// A special meeting of the Council of the City of Lynchburg, recessed from September 11, was held on the 25th day of September, 2007, at 1:00 p.m., Second Floor Training Room, City Hall, Bert Dodson, Jr., Vice President, presiding. The purpose of the meeting was to conduct a work session regarding several items. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert 6

Absent: Foster 1

// City Manager Kimball Payne stated that City Council needs to determine the appropriate course of action with regard to the recommendations made by the Tourism Task Force and the response of the Chamber of Commerce. Mr. Payne explained that he has shared with Council his thoughts via a white paper and that staff is seeking guidance on how to move forward. Mr. Payne went on to say that the Chamber of Commerce Board has agreed to extend the tourism contract to June 30, 2008. At the request of City Council, Dr. Darrell Staat, Chair of the Chamber of Commerce Tourism Committee, presented two additional scenarios for City Council to consider:

Greater Lynchburg Chamber of Commerce

Tourism Scenario #1

In this scenario, the Chamber would continue operating the Visitors Center as it has in the past.
In addition, the Chamber would hire a Vice President for Tourism, a position currently vacant and develop extensive research on a tourism program through:

1. Identifying and studying benchmark tourism programs for cities the size of Lynchburg in the Commonwealth and other states to determine best practices in this area
2. Holding a series of focus group meetings of stakeholders in Lynchburg to identify needs in the tourism arena
3. Investigating best practices for marketing tourism for greater Lynchburg
4. Investigating Website potential and possibilities to promote area tourism – again identify best practices in the Commonwealth and beyond
5. Discussing possible partnerships with the four surrounding counties
6. Implementing any other activities which would provide further information on best practices
7. Developing a strategic plan for tourism
8. Developing a budget to support the plan
9. Holding meetings with stakeholders to review and critique the plan

10. Presenting the Plan and Budget to the City Council for approval

11. Hiring any new personnel, as approved

12. Implementing the plan as funded

13. Providing quarterly matrix reports to the City Council on the progress of the plan.

The work we have outlined could be ready to present to the City Council in about six months as we could be ready to move ahead almost immediately. We could have a plan and budget, research supported, ready for City Council to consider by sometime in spring 2008.

Greater Lynchburg Chamber of Commerce
Tourism Scenario #2

Scenario two would lead to a tourism program as envisioned by the Tourism Taskforce with continued support of the Greater Lynchburg Chamber of Commerce. In that second scenario the following would take place:

1. City Council appoints a Tourism Board

2. The Tourism Board hires a Director of Tourism who reports directly to the Board.

3. The Director proceeds through some or all of the actions outlined in Scenario #1

4. The Director presents a plan to the City Council sometime during 2008.

5. The Chamber would continue to operate the Visitors Center for three years.

6. The Director of Tourism would be officed at the Chamber.

7. The Visitors Center could be transferred to the Tourism Board after three years.

8. The Chamber would work with the Tourism Director on opportunities that are mutually beneficial.

Mr. Payne explained that in addition to the two options presented by the Chamber, the other three options for Council to consider are (1) to proceed with the implementation of the Tourism Task Force recommendation to establish an independent Tourism Authority, (2) set up the Tourism program as a separate City Department, or (3) set up a hybrid of these two options similar to how the Industrial Development Authority operates. Council Members discussed the five options, whether to increase the funding for the program to $1.1 million, and a proposal that would increase to the lodging tax to help fund the program increase. Some Council Members stated that the Tourism program needed to be a regional

program. Council Members agreed that additional information was needed before making a decision and asked staff to take the five options, list the pros and cons of each option, and include a budget for each option. Mr. Payne stated that the information should be ready for the November work session.
// Legislative Liaison Linda McMinimy provided an overview regarding the City's Proposed 2008 Legislative Agenda. Ms. McMinimy focused her presentation on changes from last year's agenda. Following discussion, City Council agreed to leave the Transportation statement in the agenda and to include statements to support funding for The Center for Advanced Engineering & Research (CAER) and for the Virginia Brownfield Redevelopment Assistance Fund to facilitate the redevelopment of brownfield sites. City Manager Kimball Payne stated that he received a letter from the Staunton City Council requesting City Council to consider asking the Virginia General Assembly to cap interest rates at 36% APR on consumer loans such as payday lenders and auto title loans. City Council agreed that more information was needed before making a decision regarding this request. City Council also asked that the area state legislators be invited to a future Council meeting for discussion regarding the 2008 Legislative Agenda. On motion of Council Member Gillette, seconded by Council Member Seiffert, Council by the following recorded vote adopted the 2008 Legislative Agenda as revised:

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

// City Council viewed a video on Study Circles, the process to be used in the Community Dialogue on Race and Racism.
// During roll call, Vice Mayor Dodson inquired regarding the request by a local veterans group to install a "Purple Heart" monument on Monument Terrace. Mr. Payne stated that the item was discussed at the Physical Development Committee meeting that morning and that staff is working with the veterans group regarding the request. Mr. Payne went on to say that there is some concern regarding the weight of the proposed "Purple Heart" monument. Mr. Payne also noted that he will also be working with a group to draft a general policy statement for use and location of monuments on Monument Terrace.
// On motion of Council Member Seiffert, seconded by Council Member Johnson, Council by the following recorded vote elected to hold a closed meeting for consultation with legal counsel and staff concerning the terms and negotiating strategy for the Lakeside Center Community Development Authority which requires the provision of legal advice and because consultation in an open meeting would adversely affect the negotiating position of the City pursuant to Section 2.2-3711(A)(7), Code of Virginia (1950), as amended:

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

// The meeting was re-opened to the public.
// Council Member Johnson made the following motion:

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

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

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

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

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

// The meeting was adjourned at 4:50 p.m.

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Clerk of Council

// A regular meeting of the Council of the City of Lynchburg was held on the 25th day of September, 2007, at 5:00 P.M. in the Council Chamber, City Hall, Bert Dodson, Jr., Vice President, presiding. Council Member Garrett gave the Invocation, followed by the Pledge of Allegiance. The following Members were present:

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

// Mr. George Dawson along with Dr. Augustus Petticolas, representing Centra Health, presented a check to the City for $10,000 in support of the Community Dialogue on Race and Racism.

// Vice Mayor Dodson recognized the Lynchburg Rotary Club Open World Delegation of Russian educators who are visiting area schools and colleges.

// Copies of the minutes of the September 4 and 11, 2007 meetings, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote approved the minutes as presented:

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

// In the matter of Commonwealth Attorney, Resolution #R-07-124 amending the FY2008 General Fund budget and appropriating $2,560, fully reimbursable from the remaining funds from the Lynchburg Exile Foundation, to the Commonwealth's Attorney office for training and mileage, laid over from the September 11, 2007 meeting, was again presented and read, and on motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote adopted the Resolution:

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

// In the matter of Public Works - General, Resolution #R-07-125 amending the FY 2008 Solid Waste Management Fund budget and appropriating $3,713 to reflect the carry forward of unexpended funds for the Department of Environmental Quality Litter Control and Recycling Grant, laid over from the September 11, 2007 meeting, was again presented and read, and on motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote adopted the Resolution:

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

// In the matter of Industrial Development Authority, Resolution #R-07-126 amending the FY 2008 General Fund budget and appropriating $20,000 from the Industrial Development Authority (IDA) to assist with the City's branding initiative, laid over from the September 11, 2007 meeting, was again presented and read, and on motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote adopted the Resolution:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert 6

Noes: 0

Absent: Foster 1

// In the matter of Parks and Recreation - General, Resolution #R-07-127 amending the FY 2008 Capital Project Fund budget and appropriating $260,000, fully reimbursable, for improvements to Riverside Park, laid over from the September 11, 2007 meeting, was again presented and read, and on motion of Council Member Seiffert, seconded by Council Member Garrett, Council by the following recorded vote adopted the Resolution:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert 6

Noes: 0

Absent: Foster 1

// In the matter of Library - General, City Council Report #6 regarding a revised Lynchburg Public Library Internet Use Policy was considered. City Librarian Lynn Dodge provided a brief summary regarding the request. On motion of Council Member Helgeson, seconded by Council Member Johnson, Council by the following recorded vote approved the Lynchburg Public Library Internet Use Policy revised September 2007:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert 6

Noes: 0

Absent: Foster 1

// The meeting was adjourned at 5:18 P.M.

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Clerk of Council

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007**		AGENDA ITEM NO.: 2
CONSENT:	REGULAR: **X**	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Transportation Enhancement Grant – Historic Districts' Streets Restoration**

RECOMMENDATION: Hold a public hearing and adopt a resolution in support of a Transportation Enhancement Grant (SAFETEA-LU) application to restore streets in the Federal Hill, Garland Hill, and Diamond Hill historic districts.

SUMMARY: Previously, the City received a SAFETEA grant for street restoration in Daniel's Hill. In order to continue this effort in the Federal Hill, Garland Hill, and Diamond Hill historic districts, the City is applying for another SAFETEA grant. Public Works, Community Development, and the Historic Districts' Coalition have developed a partnership to restore brick streets within the historic districts. The Coalition has shown support by providing volunteer manpower, while Public Works and Community Development provide necessary equipment and technical expertise.

The grant request is for $838,997 over four years and requires a 20% match commitment by the locality. Therefore, the City commitment is $167,799 over four years. The Historic Districts are committed to providing a portion of the match requirement as in-kind services valued at $33,560 over the same four year period. Therefore, a grant award would necessitate an annual appropriation of $33,560 in the Public Works Streets Division budget and an in-kind contribution of $8,390.

PRIOR ACTION(S): Finance Committee, October 2, 2007

FISCAL IMPACT: The grant requires a 20% local match of $167,799 over four years where the Historic Districts provide manpower to equal $33,560 of in-kind contribution and the City provides $134,239 in funding.

