 25, 2011



Time Line of Increasing Regulations



- What we know:
 - 2011 - General Watershed Nutrient Permit
 - 2013 - MS4 renewal
 - 2013 - Bacteria TMDL
 - 2014 - State Stormwater Regulations
 - 2016 - VPDES Permits
- What we don't know:
 - 2012 - National Stormwater Regulations
 - 2013 - Chesapeake Bay TMDL (WIP Phase 2)

Today's Decisions



- Use tax revenues or a fee?
- Fee amount?
- How to bill? (on utility, tax, or separate bill)
- Send bills to property owners or tenants?
- Include a residential credit program?

Recommendation # 1: Fee



- A fee is more equitable than a tax – all properties pay based on impervious area
- Everyone's cost is directly related to their level of contribution to the problem
- Tax structure has no relationship to the demand for stormwater services
- Effective July 1, 2012

Recommendation # 2: \$4.00 per SFU



- Most houses – 1 SFU (\$4.00)
- Small houses – 50% of SFU fee (\$2.00)
- Large houses – 160% of SFU fee (\$6.40)
- Duplexes – 50% of SFU fee (\$2.00)
- Triplex, Quad, Mobile Homes – 70% (\$2.80)
- Condos, Townhomes – 33% (\$1.33)
- All Others in proportion to impervious area – \$0.1497 per 100 sq. ft. of impervious area

Recommendation # 3: Use Utility Bills



- 12 bills / year vs. 4 bills / year for tax bill
- \$4.00 / bill vs. \$12.00 / bill on tax bill
- Better cash flow distribution
- Emphasizes the relationship between the demand on the system and the fee charged
- Better association with the department providing the service

Recommendation # 4: Send Bill to Owner



- City currently spends \$100,000 per year transitioning from tenant to tenant
- Shift cost of tenant turnover to the property owner and off of the city taxpayers
- Ownership turnover is much less frequent than tenant turnover
- Owner has the ability to make changes that would reduce the rate. Tenants do not.
- Transition period: 7/1/12 to 6/30/13

Recommendation # 5: Residential Credits



- Sends the right message
- Provides an educational opportunity
- Allows customers to reduce their rate
- Many people want to do the right thing
- Extensive participation could reduce the city's requirements

Summary of Recommendations



- Use a stormwater fee
- Bill \$4.00 per month per single family unit
- Add the fee to current utility bills
- Send the bills to property owners
- Allow residential credits

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 25, 2011**

AGENDA ITEM NO.: 15

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: SAFETEA-LU Resolution: Kanawha Canal Trail/Park and Railroad Tunnel Stabilization

RECOMMENDATION:

Approve a resolution to request the Commonwealth Transportation Board to establish a project for the construction of a pedestrian/bike trail along the former Kanawha Canal in Lynchburg, including improvements to the 9th Street Kanawha Canal Bridge to allow pedestrian/bike travel under the bridge, creation of a Canal Park to serve as a trailhead, and stabilization of the adjacent historic train tunnel for a future transportation exhibit.

SUMMARY:

This work is a continuation of the Downtown & Riverfront Master Plan 2000. This phase of work will focus on the Kanawha Canal revitalization as a trailhead connection between Percival's Isle and Blackwater Creek. Also included is the stabilization of the old railroad tunnel located behind Amazement Square. This tunnel will be used for a future transportation exhibit.

The City is seeking funding assistance through VDOT's SAFETEA-LU program for design and implementation of these improvements. The total project cost is estimated to be \$1,768,000 and will be completed in two phases. For this phase, the City will apply for a \$1,000,000 grant with a 20% local match of \$200,000.

PRIOR ACTION(S):

The City has implemented adjacent phases of the overall Master Plan, such as the Depot Plaza, Great Lawn and Jefferson Street Promenade, and currently working on the Lower Bluff Walk connection at 11th Street.

FISCAL IMPACT:

The City would be responsible for \$200,000 in this phase, which is the required 20% local match.

SAFETEA-LU Grant	\$1,000,000
City 20% Match	\$200,000
TOTAL	\$1,200,000

CONTACT(S):

Charles Grant, 455-3934

ATTACHMENT(S): Resolution; Grant application.

REVIEWED BY: lkp

RESOLUTION

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the local government or state agency in order that the Virginia Department of Transportation program establish a transportation enhancement project in the City of Lynchburg.

NOW, THEREFORE, BE IT RESOLVED that the City of Lynchburg requests the Commonwealth Transportation Board to establish a project for the Kanawha Canal Trail/Park and Railroad Tunnel Stabilization Project in Lynchburg, Virginia,

AND, BE IT FURTHER RESOLVED that the City of Lynchburg hereby agrees to pay a minimum 20 percent of the total cost of the project, and that, if the project is cancelled, the responsible entity hereby agrees to reimburse the Virginia Department of Transportation for the total amount of costs expended through the date the Department is notified of such cancellation.

Adopted:

Certified:

Clerk of Council

163L



FY 2012 – 2013 PROJECT APPLICATION FORM

****APPLICATION DEADLINE NOVEMBER 1, 2011****

Use TAB KEY to reach each field

1. Applicant	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Name and Title:</td><td>Mr. Charles Grant, City Construction Manager</td></tr> <tr> <td>Organization:</td><td>City of Lynchburg</td></tr> <tr> <td>Address:</td><td>900 Church Street</td></tr> <tr> <td> </td><td> </td></tr> <tr> <td>City, State, Zip+4:</td><td>Lynchburg, VA 24504</td></tr> <tr> <td>Telephone/Fax:</td><td>(434) 455 - 3934 / () -</td></tr> <tr> <td>E-mail Address:</td><td>charles.grant@lynchburgva.gov</td></tr> </table>	Name and Title:	Mr. Charles Grant, City Construction Manager	Organization:	City of Lynchburg	Address:	900 Church Street			City, State, Zip+4:	Lynchburg, VA 24504	Telephone/Fax:	(434) 455 - 3934 / () -	E-mail Address:	charles.grant@lynchburgva.gov
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E-mail Address:	charles.grant@lynchburgva.gov														
2. Project Sponsor	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Name and Title:</td><td>Mr. L. Kimball Payne, City Manager</td></tr> <tr> <td>Sponsoring Agency:</td><td>City of Lynchburg</td></tr> <tr> <td>Address:</td><td>900 Church Street</td></tr> <tr> <td> </td><td> </td></tr> <tr> <td>City, State, Zip+4:</td><td>Lynchburg, VA 24504</td></tr> <tr> <td>Telephone/Fax:</td><td>(434) 455 - 3990 / (434) 847 - 1536</td></tr> <tr> <td>E-mail Address:</td><td>city.manager@lynchburgva.gov</td></tr> </table>	Name and Title:	Mr. L. Kimball Payne, City Manager	Sponsoring Agency:	City of Lynchburg	Address:	900 Church Street			City, State, Zip+4:	Lynchburg, VA 24504	Telephone/Fax:	(434) 455 - 3990 / (434) 847 - 1536	E-mail Address:	city.manager@lynchburgva.gov
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E-mail Address:	charles.grant@lynchburgva.gov														
4. Project Title and Description	This new project continues implementation of Lynchburg's "Downtown and Riverfront Master Plan 2000". This project includes construction of a pedestrian/bike trail along the former Kanawha Canal in Lynchburg, including improvements to the 9th Street Kanawha Canal Bridge to allow pedestrian/bike travel under the bridge, creation of a Canal Park to serve as a trailhead, and stabilization of the adjacent historic train tunnel for a future transportation exhibit (please see attached narrative).														

5. Relationship to Surface Transportation (Select **ONLY** one and explain)

Select the primary relationship to transportation (past or future) and describe how the project demonstrates this relationship. (Please limit your response to 150 words.)

(See Enhancement [Relationship to Transportation](#) for a description of relationships)

☒ Function

Explain: Connection of two major existing trails with full ADA accessibility. The readaptive design of the Historic Kanawha Canal and bridge in to a small park, for pedestrian/bike trail use along the old Canal. And, stabilization of the historic train tunnel for future transportation exhibit (please see attached narrative).

☐ Impact

Explain:

☐ Proximity

Explain:

6. Primary Category of Eligibility (Select **ONLY** one)

List **primary category of eligibility**. Select major category of eligibility even if other categories may apply.

(See Enhancement [Project Eligibility](#) for a listing and description of the 12 categories)

Category 1 - "Provision of Facilities for Bicycles and Pedestrians"

7. Transportation Enhancement Funds Requested

7a. Enhancement Funds Requested	This Application Only	\$1,000,000.00
7b. Match Required	This Application Only	\$200,000.00

8. Total Project Cost

8a. Total Estimated Project Cost	All Phases	\$1,718,000.00
8b. Total Enhancement Funds Anticipated	All Phases (Maximum 80%)	\$1,374,400.00
8c. Total Match Required	All Phases	\$343,600.00
8d. Other Project Funds	All Phases	

9. Funding Sources

9a. Match Funds	Type	Confirmed Amount	Anticipated Amount
City of Lynchburg Capital Funds		\$343,600.00	\$343,600.00
9b. Other Project Funds	Type	Confirmed Amount	Anticipated Amount

10. Attachment A- Project Budget. Enclose a complete project budget (See 8a). If the project includes multiple phases, show ALL phases. Budget projections should reflect the total project cost, including federal and non-federal costs. Format budget to separate PE, RW and CN costs.