CONTACT(S): Numan Franklin, Neighborhood Project Manager, 455-3931

ATTACHMENT(S): Resolution

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 an 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 to restore streets in the Federal Hill, Garland Hill, and Diamond Hill historic districts,

BE IT FURTHER RESOLVED that the City of Lynchburg hereby agrees to pay a minimum 20% of the total cost for the final planning and design, right of way, and construction of this project, and that, if the City of Lynchburg subsequently elects to cancel this project the City of Lynchburg hereby agrees to reimburse the Virginia Department of Transportation for the total amount of costs expended by the Department through the date the Department is notified of such cancellation, and

BE IT FURTHER RESOLVED that the City Manager is authorized to sign the necessary documents for this project.

Adopted:

Certified: ________________________________

Clerk of Council

132L

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007** AGENDA ITEM NO.: 3

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Possible Sale of 912 Fifth Street**

RECOMMENDATION:

After a public hearing authorize the City Manager to sell the subject property.

SUMMARY:

The City owns the vacant lot at 912 Fifth Street. Kelvin Moore with Moore and Goldman Architects has requested to purchase the lot. He says the land would be an excellent opportunity for their architectural firm to develop. His plans include building a structure for future business occupancies that are consistent with the City's vision. A review of the assessed value of the property was made by the City Assessor's Office and the current market value was established as $5,300. Language in the deed will assure the property will be developed in accordance with the Fifth Street Corridor Master Plan and the Commercial Historic Guidelines.

PRIOR ACTION(S):

March 20, 2006 Technical Review Committee - Approved
April 24, 2006 Physical Development Committee - Approved

FISCAL IMPACT:

The property will be returned to the tax rolls.

CONTACT(S):

Steve Lawson, Real Estate Manager, 455-3945

ATTACHMENT(S):

Aerial of lot, Resolution

REVIEWED BY: lkp

<u>RESOLUTION</u>

A RESOLUTION TO SELL THE VACANT LOT LOCATED AT 912 FIFTH STREET
(TAX MAP NO. 010-01-015).

WHEREAS, the City of Lynchburg owns a vacant lot located at 912 Fifth Street in the City of Lynchburg, Virginia; and

WHEREAS, Kelvin Moore has requested to purchase the lot; and

WHEREAS, the City Assessor's Office has determined that the lot has a fair market value of five thousand three hundred dollars ($5,300.00) and Kelvin Moore is willing to pay this amount for the lot; and

WHEREAS, the City is not using the lot in question and has no plans to use the lot in the future.

NOW, THEREFORE, BE IT RESOLVED that City Council determines the City has no need lot located at 912 Fifth Street and finds the City's continued ownership of the lot is no longer necessary or required for the best interests of the City; and

BE IT FURTHER RESOLVED that the City Council hereby approves the sale of the lot at 912 Fifth Street to Kelvin Moore and hereby authorizes the City Manager to execute a deed and any other documents that may be needed to convey said property to Kelvin Moore.

BE IT FURTHER RESOLVED that the lot at 912 Fifth Street is being sold subject to the condition that it shall be developed in accordance with the Fifth Street Corridor Master Plan as approved by the City Council.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

124L


POLK ST
5TH ST
416
915
918
916
912
910
908
906
906 A
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1060
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518
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LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007**		AGENDA ITEM NO.: 4
CONSENT:	REGULAR: **X**	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Ntelos Cable Television Franchise**

RECOMMENDATION:

After a public hearing, adopt a resolution authorizing the City Manager to sign a cable television franchise agreement with Ntelos, allowing Ntelos to provide cable television service to the Cornerstone development.

SUMMARY:

Ntelos has requested a cable television franchise in order to provide cable television service to the Cornerstone Traditional Neighborhood Development. Staff has negotiated a proposed franchise agreement which is acceptable to Ntelos. Staff recommends approval of this agreement.

PRIOR ACTION(S):

None.

FISCAL IMPACT:

None.

CONTACT(S):

Walter Erwin 455-3973
Mike Goetz 455-6002

ATTACHMENT(S):

Cable Television Franchise Agreement

REVIEWED BY: lkp

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO NTELOS MEDIA, INC., d/b/a NTELOS WITHIN THE CITY OF LYNCHBURG IN THE CORNERSTONE TRADITIONAL NEIGHBORHOOD DEVELOPMENT

WHEREAS, pursuant to provisions of Article 1.2 of Title 15.2 of the Code of Virginia, no one may construct, install, maintain or operate a cable television system through, on, over, or under any public rights-of-way within the City without first having applied for and been granted a franchise by the City; and

WHEREAS, NTELOS would like to operate a cable television system within the City in the Cornerstone Traditional Neighborhood Development; and

WHEREAS, NTELOS has asked that it be granted a franchise to operate a cable television system within the City and the City and NTELOS have negotiated a Cable Television Franchise Agreement, a copy of which is attached hereto; and

WHEREAS, a public hearing was held on October 9, 2007 on the issue of whether to enter into a Franchise Agreement with NTELOS; and

WHEREAS, notice of such public hearing for the proposed Franchise Agreement was advertised once a week for two successive weeks in a newspaper having general circulation in the City of Lynchburg; and

WHEREAS, at such public hearing there was an opportunity to consider economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit, and other relevant factors;

NOW, THEREFORE, BE IT ORDAINED, that the Lynchburg City Council, does hereby find that the public welfare will be enhanced by the grant of the franchise requested by NTELOS and it is in the best interest of the City to grant a Cable Television Franchise Agreement to NTELOS in accordance with the terms of the proposed Cable Television Franchise Agreement between the City and NTELOS, a copy of which is attached hereto; and it is

FURTHER ORDAINED that Lynchburg City Manager is authorized to sign such Cable Television Franchise Agreement and any other documents embodying the terms approved herein on behalf of the City; and it is

FURTHER ORDAINED that such Franchise shall be effective upon the date upon which it is signed by the City and NTELOS and shall extend for a term of fifteen (15) years.

Adopted:

Certified: ______________________________
Clerk of Council

125L

**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.

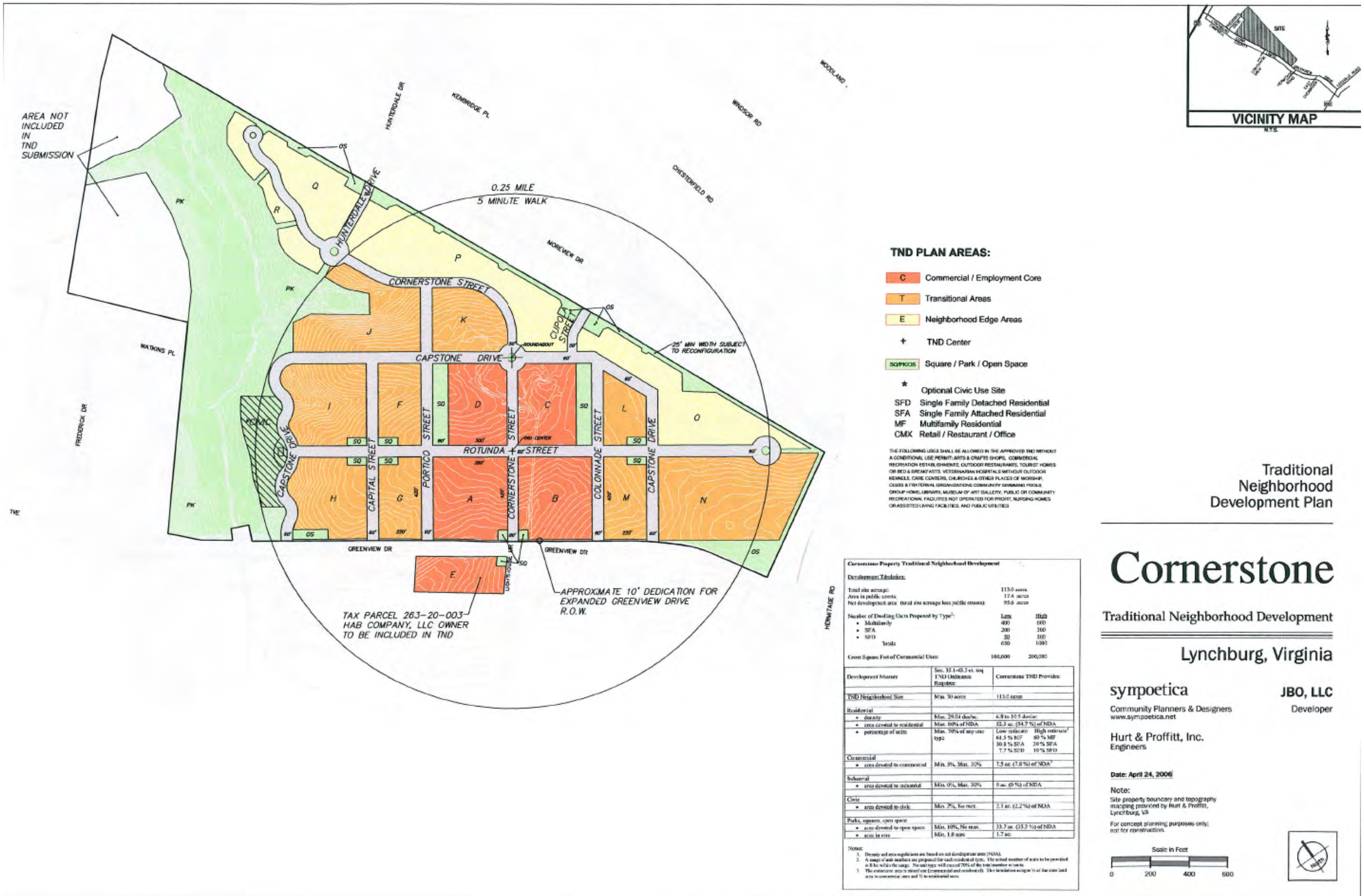
14.8 No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Franchisee may have under federal or state law unless such waiver is expressly stated herein.