11. Attachment B- Scoring Criteria. NEW projects ONLY. To be completed by project applicants requesting funds for a new project that has not received prior funding.

12. Attachment C- Project Status. EXISTING projects ONLY. To be completed by project applicants that have received federal Enhancement funds in the past for this project.

13. Sponsor Certification

13a. Public Hearing Held	Date:	Attached: ☐
13b. MPO Resolution of Support (if applicable)	Date:	Attached: ☐
13c. Local Resolution to Sponsor Project	Date:	Attached: ☐

13d. Sponsor certifies the following: (Read and check each statement below)

- ☒ We are familiar with Enhancement Procedure Manual and the Locally Administered Projects Manual
- ☒ We will provide technical guidance and oversight throughout project development
- ☒ Budget accurately reflects cost of proposed project
- ☒ Project development will comply with all state and federal regulations
- ☒ We understand these funds must be expended within four (4) years of federal availability
- ☒ We will be responsible for ensuring future maintenance and operating costs of the completed project

Sponsor Signature (Authorized Local Official)

Date

ATTACHMENT A: PROJECT BUDGET - Kanawha Canal Park & Trail

Task by Project Development Phase	Construction Phase 1	Construction Phase 2	TOTAL Project Costs
PRELIMINARY ENGINEERING (PE) PHASE			
Engineering / Design Fees	85,000.00	40,000.00	125,000.00
Environmental Document	20,000.00		20,000.00
Surveying Fees	15,000.00		15,000.00
Estimated VDOT Review Charges	40,000.00	30,000.00	70,000.00
Grant Administrative Costs	10,000.00	8,000.00	18,000.00
PE Phase TOTAL COSTS	170,000.00	78,000.00	248,000.00
RIGHT OF WAY (RW) PHASE			
Right of Way Purchase			
Utility Relocation	120,000.00	50,000.00	170,000.00
RW Phase TOTAL COSTS	120,000.00	50,000.00	170,000.00
CONSTRUCTION (CN) PHASE			
Archeological Dig	20,000.00		20,000.00
Excavate/Clean and Stabilize Canal	50,000.00		50,000.00
Install Temporary Safety Features	20,000.00		20,000.00
Stabilize Kanawha Canal Bridge (9th Street)	100,000.00		100,000.00
Stabilize Historic Railroad Tunnel	200,000.00		200,000.00
Construct Trail Extension/Connections and Canal Park Features		800,000.00	800,000.00
Inspection Fees	15,000.00	15,000.00	30,000.00
Construction Management	10,000.00	20,000.00	30,000.00
Contingency	25,000.00	75,000.00	100,000.00
CN Phase TOTAL COSTS	440,000.00	910,000.00	1,350,000.00
TOTAL COSTS (PE, RW & CN)	730,000.00	1,038,000.00	1,768,000.00



FY 2012 - 2013
ATTACHMENT B
SELECTION CRITERIA

COMPLETED FOR NEW PROJECTS ONLY

A. Applicant Name: City of Lynchburg

B. Project Title: Kanawha Canal Park and Trail

C. Complete the following questions providing as much detail as possible using the text boxes available. Provide numeric data when available. Responses will automatically expand to additional sheets as needed.

1. Demonstrated Need – What need(s) will this project fulfill within the community? Explain all that apply.

☒ Safety: The connection of two major trail systems that are currently divided by vehicular traffic.

Creation of a safe path system for pedestrians and bicyclists (please see attachment)

☒ Non-motorized Transportation: Creation of a trail for pedestrians and bicyclists along the historic Kanawha Canal (please see attachment)

☒ Economic: Attracting visitors and tourists to a new trail and interpretation of canal history in downtown will enhance economic vitality of the City. Providing a pedestrian link between downtown workers and existing restaurants will boost local business revenue (please see attachment). The stabilization of the railroad tunnel will foster development of a transportation exhibit.

☒ Historic Preservation: Restoration of the 9th Street Kanawha Canal Bridge to enable trail users to pass under the structure in the path batteaux and packet boats once traveled (please see attachment).

☐ Other:

2. Project Usefulness and/or Benefit

a) What purpose will this project serve and how will it benefit the community? Explain all that apply.

☒ Provides new bicycle/pedestrian facilities where none exist: Currently the former Kanawha Canal is inaccessible for pedestrians. This proposed trail will provide an important link between historic attractions and a new public park/open space currently under construction.

☒ Provides connectivity within the existing transportation network: This project lies between Percival's Island Trail and the Blackwater Creek Greenway Trail. This segment will link two heavily used trails, which are currently divided by vehicular traffic.

☐ Environmental air quality benefit via alternate transportation:

☒ Tourism / Education benefit: Approximately 90,000 people visit Amazeement Square Children's Museum, located adjacent to the proposed Trail and Bridge Improvements. This large group of the traveling public will benefit from learning the history of the Kanawha Canal through interpretive exhibits located along the trail and near the existing bridge. The stabilization of the

historic railroad tunnel will lead to development of a transportation exhibit, creating additional interest for these visitors to stay in the downtown area longer.

☐ Beautification / Revitalization of existing transportation network:

☐ Other:

b) Describe the primary users – provide numbers/if available: 90,000 visitors annually to Amazement Square; 50,000 visitors annually to nearby James River Heritage Trail; downtown workers and residents.

3. Amenities/Support Facilities – What facilities are available and/or included in this proposal? Describe.

4. Educational/Historical

a) What educational experience will be provided? Describe.

Transportation History will be the primary educational component of this project. History of the Kanawha Canal will be communicated to the traveling public through interpretive displays along the Trail. The train tunnel will also host a transportation-related exhibit in the future.

b) Will interpretation of the site be provided and in what format?

The site will be interpreted through displays which illustrate historical images of the Kanawha Canal and Basin, commerce along the Canal, mechanics of the canal system, and the importance of overlapping transportation networks in the founding and sustainability of the City of Lynchburg.

c) What other historic / scenic sites are within the immediate vicinity?

Amazement Square Children's Museum adjacent to trail and bridge; Lynchburg Museum - 2 blocks, James River Heritage Trail, James River Batteaux Festival, Riverviews Studios & Lofts, The Bluffwalk Center, Monument Terrace, Lynchburg Visitor's Center, Point of Honor, Anne Spencer home, numerous National Historic Designation homes and neighborhoods

5. Project Resources – What resources are available? Describe.

a) What financial support is available for project design and / or construction?

The City has funds appropriated for downtown development on another project. Remaining funds from that project will be used towards funding design and construction of the Kanawha Canal Trail/Park and stabilization of the railroad tunnel.

b) Describe any preliminary engineering activities that have occurred including completion of a master plan:

Sasaki Master Plan - completed 2000; Nelson Byrd Woltz Master Planning - ongoing (see attachments). Preliminary engineering/analysis for the train tunnel exhibit is also complete.

c) Has all required property been secured?

Yes

d) Will this funding request fully fund the proposed project and all its phases?

No, this request will partially fund this two-phase project.

e) Describe how local support has been demonstrated – provide numbers / data / statistics:

1. Provision of Facilities for Bicycles and Pedestrians

Function:

Creation of a pedestrian/bike trail along the historic Kanawha Canal, and restoration of the 9th Street Kanawha Canal Bridge

1. Demonstrated Need

Safety:

Safety will be greatly improved by providing a pedestrian and bike link between two high traffic pedestrian areas in Lynchburg. Amusement Square Children's Museum, Depot Grille, and James River Heritage Trail anchor the west end of the project and Percival's Island Trail, The Bluffwalk Center, and other businesses anchor the east end. Bicyclists and pedestrians currently use Jefferson Street to link the trail segments. This trail will create a safe non-vehicular trail system for pedestrians. It is located away from vehicular traffic and follows the historic location of the Kanawha Canal. This trail will inspire businesses which currently line the former canal to open entrances and patio dining spaces to front on the proposed trail.

Non-motorized Transportation:

An important transportation corridor will be completed with this trail project which will provide pedestrians and bicyclists with a safe transportation network. Currently users of the James River Heritage Trail must use Jefferson Street to link two ends of the trail. This proposed link will seamlessly tie together the James River Heritage Trail and the Heritage Park currently under construction.

Economic:

The Kanawha Trail will create a Tourist Destination. A trail with interpretation of the abundant history of the site will encourage visitors to linger in downtown and create economic vitality. In addition, completion of a beautiful and educational trail adjacent to the former Kanawha Canal, a well-known historic feature, will attract history buffs and recreational enthusiasts to downtown Lynchburg. Many restaurants and shops exist near the proposed trail. The trail will increase their business through increased pedestrian connections to their businesses. Property values in Lynchburg have increased \$50 million in recent years (Lynch's Landing/VA Main Street data). Downtown living has also increased with many loft apartments and condominiums. Three new restaurants are thriving within walking distance of the proposed new trail. These successes provide numerous users of the trail system and indicate the local community's support of downtown revitalization.