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:

Attest:	City of Lynchburg, Virginia:
________________	By: _________________ Name: L. Kimball Payne, III Title: City Manager
Attest:	NTELOS Media Inc.
_______________	By:____________________ Name: D. R. Maccarelli Title: Vice President

<u>EXHIBITS</u>
Exhibit One: Franchise Area

Exhibit 1 – Franchise Area (Cornerstone Traditional Neighborhood Development , from Lynchburg City Council resolution R-06-075 (page 3) adopted on June 27, 2006. Full City Council resolution on file with Lynchburg City Clerk of Council.)



LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007**		AGENDA ITEM NO.: 5
CONSENT:	REGULAR: **X**	CLOSED SESSION:
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Central Virginia Community Services Board (CVCSB) Request to purchase and renovate the Courtland Building**

RECOMMENDATION:
Adopt a Resolution approving the submission of an application and consenting to the issuance of debt in a principal amount not to exceed $2,200,000 by the Central Virginia Community Services Board in order to purchase and renovate the Courtland Building.

SUMMARY:
Central Virginia Community Services Board (CVCSB) wishes to purchase the Courtland Building, a facility which it is now leasing. CVCSB has submitted a financing application to the Virginia Municipal League/Virginia Association of Counties Finance Program for the purpose of financing the costs of acquiring, renovating and undertaking various capital improvements to the Courtland Building. CVCSB is recommending that each member jurisdiction adopt a resolution to approve the submission of the Application. The issuance of the debt shall not directly, indirectly or contingently obligate the City of Lynchburg to pledge its faith and credit or to levy any taxes for the payment of the principal amount of or premium, if any, and interest on the debt or other costs incident to it.

PRIOR ACTION(S):
None

FISCAL IMPACT:
None

CONTACT(S):
Wayne Trent, Director of Administration 847-8050

ATTACHMENT(S):
Resolution
Letter dated September 27, 2007

REVIEWED BY: lkp

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LYNCHBURG APPROVING THE ISSUANCE OF DEBT BY THE CENTRAL VIRGINIA COMMUNITY SERVICES BOARD AND RELATED MATTERS

WHEREAS, the Board of Directors of the Central Virginia Community Services Board (the "Board") has authorized the submission of a financing application (the "Application") to the Virginia Municipal League / Virginia Association of Counties Finance Program which shall include a pooled bond program designed specifically for community services boards structured in consultation with VML/VACo Finance Program (the "VML / VACo Program") for the purpose of financing the costs of acquiring, renovating and undertaking capital improvements for the benefit of, certain property and facilities currently being leased by the Board, generally referred to as the Courtland Project, together with related costs and expenses (the "Project"), through the issuance of one or more notes or bonds of the Board in a principal amount not to exceed $2,200,000 (the "Note").

WHEREAS, pursuant to Chapter 5, Subtitle II, Title 37.2 of the Code of Virginia of 1950, as amended (the "Act"), including Section *37.2-504* of the Act, the Board is authorized to accept loans as authorized by the governing bodies of the political subdivisions that established, which consist of Counties of Amherst, Appomattox, Bedford and Campbell, and the Cities of Bedford and Lynchburg (collectively, the "Member Jurisdictions"), and such consent is being requested prior to the issuance of the Note by the Authority.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council of the City of Lynchburg (the "Locality") hereby approves the submission of the Application and consents to the issuance of the Note by the Board in order to finance the Project and to pay related costs and expenses, upon terms and conditions, and pursuant to such financing, collateral, and other documents, as shall be approved by the Board pursuant to a subsequent resolution adopted by the Board.

2. Each duly authorized officer of the Locality is hereby authorized to execute and deliver such additional instruments or to take such additional action as may be reasonably necessary to effectuate the purposes and intent of this Resolution and the issuance of the Note by the Board. Under no circumstances, however, shall the payment of debt service on the Note constitute a general obligation indebtedness or a pledge of the full faith and credit or taxing power of any of the Member Jurisdictions.

3. This resolution shall take effect immediately.

Adopted:

Certified: ______________________________
Clerk of Council

142P

CENTRAL VIRGINIA
COMMUNITY SERVICES
Behavioral Healthcare

ADMINISTRATION

2241 LANGHORNE ROAD, LYNCHBURG, VA 24501
434-847-8050 • TDD: 434-847-8062
FAX: 434-847-6099 • HUMAN RESOURCE FAX: 434-847-4129

September 27, 2007

Mr. L. Kimball Payne III
City Manager
City of Lynchburg
900 Church Street
Lynchburg, VA 24504

Dear ~~Mr. Payne~~ Kim:

Central Virginia Community Services wishes to participate once again in the VML/VACo Finance Program developed for Community Services Boards, to purchase the Courtland Building.

At its meeting September 26, the Board adopted the enclosed resolution required for participation. The resolution recommends that each of our participating jurisdictions adopt a similar resolution, also enclosed, approving the application.

We will appreciate your taking this matter to City Council at the next scheduled meeting. Thank you for your help in this matter.

Sincerely,

Wayne

L. Wayne Trent,
Director of Administration

RESOLUTION OF THE
CENTRAL VIRGINIA COMMUNITY SERVICES BOARD

WHEREAS, the Central Virginia Community Services Board (the "Board") is a public body politic and corporate of the Commonwealth of Virginia duly created pursuant to Chapter 5, Subtitle II, Title 37.2 of the Code of Virginia of 1950, as amended (the "Act"), and is organized and operated in accordance with the Charter Agreement by and among the Counties of Amherst, Appomattox, Bedford and Campbell, and the Cities of Bedford and Lynchburg (collectively, the "Member Jurisdictions").

WHEREAS, the Director of Administration of the Board has previously submitted a financing application (the "Application") to the Virginia Municipal League / Virginia Association of Counties Finance Program which shall include a pooled bond program designed specifically for community services boards structured in consultation with VML/VACo Finance Program (the "VML / VACo Program") for the purpose of financing the costs of acquiring, renovating and undertaking various capital improvements for the benefit of, certain property and facilities currently being leased by the Board, generally referred to as the Courtland Project, together with related costs and expenses (the "Project").

WHEREAS, pursuant to the terms and conditions of the Act, the Board is authorized to accept loans as authorized by its Member Jurisdictions.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board of Directors of the Board (the "Board of Directors") hereby approves of the submission of the Application to the VML / VACo Program and authorizes and directs the Director of Administration and Executive Director of the Board to provide such additional information and to take such additional actions as may be reasonably necessary to comply with the requirements for the Board's proposed participation in the VML / VACo Program.

2. The Board hereby recommends to the Member Jurisdictions that each such Member Jurisdiction adopt and approve a resolution substantially in the form attached hereto as Exhibit A which authorizes and approves the submission of the Application and the issuance of one or more notes or bonds by the Board in a principal amount not to exceed $2,200,000 (the "Note") pursuant to the VML / VACo Program in order to finance the costs of the Project upon terms and conditions, and pursuant to such financing, collateral, and other documents, as shall be approved by the Board pursuant to a subsequent resolution adopted by the Board.

3. The issuance of the Note shall not directly, indirectly or contingently obligate the Commonwealth of Virginia or any Member Jurisdiction to pledge its faith and credit or to levy any taxes for the payment of the principal of or premium, if any, and interest on the Note or other costs incident to it.

4. All prior acts of the Chairman, the Vice-Chairman, the Director of Administration and the Executive Director of the Board, and other officers, agents or representatives of the Board that are in conformity with the purposes and intent of this Resolution and in furtherance of the submission of the Application, the plan of financing contemplated thereby and the issuance of the Note by the Board, are hereby ratified, reaffirmed and approved.

5. LeClair Ryan, A Professional Corporation, is hereby appointed bond counsel to the Board in connection with the issuance of the Note.

6. To the extent applicable and necessary, in adopting this resolution the Board intends to evidence its "official intent" to reimburse Project expenditures with proceeds from the issuance a tax-exempt financing within the meaning of Treasury Regulations Section 1.150-2 promulgated by the Internal Revenue Service pursuant to the Internal Revenue Code of 1986, as amended.

The undersigned Executive Director of the Central Virginia Community Services Board, hereby certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Board of Directors of the Board present and voting at a meeting duly called and held on September 26, 2007, and that such resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof. A summary of the members present or absent at such meeting, and the recorded vote with respect to the foregoing resolution, is set forth below:

			Voting		
Director Name	**Present**	**Absent**	**Yes**	**No**	**Abstaining**
BOYERS, Sue	X		X		
BROCKMAN, Nancy	X		X		
CRAFT, William	X		X		
DOSS, Lynn	X		X		
EDWARDS, Lindsey		X			
FALWELL, Charles	X		X		
FORE, Thomas	X		X		
HELGESON, Jeff	X		X		
KOENIG, Dana	X		X		
LOWRY, Gary	X		X		
MARPLE, Gary	X		X		
PARKER, Debbie	X		X		
PORTER, Clyde	X		X		
ROSE, Marsha	X		X		
THEISEN, Phil		X			

Nancy Cottingham, Executive Director,
Central Virginia Community Services Board

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: October 9, 2007 **AGENDA ITEM NO.: 6**

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

ACTION: X **INFORMATION:**

ITEM TITLE: Approve Increased Speeding Fines for Sheffield Drive.

RECOMMENDATION: Approve an amendment to the City Code to add Sheffield Drive as a speed zone per Section 25-193.1 of City Code and Section 46.2-878.2 of Virginia Code.