Existing Conditions – 9th Street Kanawha Canal Bridge



Proposed Bike/Walk Path Under Kanawha Canal Bridge

(Image Courtesy Nelson Byrd Woltz)

Historic Preservation:

Restoration of the 9th Street Kanawha Canal Bridge will restore the elevation under the bridge to its former canal level. In addition, restoration of this historic structure will enable trail users to pass under the structure in the same path bateau and packet boats once traveled.

Interpretation of the history of the Kanawha Canal will occur on panels located along the trail with images of the exact site users are viewing from varying periods of time.

Additional historic preservation will be achieved by recreating the former tow-path used to pull batteaux along the Kanawha Canal.

Canal history is a strong element of the history of this site. Lynch's Ferry site, located at the terminus of 9th Street, was why Lynchburg was founded. Numerous railroad lines formerly and currently cross this site. The Kanawha Canal was widened in this location to form a Canal Basin, to allow boats to turn and dock at bustling warehouses lining the canal and basin.



Covered Bridge at 9th Street



View of Kanawha Canal Basin from James River

Photographs courtesy of the Lynchburg Museum System

Lynchburg Transportation History

Lynchburg is home to 70,000 people today. The city was founded around a transportation business: Lynch's Ferry. As Virginia became increasingly settled, tobacco was the cash crop that promoted construction of canals, railroads, and roads for horses and later vehicles. Tobacco, agricultural, and manufacturing products were shipped by bateaux downriver. When the Kanawha Canal was conceived and constructed in the late 18th and early 19th centuries, it was the primary transportation mode in what was essentially a wilderness. Four centuries of development in Lynchburg have not erased this early transportation history.



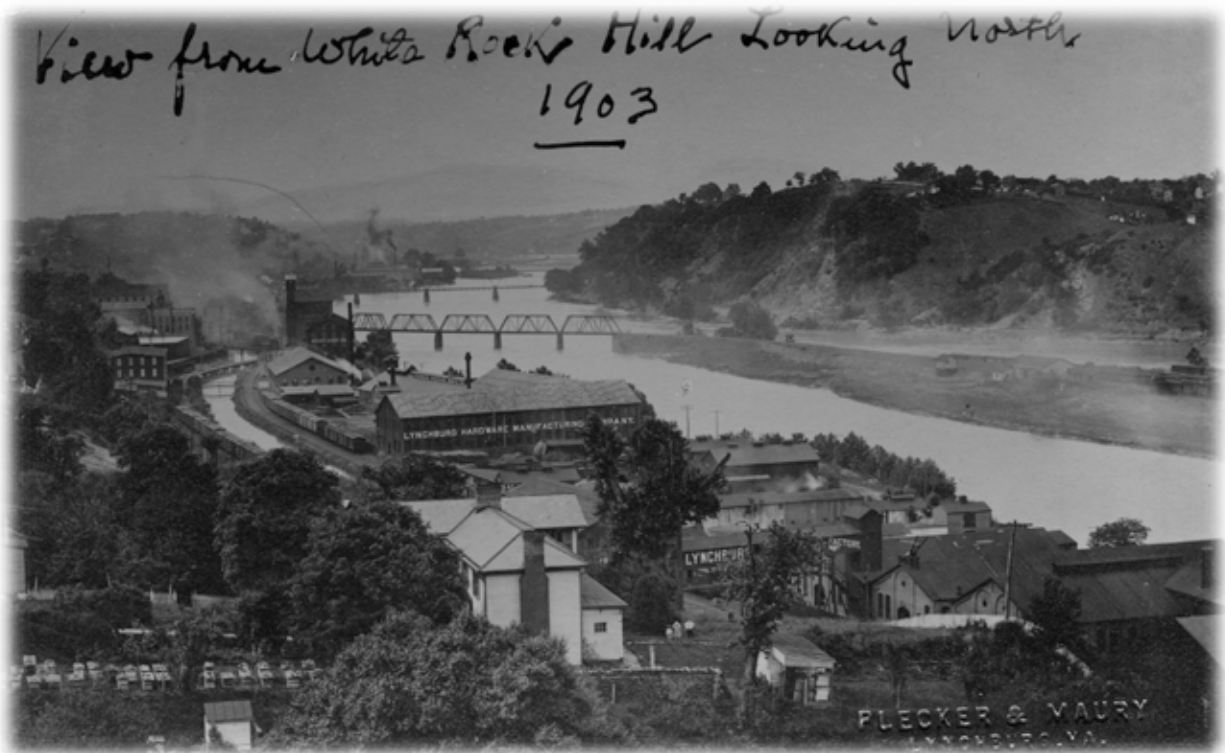
9th Street where crosses Kanawha Canal Bridge

Pictured on right is Amazement Square

Seen at the top of 9th Street is the Lynchburg History Museum

Seen on left is Riverviews Art Space – Offices, Studios and Loft Apartments

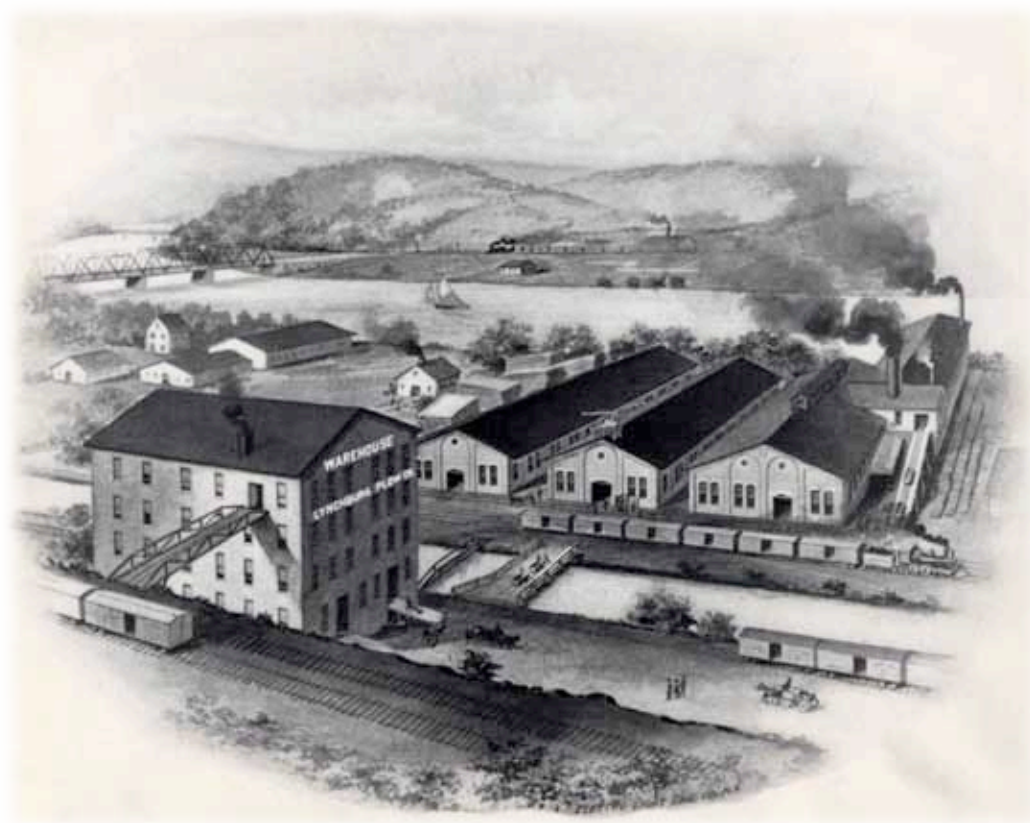
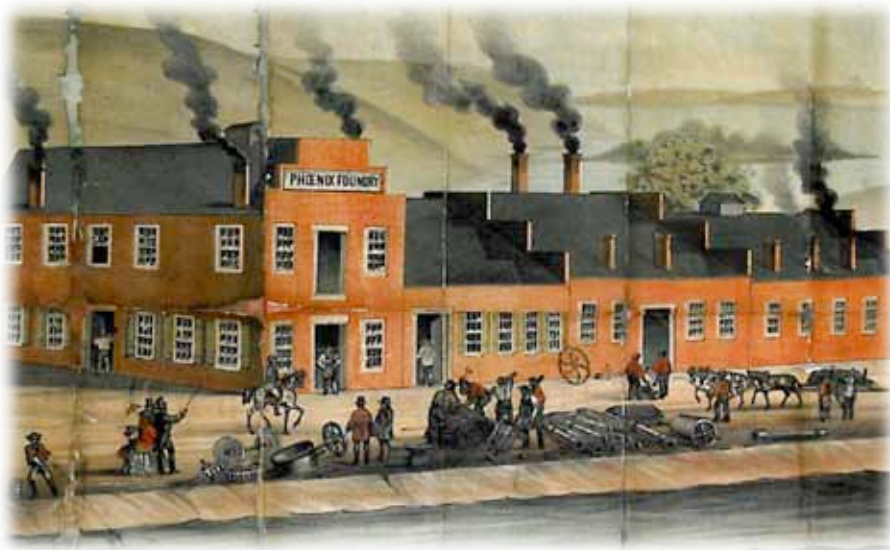
Amazement Square, adjacent to Kanawha Canal bridge and proposed Kanawha Canal Trail, is located in the J.W. Wood Building, a National Register of Historic Buildings structure. The building, a Civil War-era structure, has served as an infirmary for the Confederate Army and a commissary store in the 1860s. It now houses the award winning Amazement Square Children's Museum, which has an annual visitation of 90,000.