SUMMARY: In February, 2006 Council approved the amendment to City Code allowing the designation of speed zones within residential neighborhoods. These speed zones specify that the minimum fines will be $200 plus any existing fines for speeding. According to State Code, these zones have to be properly designated with the fines clearly posted. If Council approves this resolution, Community Development will need to install additional signs underneath the existing speed limit signs informing motorists about the additional penalty. Melinda Drive, Alta Lane and Del Ray circle have previously been designated.

A public meeting was held on July 24, 2007 to discuss traffic calming options with the residents of Sheffield Drive with approximately 20 residents attending. At this meeting, it was determined that the project would be divided into two phases. The first phase would be implementing increased fines for speeding and the second phase would be potentially implementing physical improvements. To implement Phase 1, two letters were sent out to the residents (see attachments). The first letter, sent August 1, 2007 surveyed the resident to determine if at least 66% of all residents wanted the increased speeding fine zone and the second letter sent on September 28, 2007, informed the neighborhood that we received over 66% support to install the signs. Both letters was sent to all residents on Sheffield Drive and Regent Place.

PRIOR ACTION(S):
The Neighborhood Traffic Management Plan (NTMP) was approved on December 13, 2005.
The amendment to City Code for Speeding Fines was approved February 14, 2006.

FISCAL IMPACT: Speeding ticket proceeds could increase due to increased fines. Negligible increase due to additional signage requirements.

CONTACT(S):
Lee Newland, 455-3947
Gerry Harter, 455-3935
Numan Franklin 455-3931

ATTACHMENT(S):
Letter sent to residents informing them of speed zone designation; Proposed Ordinance

REVIEWED BY: lkp

August 1, 2007

RE: Traffic Calming on Sheffield Drive

Dear Residents,

In April of this year, I met with the Sheffield Drive Neighborhood Traffic Management Petitioner to discuss potential traffic calming measures for Sheffield Drive. During the meeting we talked about the current traffic flow and available traffic calming devices that could possibly slow down traffic and/or decrease the traffic on Sheffield Drive. But most importantly, we decided to conduct a traffic study to determine if Sheffield Drive warrants traffic calming. As you know, this study was implemented and the results supported a need for a traffic calming plan.

On July 24, 2007 we held a neighborhood meeting to present some traffic calming options to you and seek your opinions on how we should proceed. After reviewing the options and with some discussions, you decided to poll your neighborhood to see if 66% or more will support installing increase fine signs. This installation will carry a minimum $200 fine for speeding on Sheffield Drive.

If you will, please check below your position, and then mail this letter to Numan Franklin, 900 Church Street, Lynchburg VA 24504.

I SUPPORT INSTALLING INCREASE FINE SIGNS ____________

I DO NOT SUPPORT INSTALLING INCREAS FINE SIGNS ____________

We appreciate your cooperation in this matter and hope to receive your response soon. If you have any questions please do not hesitate to call me at 434-455-3931.

Sincerely,

Numan Franklin
Neighborhood Project Coordinator

CC: Charlene Montford – Director of Community Development
Lee Newland, P.E. – Director of Engineering
Gerry Harter, P. E. - Traffic Engineer

September 28, 2007

Residents Sheffield Drive and Regent Place

RE: Increased Speeding Fines on Sheffield Drive

Dear Resident;

As you are aware, Sheffield Drive residents petitioned the City to implement traffic calming measures on Sheffield Drive, and shortly afterwards, decided during a neighborhood meeting to poll the neighborhood for support to install increased fine speed limit signs. This step is being considered as phase 1 of a potential two (2) phase project. Phase 1 of this project will be to increase the speeding fines on Sheffield Drive; and Phase 2 of the project will be to meet with the neighborhood to discuss actual physical measures in the street such as speed tables, traffic circles and other potential traffic calming devices if Phase 1 in proven to be ineffective.

According to policy, the City needed 66% support from the neighborhood before the increased fine speed limit signs could be installed. The neighborhood's response exceeded the 66% required support. Now the City is beginning to move forward with Phase 1, which is to install the increase fine signs.

The increased speeding fine will be an additional $200 added to the regular speeding ticket fines. This additional fine will be posted beneath the existing speed limit signs. The larger fine will deter drivers from speeding through the neighborhood. It is anticipated that the increased fines will be implemented in November after City Council has had a chance to review the proposal. Authority for the increased speeding fines is given under Section 25-193.1 of City Code and Section 46.2-878.2 of Virginia Code.

The City believes that this is an appropriate first step to minimize speeders through your neighborhood. We appreciate your cooperation in this matter. If you have any questions please do not hesitate to call me at 434-455-3931 or you can go to our web site and learn more about the Neighborhood Traffic Management Program (NTMP) at the address below:

http://www.lynchburgva.gov/docs/traffic_calming_rev_lynchburg_rev_dec_final.pdf.

Sincerely

Numan Franklin
Neighborhood Project Coordinator

CC: Gerry Harter
Lee Newland
Charles Bennet

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY ADDING THERETO A NEW ROAD DESIGNATION (SHEFFIELD DRIVE) TO SECTION 25-193.1, RELATING TO THE PLACEMENT OF MAXIMUM SPEED LIMIT SIGNS IN CERTAIN RESIDENCE DISTRICTS AND THE FINE FOR EXCEEDING THE MAXIMUM SPEED LIMIT IN POSTED RESIDENCE DISTRICTS.

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

1. That Section 25-193.1 of the Code of the City of Lynchburg be, and the same is hereby amended as follows:

Sec. 25-193.1. Posting of speed limits in certain enumerated residence districts and the fine for exceeding the maximum speed limit in a posted residence district.

(a) Pursuant to section 46.2-878.2 of the Code of Virginia, the maximum speed limits shall be indicated by appropriately placed signs in the following enumerated resident districts (as adopted by City Council by separate ordinance):

(1) Melinda Drive
(2) Alta Lane
(3) Del Ray Circle
<u>(4) Sheffield Drive</u>

(b) When the maximum speed limit for a residence district is indicated by appropriately placed signs displaying the maximum speed limit, any person exceeding such speed limit shall be guilty of a traffic infraction punishable by a fine of two hundred dollars ($200.00), in addition to other penalties provided by law. No portion of the fine shall be suspended unless the court orders twenty (20) hours of community service.

2. That this ordinance shall become effective on its passage.

Adopted:

Certified: ______________________________
Clerk of Council

127L

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007**		AGENDA ITEM NO.: 7
CONSENT:	REGULAR: **X**	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Request to Temporarily Fill a Vacancy in the Circuit Court Clerk's Office**

RECOMMENDATION: Adopt a resolution to amend the FY 2008 General Fund budget and appropriate $11,600 with $11,600 from the General Fund Reserve for Contingencies to allow the Circuit Court Clerk to fill a position in the Clerk's Office while waiting for State funding to become available.

SUMMARY: An employee in the Circuit Court Clerk's Office is retiring effective January 1, 2008, but her last day in the office will be October 21, 2007. Although this position is funded by the State, a 90-day freeze on all vacancies has been enacted. Therefore, the State will not fund the position from October 22, 2007 through March 30, 2008. In order for the Clerk's Office to be timely in performing its duties, it is imperative the office remain fully staffed.

Funding of $11,600 from the City would allow the office to remain fully staffed. The Clerk's Office expects to go through the hiring process to employ someone in the vacant position by December 1, 2007. Office personnel plan to work overtime prior to the December 1 hire, but cannot sustain this workload for a prolonged period.

PRIOR ACTION(S): Finance Committee, October 2, 2007

FISCAL IMPACT: A one-time appropriation of $11,600 from the General Fund Reserve for Contingencies

CONTACT(S): Larry Palmer, Circuit Court Clerk, 455-2620

ATTACHMENT(S):
Resolution
Letter from Larry Palmer, Circuit Court Clerk
Letter from Judges Mosby Perrow, III and J Leyburn Mosby, Jr.

REVIEWED BY: lkp

Resolution

BE IT RESOLVED That the FY 2008 General Fund Budget is amended and $11,600 is appropriated with $11,600 from the General Fund Reserve for Contingencies to overfill a position in the Circuit Court Clerk's Office while waiting for State funding to become available.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

131L

CLERK'S OFFICE

LYNCHBURG CIRCUIT COURT

900 Court Street
P. O. Box 4
Lynchburg, Virginia 24505
Telephone 434-455-2620
Facsimile 434-847-1864

LARRY B. PALMER, CLERK

J. SAMUEL JOHNSTON, JR., JUDGE
MOSBY G. PERROW, III, JUDGE
J. MICHAEL GAMBLE, JUDGE
JAMES W. UPDIKE, JUDGE
J. LEYBURN MOSBY, JR., JUDGE

September 20, 2007

RECEIVED
SEP 21 2007
Council / Manager Offices

Mr. L. Kimball Payne
City Manager, City of
Lynchburg
900 Church Street
Lynchburg, VA. 24505

Dear Mr. Payne:

Thank you very much for seeing me today on such short notice. As is the case here, sometimes situations and circumstances can and do change rather quickly.

As I indicated to you, I am facing a near crisis in my office. My long time supervisor of the Criminal Section, Ms. Jeannine Wingfield, has submitted her notice of retirement after 31 years of service to this office. The effective date of her retirement is January 1, 2008, however, her last day of employment here will be October 21, 2007. She has sufficient annual leave to carry her until the effective date of her retirement.

The State has implemented a 90-day freeze on all vacancies. Since she is on the payroll until January 1, 2008, this freeze would mean her position could not be filled and a replacement made until April 1, 2007.

As a result, I would only have (2) two employees in the Criminal Department until April 1, 2007. We have (2) Courts every day, and it would be humanely impossible to expect these two (2) employees to work Court each day, then keep our orders flowing efficiently.

As you know, we are a Court of Record. Every situation occurring in the courtroom, from an advisement and appointment of counsel up to sentencing must be documented by an Order from the Court. These Orders are then distributed throughout the criminal justice system as well as probation and parole, Commonwealth's Attorney and Public Defender's office, the Blue Ridge Jail and the media. Promptness of preparing these Orders is of the highest priority in this office; to not only keep the Court's record accurate but to provide other vital services. For example, if a defendant is sentenced in this Court today, the Blue Ridge Jail receives a copy of that sentencing Order this afternoon, or no later than tomorrow a.m. This is very critical to the City since the jail uses our Order to transfer the prisoner from local authority (local funding) to the Dept. of Corrections (state funded) immediately.

The personnel assigned to the Criminal Dept. must be efficient, effective and promote a professional image in the Court Room, however, their "must do" work occurs when the return to the office, in terms of updating cases, preparing orders and pulling cases for the following day. Today, with (3) three people assigned, they have their hands full just keeping up with the day-to-day affairs, and it would be virtually impossible for only (2) two people to be expected to provide all of these services over an extended period of time. Any errors of commission or omission would have serious consequences.

Accordingly, I am requesting funding for the following actions:

1. Approximately \$2,400 to fill the supervisor position on December 1st (one month only)
2. Approximately \$2,300 for (4) four months to fill the vacancy in the Criminal Department for the period of Dec. 1 – March 30, 2008. Effective April 1st, the position would then be transferred by to the state payroll from that day forward.

I sincerely appreciate your consideration and support of this request.

Very truly yours,

Larry B. Palmer

Larry B. Palmer, Clerk

TOTAL: \$11,600

TWENTY-FOURTH JUDICIAL CIRCUIT

OF VIRGINIA

J. LEYBURN MOSBY, JR., JUDGE
LYNCHBURG CIRCUIT COURT
900 COURT STREET
P.O. BOX 4
LYNCHBURG, VIRGINIA 24505
(434) 455-2600
TELEFAX (434) 847-1350

MOSBY G. PERROW, III, JUDGE
LYNCHBURG CIRCUIT COURT
900 COURT STREET
P.O. BOX 4
LYNCHBURG, VIRGINIA 24505
(434) 455-2600
TELEFAX (434) 847-1863

COMMONWEALTH OF VIRGINIA
CITIES OF LYNCHBURG AND BEDFORD
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

September 21, 2007

Mr. L. Kimball Payne
City Manger
City of Lynchburg
900 Court Street
Lynchburg, VA 24505

Dear Mr. Payne:

We are writing in support of our Clerk's request of temporary funding for personnel in the criminal section of the Lynchburg Circuit Court. We have reviewed his September 20, 2007, letter to you and believe it accurately reflects the situation. It should be significant to the City that the requested funding will staff a position that will ultimately save the City additional expense by insuring that financial responsibility for the retention of convicted felons is promptly transferred to the Commonwealth.

Thank you for your assistance.

Very truly yours,

Mosby G. Perrow, III, Judge

J. Leyburn Mosby, Jr., Judge

MGP,III/vkh
cc: Larry Palmer, Clerk

RECEIVED
SEP 26 2007
Council / Manager Offices

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007**		AGENDA ITEM NO.: 8
CONSENT:	REGULAR: **X**	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Conversion of a Non-Seasonal Wage Animal Warden Position to Full-Time**

RECOMMENDATION: Adopt a resolution to approve the conversion of a non-seasonal wage Animal Warden position to full-time, amend the FY 2008 General Fund Budget, and appropriate $7,796 with $7,796 from the General Fund Reserve for Contingencies to fund the full-time position.

SUMMARY: During FY 2007, the Lynchburg Police Department responded to 4,512 animal related calls for service. As a result of the increase in animal related service calls, a schedule of Monday – Friday, 7:00 a.m. – 10:30 p.m. was established. With the non-seasonal wage position, the Police Department has tried to provide animal control service on the weekends from 10:00 a.m. – 6:30 p.m. These weekend hours would allow the City to provide better service delivery by reducing response time, while not requiring a police officer to respond because an animal warden is unavailable.

Unfortunately, the non-seasonal wage position continuously remains vacant due to the difficulties related to hiring someone in this position part-time. Conversely, the Police Department has experienced a positive retention rate with the full-time animal warden staff. The opportunity costs related to constantly recruiting, hiring, and training a non-seasonal wage position would be eliminated by converting this position to full-time. Therefore, converting this position to full-time should allow the City to hire and retain adequate personnel while delivering a higher quality of service to citizens.

PRIOR ACTION(S): Finance Committee, October 2, 2007

BUDGET IMPACT:
This conversion would increase the number of full-time positions in the Police Department and require an annual personnel cost increase of $17,318.

Full-Time Animal Warden annual cost:	$38,092
Non-seasonal wage Animal Warden annual cost:	$20,774
Annual Cost Difference:	$17,318

The Police Department will use managed vacancy dollars to alleviate some of the cost in FY 2008. Because the anticipated hire date of the position will be after November 1, 2007, the amount needed from the General Fund Reserve for Contingencies is $7,796.

Full-Time Animal Warden 9-month cost:	$28,570
Non-seasonal wage Animal Warden annual cost:	$20,774
FY 2008 Cost Difference:	$7,796

CONTACT(S):
Colonel Charles W. Bennett, Jr., 455-6116
Captain H. Wayne Duff, Jr., 455-6112

ATTACHMENT(S):
Resolution
Memorandum from Chief Bennett

REVIEWED BY: lkp

Resolution

BE IT RESOLVED that the conversion of a non-seasonal wage Animal Warden position to full-time is approved, the FY 2008 General Fund Budget is amended, and $7,796 is appropriated with $7,796 from the General Fund Reserve for Contingencies to fund the full-time position.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

130L

Pending

The City of Lynchburg, Virginia
POLICE DEPARTMENT

MEMORANDUM

TO: MR. L. KIMBALL PAYNE, III, CITY MANAGER

FROM: COLONEL CHARLES W. BENNETT, JR., CHIEF OF POLICE

DATE: AUGUST 15, 2007

RE: **PROPOSAL TO CONVERT NON-SEASONAL WAGE ANIMAL WARDEN POSITION TO FULL-TIME**

Attached is a proposal from Captain Brandon V. Zuidema to convert a non-seasonal wage position to full-time status. I believe the rationale behind this proposal is sound and support the proposal.

If you need additional information or input on this proposal, please let me know.

Att.

RECEIVED
SEP 13 2007
Council / Manager Offices

The City of Lynchburg, Virginia

MEMORANDUM

COL. BENNETT,
I CONCUR WITH CAPT. ZUIDEMA'S OBSERVATIONS AND I RECOMMEND MOVING FORWARD WITH THIS PROPOSAL!
MAJOR SPENCER
8/10/07

TO: Major M.B. Spencer

FROM: Captain B.V. Zuidema

DATE: August 9, 2007

RE: Conversion of non-seasonal wage Animal Warden position to full-time status

Attached is a memorandum from Chief Warden Faust requesting the conversion of our one non-seasonal wage animal warden position to a full-time warden position. Chief Warden Faust has had some preliminary discussion with Mr. Payne regarding this issue and Mr. Payne requested a summary of need and justification for further consideration. Chief Warden Faust has worked with Captain Duff and the City's automotive shop to identify the costs associated with the operation of this program and has developed an outline of the costs associated with this transition as well as justifications for converting this position.

I concur with Chief Warden Faust's justifications for the conversion of the non-seasonal wage Animal Warden position to a full-time position. We have posted the position twice since Mr. Boggs left employment in March and have yet to identify a suitable candidate for the wage position. I expect that a full-time position with benefits will draw much more attention and should result in ideally a number of suitable candidates applying. We also have a much better retention rate for our full-time wardens versus our non-seasonal wage wardens. Our three full-time wardens have thirty, fifteen and two and one-half years of service respectively. In just the time that our most-recent full-time hire has been here, we have gone through three non-seasonal wage employees. This transition should stabilize our workforce and reduce repeated training costs and overtime costs associated with filling the void created by the recurring non-seasonal wage position vacancy.

The transition from the non-seasonal wage to the full-time position will also increase our ability to appropriately staff the unit seven days a week, a service that the citizens of Lynchburg are deserving based on calls for service and the potential danger associated with the higher priority calls that occur seven days a week. We are continuing to see animal-related calls for service increase in the city; we had approximately 3,900 calls in 2003, 4,365 calls in 2005 and 4,512 calls in FY'07. There is no indication this trend will dissipate throughout the remainder of this decade, thus further substantiating the need for additional resources. In the past, we have had difficulty with non-seasonal wage employees who do not wish to work more than "part-time" hours; a full-time position automatically increases hours worked and gives us more flexibility in scheduling and in covering potential vacancies due to training and employee leave.

From a financial standpoint, Chief Warden Faust and Captain Duff have determined that the salary / benefit increase will be approximately $17,774 for this transition. Chief Warden Faust has done calculations related to reducing unnecessary travel and vehicle costs and determined a potential cost savings of approximately $15,830 resulting from this transition. I believe that these numbers are a "best case" scenario that we are unlikely to see; however, there is justification for his logic in regard to reducing costs based on reducing unnecessary travel as well the training and overtime costs associated with the turnover in our non-seasonal wage position. However, I do not believe we can calculate a true savings amount until after the change is made. Having said this, I do agree with Chief Warden Faust that the additional expense (even up to the full $17,774 figure) is a worthwhile financial commitment on the part of the city to address what tend to be high exposure calls for service in our community.

I support Chief Warden Faust's request to transition the non-seasonal wage warden to a full-time position and believe that it is a necessary and appropriate action in the context of providing public service in regard to animal-related calls for service in the City of Lynchburg. If you have any questions or require any further information, please contact me.