Above: Project Context

Below: 1903 View of James River and Kanawha Canal

Black and White Photograph courtesy of the Lynchburg Museum System



Top: Phoenix Foundry with manufactured goods waiting to be shipped on the Kanawha Canal

Bottom: Manufacturing Businesses Once Lined the Kanawha Canal (James River in Background)

Interpretation of the shipping industry will be communicated with artifacts placed along the trail.

Photographs Courtesy of Nancy Marion, from the book The Canal on the James by T. Gibson Hobbs, Jr.



Ferry House at 9th Street Bridge, Crossing the James River. Building behind Ferry House is now Amazeement Square Children's Museum which hosts 90,000 visitors annually. Former RR Covered Bridge and Roundhouse in upper right background.

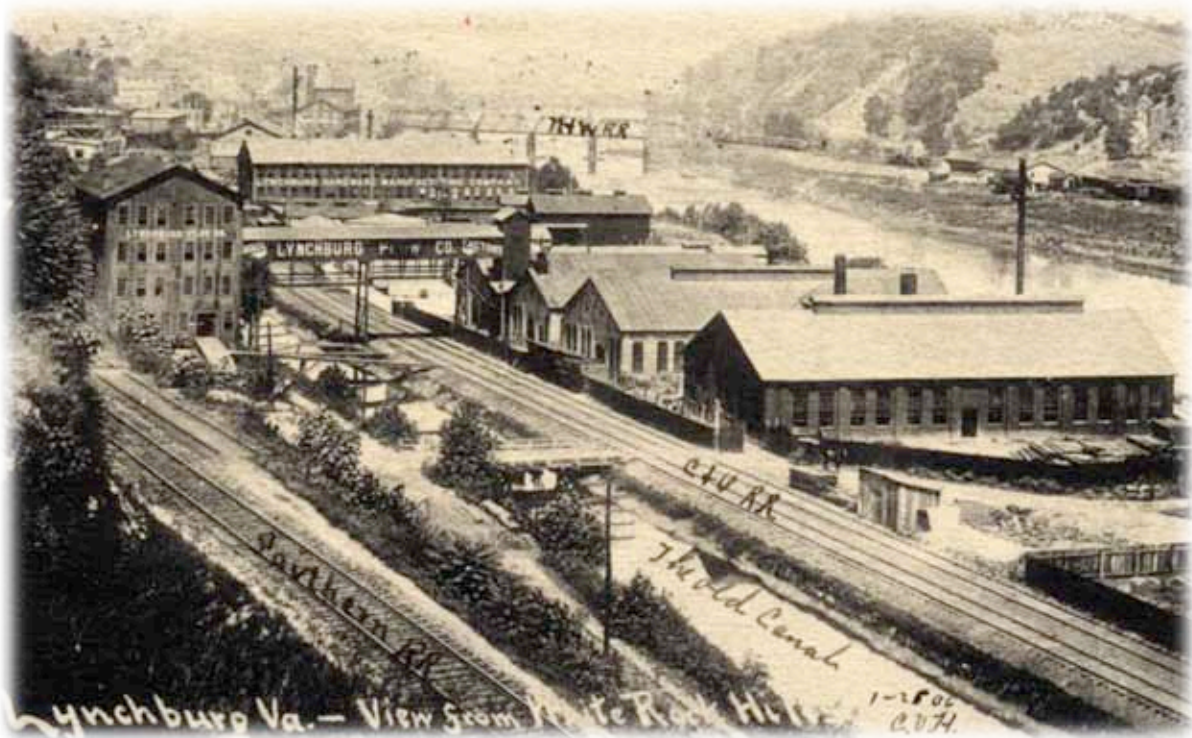
Photographs Courtesy of the Lynchburg Museum System



Multiple Train Lines ran parallel to Kanawha Canal

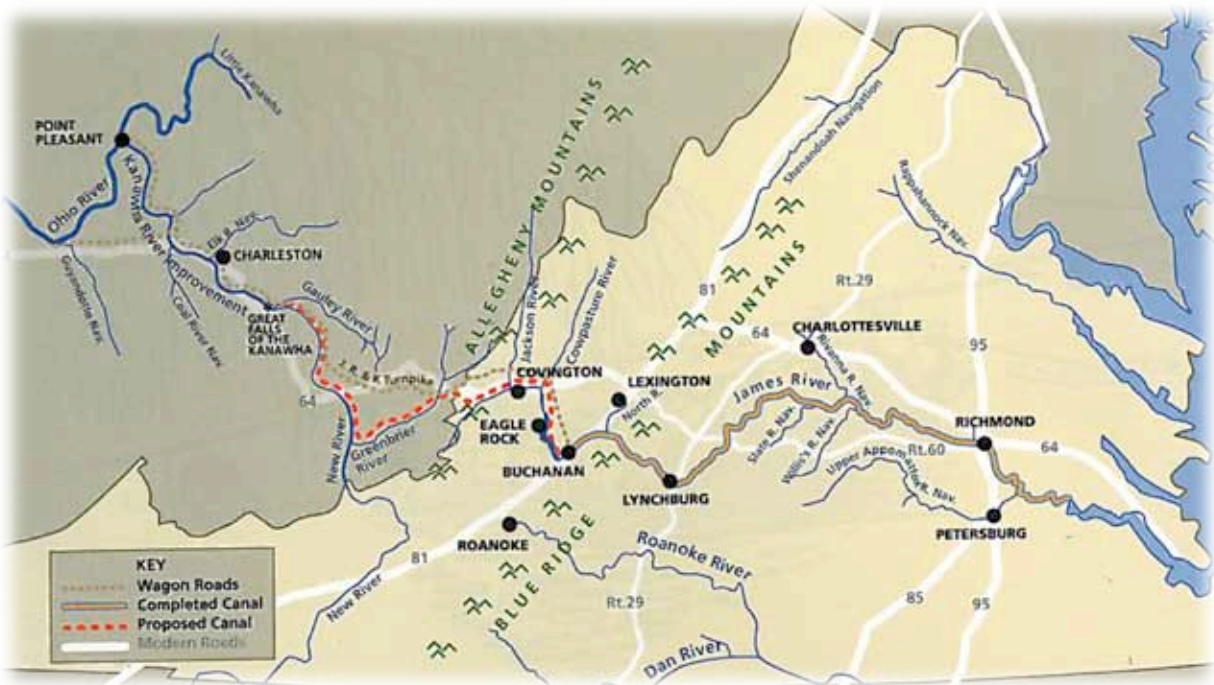
Photographs Courtesy of the Lynchburg Museum System

Kanawha Canal Trail Park

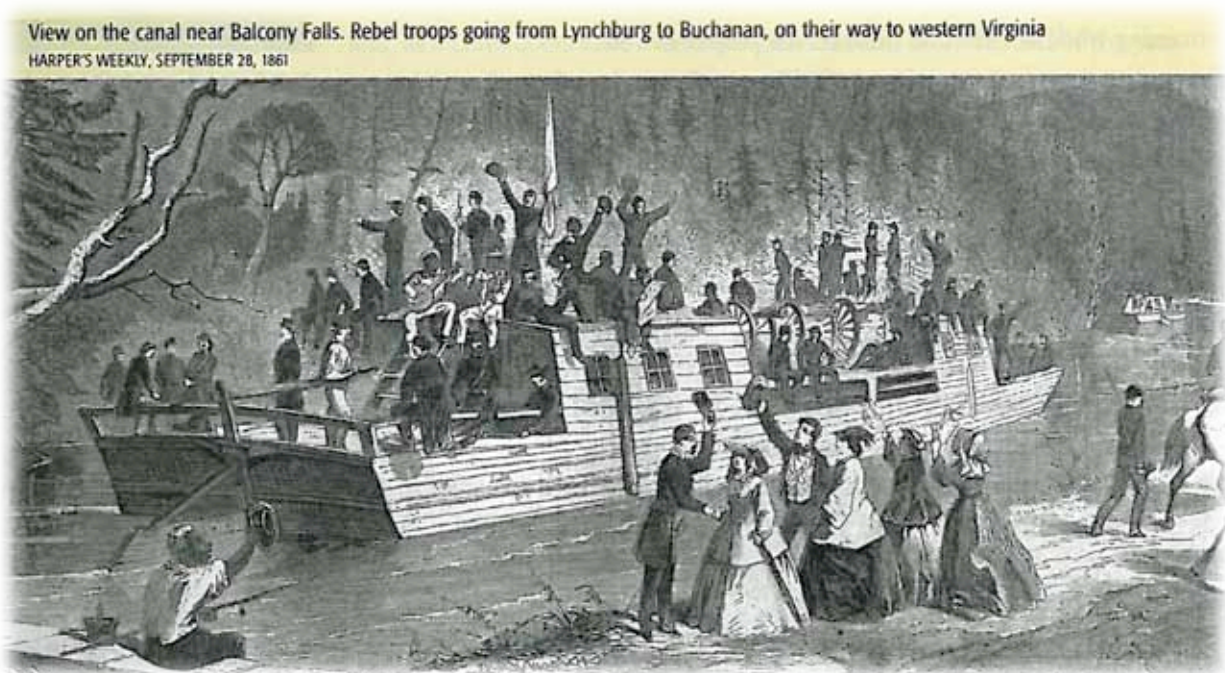


Multiple Transportation Modes traverse the Lower Kanawha Canal Basin adjacent to the James River

Photograph Courtesy of the Lynchburg Museum System



Map of Kanawha Canal in Virginia and West Virginia. When constructed, the Kanawha Canal was the primary means of travel and shipping goods.



Interpretation of the Kanawha Canal is an Interpretation of Virginia Transportation History and its connectivity to important historical events, such as westward expansion and the Civil War.

Photographs courtesy of Nancy Marion, from the book *The Canal on the James* by T. Gibson Hobbs, Jr.

Kanawha Canal Bridge seen in background of image below.



183 Norfolk and Western freight depot, between James River and the James River and Kanawha Canal, from Ninth to Eleventh streets. c. 1885. Photo c. 1900. The intrepid photographer, A. Plecker, stood on a railroad boxcar to obtain this picture (compare fig. 184). (Map B)



Former N&W Freight Depot – Renovated as Depot Grille Restaurant. Kanawha Canal Bridge in background. The boxcars serve as the restaurant kitchen. Visible is imprint of N&W Freight Depot with Clearstory; structure was destroyed by fire in the mid-20th century.



Looking East



Looking West

Jefferson Street New Construction – including permeable pavers, bioswales, walk, and granite street paving. The Bluffwalk Center Hotel & Conference center in background. The Bluffwalk Center won the *2009 Historic Preservation Award* for the State of Virginia. These improvements and pedestrian nodes anchor the eastern end of the proposed Kanawha Canal Trail.



Details of existing Kanawha Canal Bridge which currently carries 9th Street Traffic – vehicular and pedestrian.

Left – Keystone & Builder's Stone with "Built. AD. 1839. by J.S. King." inscription.

Right – Existing Conditions of Bridge Structure

2. Project Usefulness and/or Benefit

Provides new bicycle/pedestrian facilities where none exist:

Currently the former Kanawha Canal is inaccessible for pedestrians and bicyclists. This proposed trail will provide an important link between historic attractions, museums and restaurants, and a public park/open space currently under construction on Jefferson Street. (see illustration previous page)

Provides connectivity within the existing transportation network:

This project lies between the Percival's Island segment of the James River Heritage Trail and the Blackwater Creek segment of the James River Heritage Trail. Currently users of the trail must use either Jefferson Street (which does not have a designated bike lane) or a cinder path running along very active rail lines. This project will seamlessly tie together two scenic segments of this trail, directing users through a beautiful and historic urban parkway space.

Tourism/Education benefit:

Approximately 90,000 people visit Amazeement Square Children's Museum, located adjacent to the Kanawha Bridge and proposed trail. This captured group of the traveling public, particularly families and children, will benefit from learning about the Kanawha Canal and its importance in early transportation history. An existing stop along the Civil War Trail is located adjacent to the proposed trail. Users of the Civil

War Trail can expand their history education by learning about the Kanawha Canal and its role in early American history and the Civil War. In addition the Lynchburg History Museum and Point of Honor are located one block from the Kanawha Canal Bridge and Proposed Kanawha Canal Trail Park. Many school groups visit these museums annually (<http://www.pointofhonor.org/>). These groups can easily incorporate a history walk along the Kanawha Canal Bridge Park Trail while learning about the history of the Kanawha Canal and early transportation history.



Lynchburg History Museum – located a short walk above the Kanawha Canal Bridge, and visible from the Kanawha Canal Bridge.



Point of Honor Museum

Accessible by trail from Kanawha Canal Bridge



Location of Proposed Project

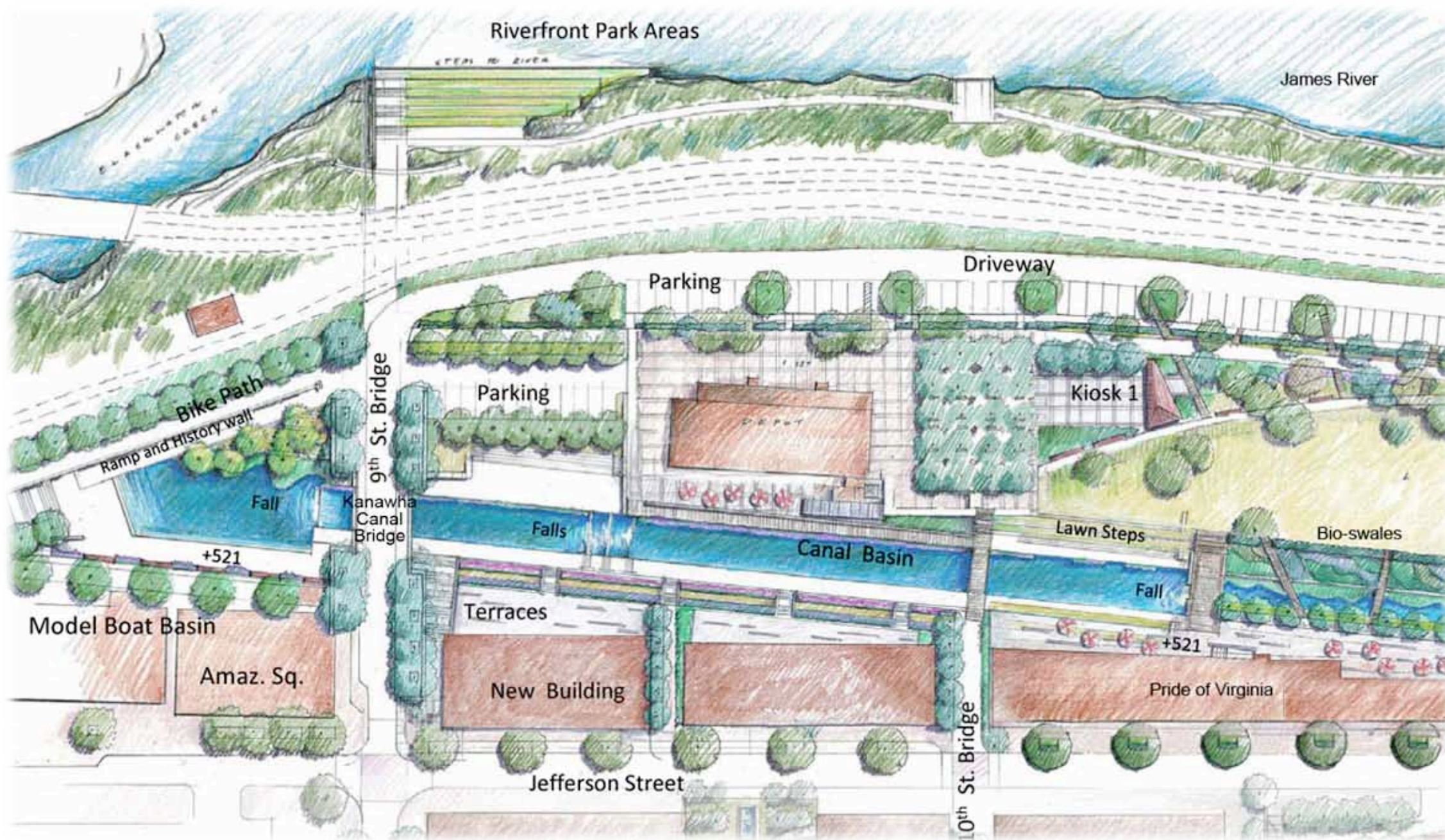


Conceptual Sketch illustrating proposed Kanawha Canal Restoration & Trail with Interactive Locks under Historic Kanawha Canal Bridge

Image Courtesy City of Lynchburg, Prepared by Nelson Byrd Woltz



Existing Conditions – Kanawha Canal Bridge at 9th Street; Amazement Square in Background