The City of Lynchburg, Virginia

M E M O R A N D U M

TO: Mr. Kimball Payne, City Manager

FROM: Warden L.H. Faust

DATE: 7/31/07

RE: Conversion of (1) Non - Seasonal Animal warden, to a Full Time position

FILE:

Per our meeting and conversation on Tuesday July 24, 2007, concerning the problem we are having getting a part time animal warden to stay for any length of time after we hire them.

One non-seasonal wage warden worked from 10/31/05 to 3/05/06, came in one day and said he quit, and left then. Did not want to work weekends.

The other part time warden we hired worked from 3/22/06 to 3/5/07, came in one day and said he is quitting, because his wife does not want him to work on weekends, and left.

From April to present date we have been trying to hire a non-seasonal wage warden, with no luck. The first time we posted the job out of all the applications we received there were only two that looked good, one of them called and said he wanted to withdraw his application, the other one did not make it past his background check.

So in June we posted it again, with no qualified applicants.

The animal related calls for service have increased in the past year and we have had to keep an animal warden on duty Monday – Friday 7:00am to 10:30pm, two shifts 7:00am to 3:30pm, and 2:00pm to 10:30pm, and 1 warden on duty Saturday & Sunday from 10:00am to 6:30pm. Monday – Friday the calls are at a number that for the safety of the citizens of Lynchburg we need to have two animal wardens on duty at all times. With the non-seasonal wage warden it is not possible to do this.

Not only is there a risk factor with safety, but there is a fact that by only having one animal warden on at a time, we are wasting the money of the citizens of Lynchburg. From July 1, 2006 to June 30, 2007 animal control answered 4,512 calls to service. East Div. 1,297 calls, North Div. 1,485 calls, & South Div. 1,730 calls. From these calls we have had to travel from one part of the city to the other to answer these calls. We crossed the city on an average of (5) five times on a light day. One warden has to cover the city, 50sq. miles. This relates to a very large cost to the city. Fleet services stated the cost to operate one animal warden truck is .30 cent a mile. The avg. mileage from one side of town to the other is 15 miles, and it takes 20 mins. to drive from one side of town to the other side.

5 trips X 15 miles = 75 miles X $0.30 per mile = $22.00 a day. Truck Expenses.
5 trips X 20 mins = 1 ¾ hrs a day. X $12.57/hr. = $20.99 Labor cost.

7 days a week X $22.50 = $157.50 truck expenses a week.
7 days a week X $20.99 = $46.93 labor cost a week.

52 weeks X $157.50 = $8,190.00 truck expenses per year.
52 weeks X $146.93 = $7,640.36labor cost per year.

TOTAL EXPENSES PER YEAR TO CRISS CROSS THE CITY IS $15,830.36
Not only will it keep the cost down by having two animal wardens on each shift, it will also show the citizens of Lynchburg that we are trying to keep their safety in mind by being able to respond to calls much faster. This is very important when there is a dogfghting / dog bite involving a pit bull.

Also in keeping with your request to keep the costs down, and also keep the citizens of Lynchburg safe, I am requesting that you convert the non – seasonal animal warden to full time.

The following information reflects the cost analysis:

Full –Time Animal Warden annual cost:	$38,092.00
Non – Seasonal wage Animal Warden annual cost:	$20,318.00
Annual Cost Difference:	$17,774.00
The cost the city is paying now to have one warden working to criss cross the city to answer calls is.	$ 15,830.36
So the only additional cost to the city will be	$1,943.64

Therefore, I would request your consideration for the conversion of our non - seasonal wage position to full - time. As we have experienced a positive retention rate with our current full time animal warden staff, we will reduce the opportunity costs related to the recruitment and hiring of a non - seasonal wage position if we convert this position to full time. The full time position with benefits will attract a larger, more qualified pool of candidates. Furthermore, we will reduce training costs associated with the non - seasonal position if we convert this position to full time status. Finally, we will be able to provide better service delivery to our citizens.

Thanks, Larry

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007**		AGENDA ITEM NO.: 9
CONSENT:	REGULAR: **X**	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Additional Appropriations to the Sewer Capital Projects Fund Budget for FY 2008**

RECOMMENDATION: Adopt a resolution to amend the FY 2008 Sewer Capital Projects Fund Budget and appropriate $3,050,000 with resources of $3,050,000 from the State CSO Matching Fund for the design and construction of additional CSO Program projects.

SUMMARY: The State has allocated $3,050,000 from the State CSO Matching Fund to the City for use on CSO Program projects in the FY 2008 State Budget.

PRIOR ACTION(S): Finance Committee, October 2, 2007

FISCAL IMPACT:

An additional $3,050,000 will be added to the FY 2008 Sewer Capital Projects Fund.
FY 2008 Adopted Sewer Fund Capital Projects Budget:

Adopted Budget	$27,650,000
Proposed Change	3,050,000
Revised Budget	$30,700,000

CONTACT(S):

Tim Mitchell, Director of Utilities	455-4252
Greg Poff, Assistant Director of Utilities	455-4249
Tammi Turner, Financial Professional III	455-4445

ATTACHMENT(S):
Resolution

REVIEWED BY: lkp

Resolution:

BE IT RESOLVED That the FY 2008 Sewer Capital Projects Fund is amended and $3,050,000 is appropriated with resources of $3,050,000 from the State CSO Matching Fund to finance the design and construction of additional CSO Program projects.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

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LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007**		AGENDA ITEM NO.: 10
CONSENT:	REGULAR: **X**	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	
ITEM TITLE: **Regional Solid Waste Initiative**		

RECOMMENDATION: Approve a resolution to adopt Articles of Incorporation establishing the Region 2000 Services Authority by the City of Lynchburg with participating members including the City of Bedford, Campbell County and Nelson County for the purpose of operating a regional landfill system serving the four jurisdictions and to authorize the City Manager to enter into a Member Use Agreement among the four jurisdictions and the authority for the operation of the landfills in Campbell and Lynchburg on a regional basis by the Authority pursuant to Section 15.2-5100 *et seq.* of the Code of Virginia.

SUMMARY: For the past three years the Local Government Council (Region 2000), working with the Solid Waste Directors for the Counties of Amherst, Campbell, Nelson and the Cities of Bedford and Lynchburg, explored the feasibility of managing solid waste on a regional basis. On July 10, 2007, the Lynchburg City Council adopted a resolution adopting Articles of Incorporation establishing the Region 2000 Services Authority with participating members of the City of Bedford, the City of Lynchburg, Amherst County, Campbell County and Nelson County and authorizing the City Manager to enter into a Member Use Agreement with the five jurisdictions. Since the adoption of the resolution on July 10, Amherst County decided not to participate in the regional solid waste authority. As a result of Amherst County's decision not to participate in the authority, it is necessary for the other jurisdictions to adopt resolutions indicating they are willing to go forward with a regional solid waste authority without Amherst County.

PRIOR ACTION(S): On July 10, 2007, City Council adopted a resolution adopting Articles of Incorporation for a regional solid waste authority.

FISCAL IMPACT: Considerable long term savings for the City of Lynchburg and participating members regarding solid waste disposal activities.

CONTACT(S): Kimball Payne, Dave Owen

ATTACHMENT(S):

A resolution adopting Articles of Incorporation establishing the Region 2000 Services Authority

Revised Member Use Agreement

REVIEWED BY: lkp

CONCURRENT RESOLUTIONS OF THE BOARDS OF SUPERVISORS OF CAMPBELL COUNTY, NELSON COUNTY AND THE CITY COUNCILS OF BEDFORD AND LYNCHBURG CREATING AND ADOPTING ARTICLES OF INCORPORATION FOR THE REGION 2000 SERVICES AUTHORITY AND APPROVING THE REGION 2000 SERVICES AUTHORITY MEMBER USE AGREEMENT

Whereas, the respective City Councils and Boards of Supervisors have published notices pursuant to the Virginia Water and Waste Authorities Act, Chapter 51 of Title 15.2 (Sections 15.2-5100 et. seq. of the Code of Virginia), as amended, ("the Act") of their intent to create and adopt proposed Articles of Incorporation for a body politic and corporate to be known as the Region 2000 Services Authority and to approve the Region 2000 Services Authority Member Use Agreement; and

Whereas, public hearings have been conducted by each of the respective Boards of Supervisors and City Councils; and

Whereas, the Boards of Supervisors and City Councils find it be in the public interest that the Region 2000 Services Authority be established to exercise the powers and carry out the responsibilities set forth in the Act, for the benefit of the citizens of Campbell and Nelson Counties and the Cities of Bedford and Lynchburg.

NOW THEREFORE, IT IS CONCURRENTLY RESOLVED BY THE BOARDS OF SUPERVISORS OF CAMPBELL AND NELSON COUNTIES AND THE CITIES OF BEDFORD AND LYNCHBURG, that the Region 2000 Services Authority (the "Authority") is hereby created and established as a body politic and corporate in the Commonwealth of Virginia under the following:

ARTICLES OF INCORPORATION

Article 1. The Region 2000 Services Authority (the "Authority") is hereby created and established as a body politic and corporate in the Commonwealth of Virginia. The principal office of the Authority shall be located with the Virginia's Region 2000 Partnership Local Government Council at 828 Main Street, 12th Floor, Lynchburg, Virginia 24505 and shall consistently reside with the Local Government Council offices in the future.

Article 2. The names of the localities participating in the Authority are the Counties of Campbell and Nelson, and the Cities of Bedford and Lynchburg.