City of Lynchburg

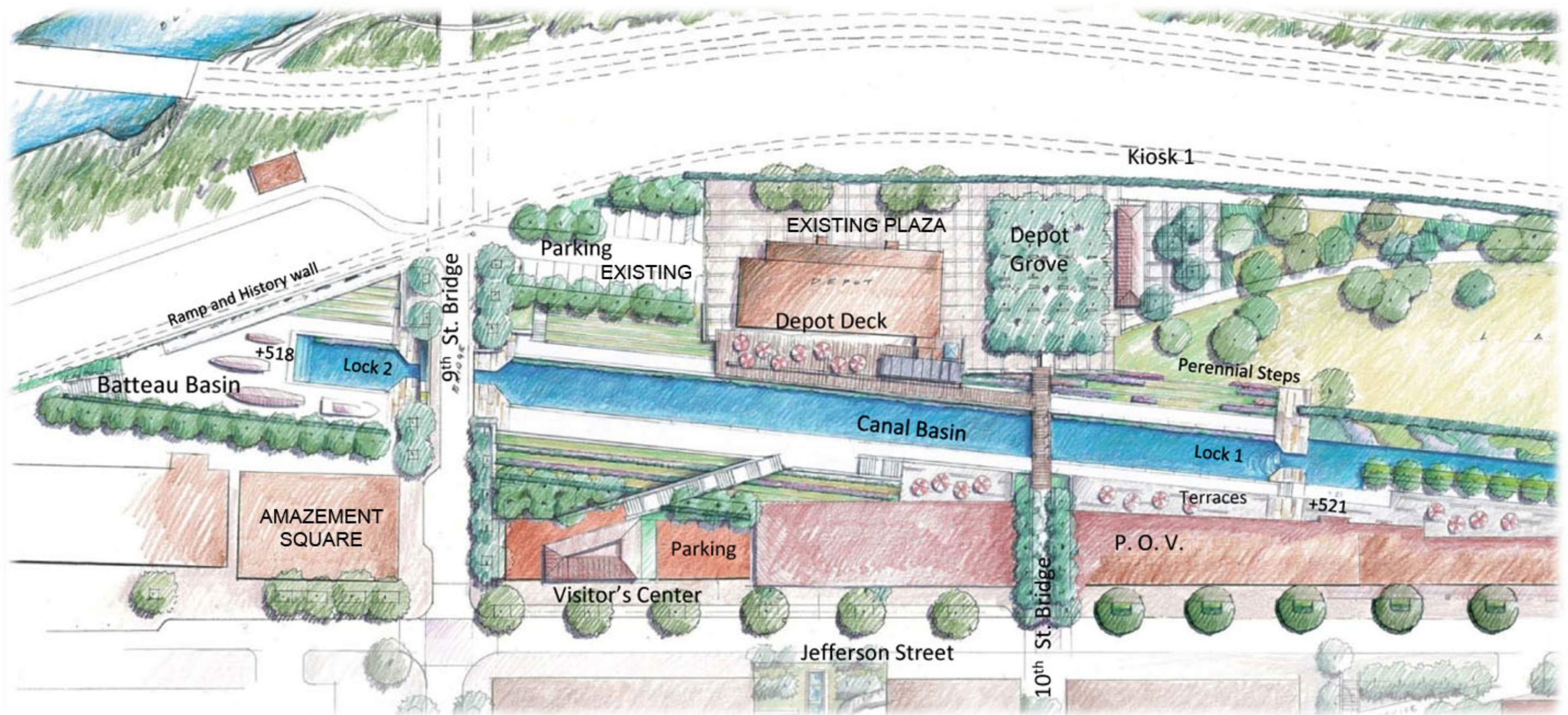
Riverfront Master Plan: Canal Basin

The City of Lynchburg is following a master plan for Downtown and Riverfront development. Re-creating the former historic Kanawha Canal is part of the master plan. The City has completed the Depot Restaurant Public Plaza. A Stage/Plaza (located at the eastern end of the proposed Canal Walk), bio-swales, and improvements to Jefferson Street are currently under construction.

Illustration of One Concept of Canal Basin.

Image Courtesy City of Lynchburg, Prepared by Nelson Byrd Woltz

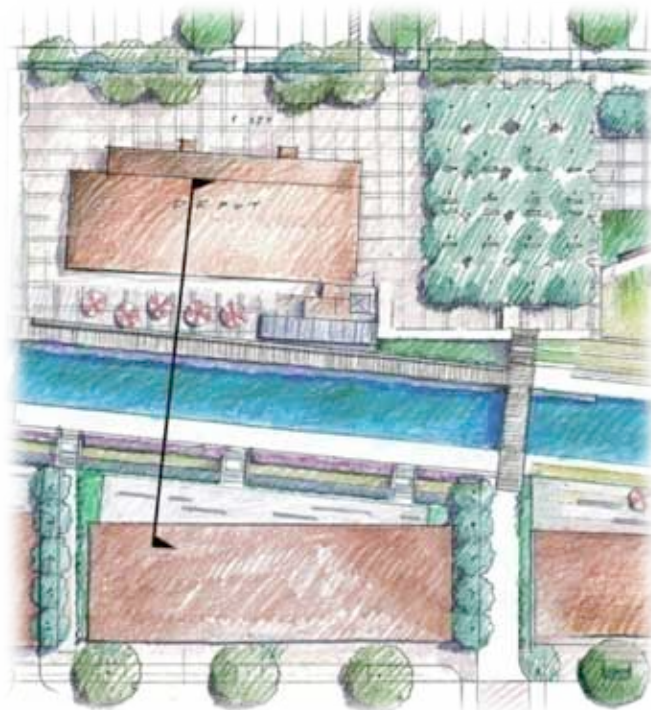
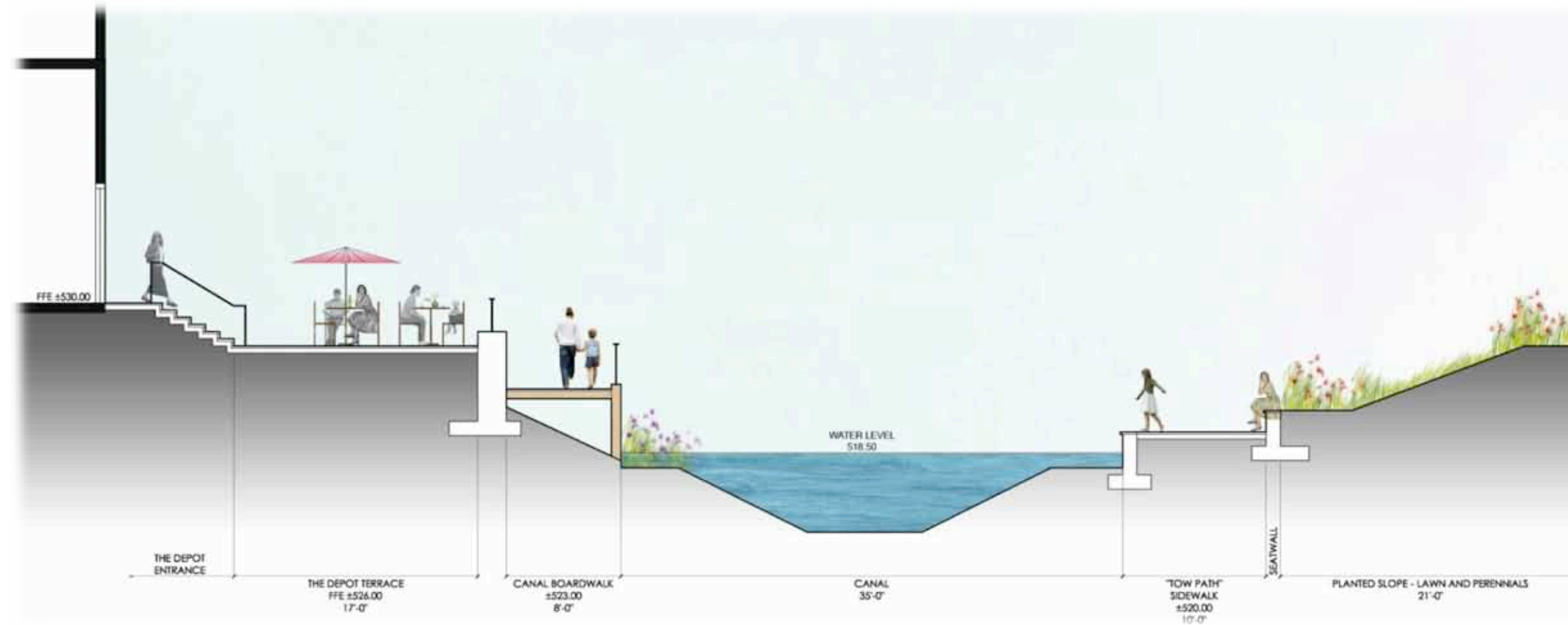




City of Lynchburg Riverfront Master Plan

Canal Basin Concept – Concept Proposes Interactive Locks and Terraced Seating Areas Adjacent to Canal Basin