Article 3. The Authority shall consist of a board of four members, with one member appointed by the local governing body of each jurisdiction. The terms of the initial members of the board shall expire June 30, 2010. Members shall then be appointed for four year terms. The names and addresses of the initial members of the Board are:

Campbell County

R. David Laurrell, County Administrator
P.O. Box 100, Rustburg, VA 24588

Nelson County

Stephen A. Carter, County Administrator
P.O. Box 336, Lovingston, VA 22949

City of Lynchburg

L. Kimball Payne, III, City Manager
900 Church Street, Lynchburg, VA 24504

City of Bedford

Charles Kolakowski, City Manager
P.O. Box 807, Bedford, VA 24523

Article 4. Each local governing body also may select an alternate board member to have all of the voting and other rights of a board member if the board member is not present at a meeting of the Authority. The term for each alternate shall be the same as the term of the board member. The following persons are appointed to serve as the initial alternates to the board of the Authority:

Campbell County
Clifton M. Tweedy
P.O. Box 100, Rustburg, VA 24588

Nelson County
Susan E. McSwain
P.O. Box 336, Lovingston, VA 22949

City of Lynchburg
David A. Owen
900 Church Street, Lynchburg, VA 24504

City of Bedford
Clarke W. Gibson
P.O. Box 807, Bedford, VA 24523

Article 5. The Authority is created and established under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 of Title 15.2 (Section 15.2-5100 et. seq. of the Code of Virginia) (the "Act"). The authority shall have all powers and duties set forth in the

Act, as the same may be from time to time amended. The initial project of the Authority shall be to own and operate as a regional entity the landfills that currently are owned and operated by the City of Lynchburg and Campbell Count, and to accept municipal solid waste generated within each of the participating jurisdictions (and from outside the jurisdictions if approved by the Authority) in those landfills in accordance with a Member Use Agreement to be approved by each of the local governing bodies. It is anticipated that the use of the landfills will be phased, with the Campbell County landfill being temporarily closed while the Lynchburg landfill is being utilized to its operating capability. The initial capital cost to purchase the landfills,, including the site improvements, landfill capacity and land, buildings, equipment and rolling stock, and the closure and post-closure reserve funds, less the outstanding debt and the closure and post-closure liability for each locality, result in a payment to the City of Lynchburg of $1,714,840, and a payment from Campbell County of $270,000. for a net capital cost of $1,444,840. The preliminary estimate of the cost per ton to the localities for solid waste delivered to the landfills owned by the Authority is $23.91 per ton. It is impractical at this time to determine a per ton charge for private haulers using the landfills. Both the capital cost figure and the cost per ton are preliminary figures and are subject to change.

Article 7. All members of the board shall serve without compensation, but may be reimbursed by the Authority for their actual expenses incurred in the course of their duties.

Article 8. Existing members of the Authority may withdraw from membership, and other localities may join the Authority, as provided in Section 15.2-5112 of the Code of Virginia, as amended. In the event other localities join the Authority, they will be asked to reimburse the localities which initially created the Authority for a fair share of the development costs of the Authority.

Article 9. All of the operations, management and fiscal services of the Authority shall be provided through contractual arrangements through the Virginia's Region 2000 Local Government Council. Subject to the approval of the Authority Board, it is the intent of the Member Jurisdictions that the Executive Director of Virginia's Region 2000 Local Government Council be appointed by the Authority to serve as the chief administrative or executive officer of the Authority pursuant to Section 15.2-5113(E) of the Code of Virginia.

BE IT FURTHER RESOLVED that the Region 2000 Services Agreement is hereby approved, and the Mayor is authorized to enter into such Agreement.

Adopted:

Certified: ________________________________

Clerk of Council

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REGION 2000 SERVICES AUTHORITY
MEMBER USE AGREEMENT

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

RECITATIONS:

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

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

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

R-4 After extensive study and analysis, the Member Jurisdictions have determined that it would be more economical and efficient to form a regional authority to own and operate the separate landfills identified in R-2 in a single, coordinated manner.

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

"Bonds" means any bonds issued by the Authority to finance the acquisition, construction and equipping of the Facilities, including any bonds issued to refund such bonds.

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

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

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

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

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

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

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

“Excess Revenue” means the sum of the incremental difference between the tipping fee per ton charged to each Private Hauler and the tipping fee per ton charged to the Member Jurisdictions multiplied by each Private Hauler’s total tonnage delivered to the regional landfills during a fiscal year.

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

Authority, but will remain the financial responsibility of Lynchburg and Campbell respectively. The area of the closed landfills will be shown on Exhibit A.

"Financial Assurance" means the ability to satisfy DEQ that the Authority has sufficient financial ability to fund closure and post-closure activities at the Facilities as defined by DEQ.

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

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

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

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

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

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

(1) Salaries and fringe benefits of employees;

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

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

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

(5) Debt Service Payments;

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

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

(8) Capital Expenditures necessary for compliance with Applicable Law, Capital Expenditures necessary for normal maintenance and reasonable periodic expansion of improvements to the Facilities, and Capital Expenditures incurred in connection with Uncontrollable Circumstances;

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

(10) All accounting and bookkeeping fees and charges;

(11) All costs associated with uncollectible accounts;

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

(13) Any fees which may be imposed by the Virginia Department of Environmental Quality ("DEQ"), or any other agency or department having jurisdiction, whether intermittently or on an annual basis.

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

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

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

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

"Pro Rata Share" means each Member Jurisdiction's share of the Annual Deficit, which shall be a fraction of the Annual Deficit determined as follows: the numerator shall be the total tons of Acceptable Waste which was delivered to the Facilities by that Member Jurisdiction and its Designated Haulers, Private Haulers, Businesses and

Residents in the Fiscal Year (or partial Fiscal Year, for the first year of operation, if applicable) in which the Annual Deficit occurred; the denominator shall be the total tons of Acceptable Waste which was delivered to the Facilities by all Member Jurisdictions and their Designated Haulers, Private Haulers, Businesses and Residents in the Fiscal Year (or partial Fiscal Year, for the first year of operation, if applicable) in which the Annual Deficit occurred.

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

"Start-Up Date" means the date that title to the Facilities is transferred to the Authority.

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

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

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

ARTICLE II

TERM OF AGREEMENT

Section 2.1. Term.

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

Section 2.2. Amendments.

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

ARTICLE III

FACILITY PURCHASE AND OPERATION

Section 3.1. Facility Purchase.

(1) The Authority agrees to purchase the Facilities, including the designated buildings, equipment and rolling stock from the County of Campbell and the City of Lynchburg, and those Member Jurisdictions agree to sell the Facilities, including the designated buildings, equipment and rolling stock, to the Authority. The closing on such purchase shall take place on or about July 1, 2008, assuming the Authority has sufficient funding in place to complete the purchase and that the Authority has been able to obtain title insurance indicating that the localities own the property in fee simple and that there are no objections to the title. The localities agree to transfer the property with a Special Warranty Deed.

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

(2) The Authority may purchase the Facilities through the issuance of any debt instrument legally available to the Authority, including entering into a contract with one or more of the Member Jurisdictions willing to advance the funding for a portion of such purchase or the entire purchase.

Section 3.2. Facility Operation.

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

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

Section 3.3. Use of Facilities.

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

Section 3.4. Use of Facilities Following Closure.

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

Section 3.5 Operation of Facilities.

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

ARTICLE IV

OBLIGATIONS RELATING TO DELIVERY AND ACCEPTANCE OF WASTE

Section 4.1. Acceptance of Waste by Authority.

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

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

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

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

Section 4.2. Operating Rules.

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

Section 4.3. Use of Facilities by Member Jurisdictions.

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

Section 4.4. Title to Acceptable and Unacceptable Waste.

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

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

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

Section 4.5. Disposal of Unacceptable Waste.

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

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

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

Section 4.6. Recycling <u>and Solid Waste Management Plan</u>.

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

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

ARTICLE V

TIPPING FEES; OTHER CHARGES

Section 5.1. Tipping Fees.

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

(b) The Authority shall set the Tipping Fees for Private Haulers on a cost – plus methodology, which will allow the Authority to recover the cost of service as well as to allow the Authority to create a capital or other reserve fund or to reimburse the Member Jurisdictions for their capital and other costs. The

Authority may set varying fees for Private Haulers based on factors such as annual tonnage disposed, character of the waste and multi-year contracts.

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

Section 5.2. Payments.

(1) All amounts payable hereunder shall be invoiced on a monthly basis unless otherwise indicated. Amounts invoiced shall be due thirty (30) days after the date of receipt of the invoice. Invoices shall be deemed received three (3) days after being placed in the U.S. Mail, postage prepaid. Each such invoice shall set forth the information relevant to a determination of the total amount due, as shown on such invoice.

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

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

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

Section 5.4. Late Payment.

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

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

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

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

Section 5.6. Uniform Charges to Member Jurisdictions.

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

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

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

(2) The obligation of each Member Jurisdiction to make payment of its Pro Rata Share under this Section shall be subject to, and contingent upon appropriations being made for such purpose by each governing body of the Member Jurisdiction, which governing body shall have a "moral obligation," but not a legally enforceable obligation, to make such appropriations; provided, however, that within thirty (30) days after receipt of such notice the chief administrative officer of each Member Jurisdiction shall present such invoice for payment to such Member Jurisdiction's governing body. Nothing in this Section or this Agreement shall constitute a pledge of the full faith and credit of any Member Jurisdiction under any provisions of its charter or the Constitution, or statutes of Virginia, or a bond or debt of any Member Jurisdiction within the meaning of any provision of the Constitution, or statues of Virginia, or such Member Jurisdiction's charter. Subject to the provisions of this Section, the obligation of each Member Jurisdiction to make payments under this Agreement and to observe and perform all other covenants and agreements under this Agreement is unconditional, irrespective of any rights of set-off, recoupment, or counterclaim that any Member Jurisdiction may have, jointly or individually, against the Authority. Each Member Jurisdiction shall notify the Authority promptly after such meeting as to whether the amount so requested was appropriated. If a governing body shall fail to make such appropriation, the chief administrative officer of such Member Jurisdiction shall give written notice to the governing body of the consequences of such failure to appropriate. The current governing body of each Member Jurisdiction, while recognizing that it is not empowered to make any binding commitment to make such appropriations, hereby states its intent to make such appropriations upon request of the Authority and hereby recommends that future governing bodies of the Member Jurisdiction do likewise.