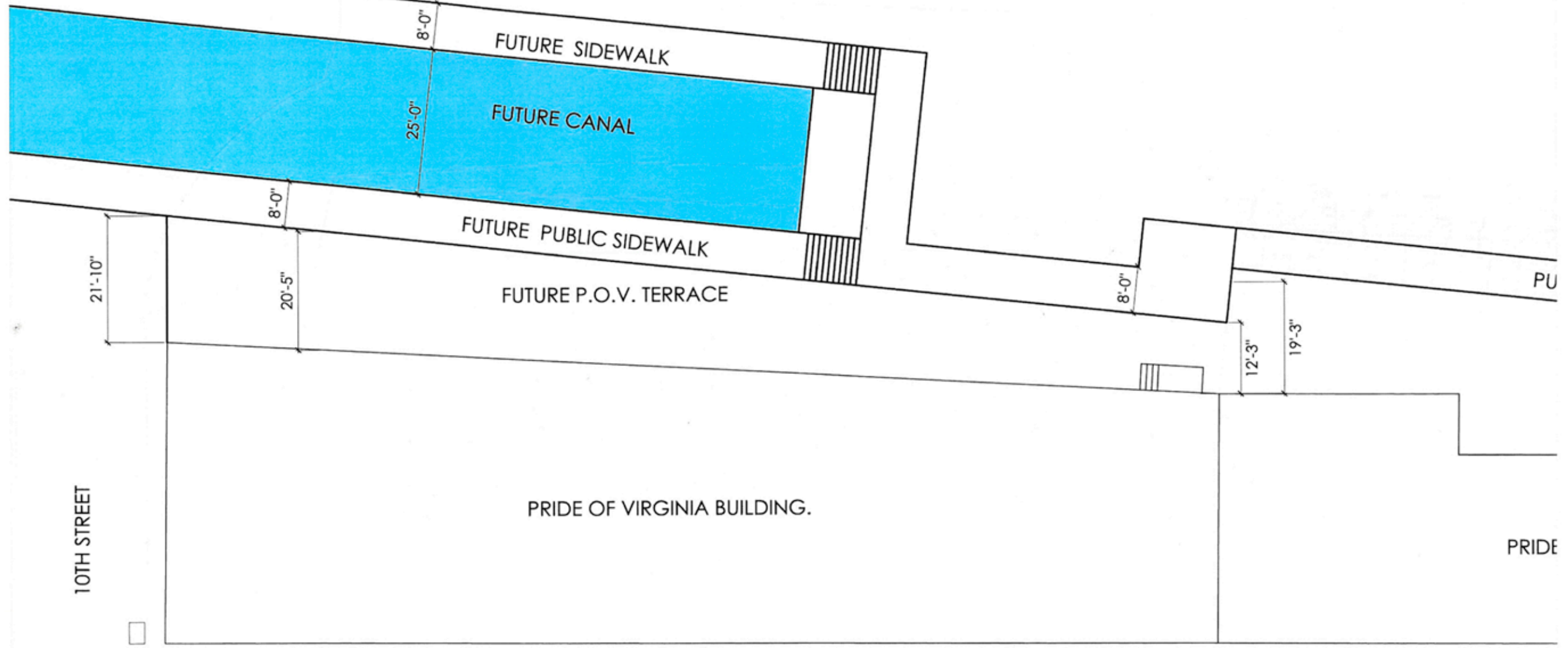
CROSS-SECTION OF PROPOSED CANAL WALK

Plans call for the canal to be restored – excavated to original elevations, filled with water and create trails on both sides of the canal.

Multiple links are proposed for pedestrians to access the trails from surrounding businesses and existing sidewalks, trails, and public spaces.



\\sequoia\projects\LMP0606\CAD\Jefferson Street\01 Drawing\trap-5A1-TEMP_DIMS.dwg - Friday April 03, 2009, 6:19pm



PRIDE OF VIRGINIA - PROJECTED WORK LIMITS--FUTURE CANAL OVERLAY 2

SCALE: 1" = 16'-0"

NELSON
BYRD
WOLTZ
LANDSCAPE
ARCHITECTS
405 Park Street
Charlottesville, VA 22902
tel 434 984-1338
fax 434 984-4158
www.nbwltz.com

JEFFERSON STREET NORTH
LYNCHBURG, VA

DATE: April 3, 2009



LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 25, 2011**

AGENDA ITEM NO.: 16

CONSENT:

REGULAR: **X**

CLOSED SESSION:

Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Establish a \$10,000,000 Bank Qualified Line of Credit for Interim Capital Financing**

RECOMMENDATION: City Council is requested to take the following actions to establish a \$10,000,000 Bank Qualified Line of Credit for capital projects interim financing.

- (a) Conduct a Public Hearing in accordance with Section 15.2-2606.A of the *Code of Virginia*, 1950, for the issuance of \$10,000,000 General Obligation Public Improvement Bond Anticipation Notes (BANS).
- (b) Adopt a Resolution authorizing the issuance of \$10,000,000 General Obligation Public Improvement Bond Anticipation Notes and authorizing the City Manager to execute appropriate documents to establish a \$10,000,000 Bank Qualified Line of Credit with Carter & Trust Bank.
- (c) Adopt a resolution amending the following: FY 2012 General Fund's Adopted Budget and appropriate \$34,956 from the General Fund Reserve for Contingencies for sixty percent (60%) of the issuance costs; and, amend the FY 2012 Water and Sewer Operating Funds' Adopted Budgets and appropriate \$11,511 from each Fund for equal twenty percent (20%) portions of the issuance costs. Total issuance costs are estimated to be \$57,978.

SUMMARY: Since 1997, the City has consistently utilized a Line of Credit to provide interim financing for the timely construction of capital projects which needed to occur prior to the receipt of bond proceeds. This Bank Qualified Line of Credit will provide interim financing for capital needs only and will not be utilized for any City operating expenditures. Also, it will facilitate the City's objective of issuing bonds on an every other year basis and/or when the market environment is more favorable.

Requests for Proposals were distributed to financial institutions on September 27, 2011. Four Proposals were received on October 11, 2011 and evaluated by the City staff and financial advisor, Davenport & Company, LLC. A status update was provided to the Finance Committee on October 25, 2011. Carter Bank & Trust is recommended based on the following: a fixed interest rate of two percent (2%) for a five year period until November 1, 2016 with the possibility of an increase in short-term rates during this time; and, no unused line of credit balance fee, no yield maintenance fee and no minimum draw request provisions.

The following summarizes the proposed issuance costs:

Issuance Cost	FY 2012 Estimate
Bond Counsel	\$16,000
Financial Advisor	\$31,555
Bank Fee & Legal Notice Ad	\$10,423

PRIOR ACTION(S): October 25, 2011 Finance Committee

FISCAL IMPACT: Line of Credit principal debt retirement will be reflected in the future operating budget's annual debt service payments when permanent bond financing occurs. The utilization of interim financing through the Line of Credit along with its related permanent bond financing will be in accordance with the City's Financial Management Policies. The General Fund Reserve for Contingencies will fund \$34,956 or sixty

percent (60%) of the issuance costs. The Water and Sewer Funds each will fund \$11,511 or twenty percent (20%) of the remainder of the issuance costs.

CONTACT(S): Donna S. Witt, Financial Services Director 455-3968

ATTACHMENT(S): BAN Resolution for Bank Qualified Line of Credit and authorization for City Manager to execute the appropriate documents

Appropriation Resolution for Issuance Costs

REVIEWED BY: lkp

A RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED TEN MILLION DOLLARS (\$10,000,000) PRINCIPAL AMOUNT OF BONDS OF THE CITY OF LYNCHBURG, VIRGINIA, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF VARIOUS PUBLIC IMPROVEMENT PROJECTS OF AND FOR SUCH CITY AND AUTHORIZING AND PROVIDING WITH RESPECT TO THE ISSUANCE AND SALE OF A LIKE PRINCIPAL AMOUNT OF GENERAL OBLIGATION BOND ANTICIPATION NOTES IN ANTICIPATION OF THE ISSUANCE AND SALE OF SUCH BONDS

WHEREAS, in the judgment of the Council of the City of Lynchburg, Virginia (the "City"), it is necessary and expedient to authorize the issuance and sale of not to exceed Ten Million Dollars (\$10,000,000) of Bonds of the City for the purpose of providing funds to pay the cost of various public improvement projects of and for the City and to authorize the issuance and sale of a like principal amount of General Obligation Public Improvement Bond Anticipation Notes in anticipation of the issuance and sale of such Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG, VIRGINIA:

SECTION 1. Pursuant to Chapter 26 of Title 15.2 of the Code of Virginia, 1950 (the same being the Public Finance Act of 1991), for the purpose of providing funds to pay the cost of various public improvement projects of and for the City set forth in Section 8 hereof, there are authorized to be issued not to exceed Ten Million Dollars (\$10,000,000) principal amount of bonds of the City (the "Bonds"). The form, denomination and other details of the Bonds, including the subsection of Article VII, Section 10(a) of the Constitution of Virginia pursuant to which the Bonds shall be issued if the Bonds shall not be secured by the full faith and credit of the City, the security pledged to the payment of the Bonds and any covenants pertaining to the status of the interest on the Bonds for purposes of federal and Commonwealth of Virginia income taxation, shall be provided for by the subsequent resolution of this Council.

SECTION 2. (a) In anticipation of the issuance and sale of the Bonds authorized for issuance pursuant to Section 1 hereof, there are authorized to be issued and sold not to exceed Ten Million Dollars (\$10,000,000) principal amount of general obligation public improvement bond anticipation notes of the City to be designated "City of Lynchburg, Virginia, General Obligation Public Improvement Bond Anticipation Notes" (the "Notes"). The Notes shall mature and be payable within five (5) years of the date of their initial issuance. The issuance and details of the Notes shall be governed by the provisions of Section 15.2-2628 of the Code of Virginia, 1950. The Bonds in anticipation of which the Notes are issued pursuant to this Section 2(a) may be issued and sold in accordance with the provisions of this Resolution at any time or from time to time; *provided* that in any event such Bonds shall be issued and sold not

later than five (5) years from the date of the original issuance of the first Notes issued in anticipation of such Bonds.

(b) The Notes shall be issued in fully registered form and the Notes of a given series shall be numbered from R-1 upwards in order of issuance. There is hereby delegated to the City Manager of the City the authority, without further action of this Council, to fix the denomination or denominations of the Notes, to sell the Notes at competitive or negotiated sale at such price plus accrued interest and on such other terms and conditions as shall be determined by the City Manager. There is hereby further delegated to the City Manager the authority to determine, in accordance with and subject to the provisions of this Resolution and without further action of this Council: the date or dates of the Notes; the rate of interest per annum to be borne by the Notes or the method for calculating the rate of interest to be borne by the Notes from time to time; *provided* that in no event shall the Notes bear interest at a rate in excess of 6% per annum; the basis of computing interest on the Notes (*e.g.*, a 360-day year comprised of twelve 30-day months or a 365- or 366-day year and actual days elapsed or such other basis as shall be determined by the City Manager); the interest payment dates thereof; the maturity date or dates thereof; the amount of principal maturing on each maturity date; the place or places of payment thereof and the paying agent or paying agents therefor; the place or places of registration, exchange or transfer thereof and the registrar therefor; and whether or not the Notes shall be subject to redemption prior to their stated maturity or maturities and, if the Notes shall be subject to redemption, the premiums, if any, payable upon such redemption; *provided* that no such premium shall exceed 2% of the principal amount of the Notes, and the respective periods in which such premiums are payable and the method and timing for giving notices of redemption of the Notes.

(c) The City Manager is hereby authorized, without further action of this Council, to execute and deliver a credit facility or loan agreement or line of credit financing agreement providing for the issuance of the Notes as evidence of advances made thereunder in a principal amount not to exceed the principal amount of the Notes authorized for issuance pursuant to Section 2(a) hereof and is hereby further authorized to cause to be paid on behalf of the City the fees and expenses payable to the issuer of such credit facility or loan agreement or line of credit financing agreement pursuant to the terms thereof. All actions taken by officials, employees, agents and attorneys of the City with respect to the preparation, solicitation and receipt of proposals for a credit facility or loan agreement or line of credit financing agreement providing for the issuance of the Notes as evidences of advances made thereunder prior to the date hereof are hereby ratified and confirmed.

SECTION 3. (a) The Notes shall be executed, for and on behalf of the City, by the manual or facsimile signature of the Mayor or the Vice Mayor of the City and shall have an impression of the corporate seal of the City or a facsimile thereof embossed or imprinted thereon, attested by the manual or facsimile signature of the Clerk of Council of the City. The certificate of authentication on the Notes shall be executed by the Registrar for the Notes designated by the City Manager.

(b) The execution and authentication of the Notes in the manner above set forth is adopted as a due and sufficient execution and authentication of the Notes.

SECTION 4. (a) Both the principal of and premium, if any, and interest on the Notes shall be payable in such coin or currency of the United States of America as at the respective dates of payment thereof is legal tender for public and private debts.

(b) Interest on the Notes shall be payable by check mailed by the Registrar to the registered owners of such Notes at their respective address as such addresses appear on the books of registry kept pursuant to the provisions of this Section 4. Principal of and premium, if any, on the Notes shall be payable on presentation and surrender thereof at the office of the Registrar.

(c) At all times during which any Note of any series remains outstanding and unpaid, the Registrar for such series shall keep or cause to be kept at its office books of registry for the registration, exchange and transfer of Notes of such series. Upon presentation at its office for such purpose the Registrar, under such reasonable regulations as it may prescribe, shall register, exchange, transfer, or cause to be registered, exchanged or transferred, on the books of registry the Notes as hereinbefore set forth.

(d) The books of registry shall at all times be open for inspection by the City or any duly authorized officer thereof.

(e) Any Note may be exchanged at the office of the Registrar for such series of Notes for a like aggregate principal amount of such Notes in other authorized principal sums of the same series, interest rate and maturity.

(f) Any Note of any series may, in accordance with its terms, be transferred upon the books of registry by the person in whose name it is registered, in person or by his duly authorized agent, upon surrender of such Notes to the Registrar for such series for cancellation, accompanied by a written instrument of transfer duly executed by the registered owner in person or his duly authorized agent, in form satisfactory to the Registrar.

(g) All transfers or exchanges pursuant to this Section 4 shall be made without expense to the registered owner of such Notes, except as otherwise herein provided, and except that the Registrar for such series of Notes shall require the payment by the registered owner of the Note requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange. All Notes surrendered pursuant to this Section 4 shall be cancelled.

SECTION 5. The full faith and credit of the City are irrevocably pledged to the punctual payment of the principal of and premium, if any, and interest on the Notes as the same become due. In each year while the Notes, or any of them, are outstanding and unpaid, the Council of the City is authorized and required to levy and collect annually, at the same time and in the same manner as other taxes of the City are assessed, levied and collected, a tax upon all taxable property within the City, over and above all other taxes, authorized by law and without limitation as to rate or amount, sufficient to pay when due the principal of and premium, if any, and interest on the Notes to the extent such principal, premium, if any, and interest shall not be paid from the proceeds of the Bonds of the City in anticipation of which the Notes are issued or from other funds of the City lawfully available and appropriated for such purpose.

SECTION 6. CUSIP identification numbers may be printed on the Notes, but no such number shall constitute a part of the contract evidenced by the particular Note upon which it is printed and no liability shall attach to the City or any officer or agent thereof (including any paying agent for the Notes) by reason of such numbers or any use made thereof (including any use thereof made by the City, any such officer or any such agent) or by reason of any inaccuracy, error or omission with respect thereto or in such use. All expenses in relation to the printing of such numbers on the Notes shall be paid by the City including the CUSIP Service Bureau charge for the assignment of such numbers.

SECTION 7. (a) The City covenants and agrees that it shall comply with the provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 and the applicable Treasury Regulations promulgated thereunder so long as any Note is outstanding.

(b) The Council of the City hereby designates the Notes as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986.

SECTION 8. The proceeds of the sale of the Bonds and the Notes in anticipation of which the Bonds are issued shall be applied to the payment of the cost of the following public improvement projects of and for the City in substantially the following respective amounts:

<u>Purpose</u>	<u>Amount</u>
General Government and Public School Improvement Projects	\$ 6,000,000
Water and Sewer Improvement Projects	<u>4,000,000</u>
	\$10,000,000

If any project set forth above shall require less than the entire respective amount so set forth, the difference may be applied to any of the other projects so set forth.

SECTION 9. The Notes shall be in the form approved by the City Manager.

SECTION 10. The City Attorney of the City is directed to file a copy of this Resolution, certified by the Clerk of Council of the City to be a true and correct copy hereof, with the Circuit Court of the City in accordance with Section 15.2-2607 of the Code of Virginia, 1950.

SECTION 11. All ordinances, resolutions and proceedings in conflict herewith are, to the extent of such conflict, repealed.

SECTION 12. This Resolution shall take effect upon its adoption.

Adopted:

Certified:

Clerk of Council

161L2

Resolution

BE IT RESOLVED THAT the FY 2012 General Fund's Adopted Budget is amended; and, \$34,956 is appropriated from the General Fund Reserve for Contingencies for issuance costs related to the FY 2012 General Obligation Public Improvement Bond Anticipation Notes for the Bank Qualified Line of Credit.

BE IT RESOLVED THAT the FY 2012 Water and Sewer Operating Funds' Adopted Budgets are amended; and, \$11,511 is appropriated from each Fund for the issuance costs related to the FY 2012 General Obligation Public Improvement Bond Anticipation Notes for the Bank Qualified Line of Credit. .

Introduced:

Adopted:

Certified:

Clerk of Council

161L

Sept 26.2011

Dear MAYN Foster

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T.V.

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Council/Manager
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Sincerely
Barbara
Redd
434 385 1734
238 3586