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

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

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

Section 5.9. Books and Records.

The Authority shall be responsible for the maintenance of all books, records and accounts necessary to record all matters affecting the Tipping Fees or other amounts payable by or to Member Jurisdictions and the Authority under this Agreement. All such books, records and accounts shall be maintained in accordance with generally accepted accounting principles, shall accurately, fairly and in reasonable detail reflect all the Authority's dealings and transactions under this Agreement and shall be sufficient to enable those dealings and transactions to be audited in accordance with generally accepted accounting principles. Within one hundred twenty (120) days after the close of each Fiscal Year, or, if later, within thirty (30) days after the date the annual report is available, the Authority shall deliver to each Member Jurisdiction an annual report accompanied by a certificate of an independent certified public accountant, including, among other things, a statement of the financial position of Authority at the end of such Fiscal Year, a statement of Operating Revenues and Operating Costs under this Agreement, and the amount, if any, of the Annual Deficit. All such books, records and accounts shall be available for inspection and photocopying by any Member Jurisdiction on reasonable notice so that it can verify Tipping Fees or other amounts payable under this Agreement. All such books, records and accounts shall be kept by the Authority for at least six years (or any longer period required by Applicable Law).

Section 5.10. Budget.

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

Section 5.11. Excess Revenue.

In the event there is Excess Revenue at the end of a Fiscal Year, the Authority Board may vote to distribute some or all of such Excess Revenue to Lynchburg and Campbell based on the basis of the relative percentage of available air space each Facility had at the Start-Up Date.

ARTICLE VI

DEFAULT AND TERMINATION

Section 6.1. Remedies for Default.

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

(2) Once any payment due from a Member Jurisdiction is delinquent as defined herein, the Authority may refuse to accept Acceptable Waste from such Member Jurisdiction and from Designated Haulers, Private Haulers and Residents of such Member

Jurisdiction. Upon payment by such Member Jurisdiction of all amounts due from it, the Authority shall commence disposing of Acceptable Waste from such Member Jurisdiction and from Designated Haulers, Private Haulers and Residents of such Member Jurisdiction.

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

Section 6.2. Events of Default by Authority.

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

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

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

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

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

Section 6.3. Events of Default by Member Jurisdictions.

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

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

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

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

(b) such Member Jurisdiction has neither corrected such default, nor initiated reasonable steps to correct it, within five (5) business days from the date of the notice given pursuant to paragraph (2)(a) of this Section (or within such longer period of time as is necessary and reasonable under the circumstances); provided that if such Member Jurisdiction is continuing to take reasonable steps to correct it, unless such default creates an emergency situation which may endanger the continued operation of the Facility, in which case an Event of Default shall be deemed to have occurred if such default is not corrected within ten (10) days or less.

Section 6.4. Termination on Default.

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

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

Section 6.5. Survival of Certain Rights and Obligations.

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

ARTICLE VII

MISCELLANEOUS

Section 7.1. Entire Agreement; Modification.

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

Section 7.2. Assignment.

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

Section 7.3. Partnership.

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

Section 7.4. Severability of Invalid Provisions.

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

Section 7.5. Notices.

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

If to Authority:	Region 2000 Services Authority Executive Director 828 Main Street – 12th Floor Lynchburg, VA 24504
If to Campbell	Campbell County, Virginia R. David Laurrell County Administrator P.O. Box 100 Rustburg, VA 24588
If to Nelson	Nelson County, Virginia Stephen A. Carter County Administrator P.O. Box 336 Lovingston, VA 22949
If to City of Bedford	Bedford, Virginia

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

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

Section 7.6. Representations As to Ability to Perform

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

Section 7.7. Further Documents and Data.

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

Section 7.8. Counterparts.

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

Section 7.9. Tax Exemption Covenant.

(1) The Authority may issue Notes and Bonds in a manner such that their interest is excludable from gross income for federal income tax purposes under Section 103 (a) and related provisions of the Internal Revenue Code of 1986, as amended, and applicable rules and regulations. The Authority and each Member Jurisdiction agree that after the

Notes and Bonds have been issued, they will not take any action or omit to take any action which would adversely affect such exclusion.

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

Section 7.10 Litigation.

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

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

[SEE ATTACHED SIGNATURE PAGES]

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

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

REGION 2000 SERVICES AUTHORITY

By: ______________________________________

Title ____________________________________

ATTEST:

____
Clerk

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

COUNTY OF CAMPBELL, VIRGINIA

By: ___________________________________
Chairman
Board of Supervisors

ATTEST:

____
Clerk

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

COUNTY OF NELSON, VIRGINIA

By: ____________________________________
Chairman
Board of Supervisors

ATTEST:

____
Clerk

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

CITY OF BEDFORD, VIRGINIA

By: ________________________________
Mayor

ATTEST: ___________________________
Clerk

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

CITY OF LYNCHBURG, VIRGINIA

By: ________________________________
Mayor

ATTEST:

____
Clerk

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LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007** AGENDA ITEM NO.: 11

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Regional Solid Waste Initiative - Appropriations for Implementation of the Region 2000 Services Authority**

RECOMMENDATION: Adopt a resolution to amend the FY 2008 Solid Waste Management Fund Operating budget and appropriate $2,409,322 with resources of $2,409,322 from the Reserve for Regional Waste Management Authority for the work necessary to create the Region 2000 Services Authority during FY 2008.

SUMMARY: For the past three plus years the Local Government Council (Region 2000), working with the Solid Waste Directors for the Counties of Amherst, Campbell, Nelson and the Cities of Bedford and Lynchburg, has explored the feasibility of managing solid waste on a regional perspective. The working group first conducted an internal study exploring various options including burning waste for energy, transferring the waste out of the region, or operating the current landfills jointly. After the in-house study was completed, the Local Government Council contracted with solid waste consultant R. W. Beck Inc. to perform a more extensive verification study (Phase I) to determine which (if any) of the options would be the most cost effective. It was determined that operating the region's landfills jointly was the best and most cost effective option and should be explored in more detail.

R. W. Beck was then contracted to conduct a more detailed analysis (Phase II) to determine the steps and costs of forming a regional entity to manage solid waste disposal. They conducted a thorough review of current operations and developed a detailed operations plan with associated costs. They also coordinated a meeting between staff at the Virginia Department of Environmental Quality (DEQ) and local representatives to discuss the regulatory requirements for this type of operation. The report concluded that meaningful cost saving opportunities for all the localities involved could result from such a cooperative effort.

Amherst County requested an alternative analysis be completed to determine if keeping the Amherst County landfill open in conjunction with the Lynchburg landfill was a feasible option. This was requested out of concern regarding potential increases in traffic going to and from their landfill adversely affecting a local neighborhood. The analysis has been completed and finds the regional solid waste management approach remains viable while allowing Amherst County's landfill to remain open. There is a slight increase in cost per ton with this approach with Amherst County covering this increased cost.

Subsequently, DEQ required that a proof of concept be developed to evaluate regulatory issues and to ensure environmental protection. The proof of concept report was completed in December 2006 and submitted to DEQ with them stating in writing that they agree in principle with the concept and are committed to supporting the regional solid waste authority formation.

Consolidating solid waste operations regionally is beneficial for a number of reasons. The most obvious one is the cost savings. Regional cooperation and protection of health and the environment are also important benefits. Operating a small landfill continues to become more costly as regulations are tightened. A regional operation takes advantage of economies of scale to control costs. Additionally a regional entity could better focus on long range planning for our next generation of waste disposal.

Amherst County voted on September 18, 2007 not to join the Region 2000 Services Authority.

PRIOR ACTION(S):

- Local Government Council and solid waste staff (from localities) explored various options
- Phase I Report completed by R. W. Beck in April 2005
- Phase II Report completed by R. W. Beck in May 2006
- Region 2000 Proof of Concept Report in December 2006 with DEQ response in January 2007
- City Council approved funding to implement the Regional Solid Waste Management Initiative in February 2007
- City Council approved resolution adopting Articles of Incorporation establishing the Region 2000 Services Authority and entering into a Member Use Agreement on July 10, 2007
- Finance Committee, October 2, 2007

FISCAL IMPACT:

Considerable long term savings for City of Lynchburg and participating members regarding solid waste disposal activities

CONTACT(S):

Dave Owen, Director of Public Works, 455-6078

ATTACHMENT(S):

Resolution

REVIEWED BY: lkp

Resolution

BE IT RESOLVED That the FY 2008 Solid Waste Management Operating Budget is amended and $2,409,322 is appropriated with resources of $2,409,322 from the Reserve for Regional Waste Management Authority for the work necessary to create the Region 2000 Services Authority during FY 2008.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

129L

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007** AGENDA ITEM NO.: 12

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

ACTION: **X** INFORMATION:

ITEM TITLE: **Appropriations for Phase I – Partial Closure of the City's Landfill**

RECOMMENDATION: Adopt a resolution to amend the FY 2008 Solid Waste Management Fund Operating Budget and appropriate $909,388 with $909,388 from the Closure and Post-Closure Care fund for the construction and partial closure of Phase I of the City's landfill.

SUMMARY: The City began setting aside monies to fund the closure and post-closure of the City's landfill in FY 1993. Each year the City has set aside these monies to cover the cost of closing the landfill. These closure and post closure monies help the City avoid borrowing funds for the closure activity. Approximately 10.2 acres are scheduled to be closed during the spring of 2008.

The engineering and permitting work have been completed, the project bid out, and the bids received for this work. The construction and inspection cost for the construction of Phase I totals $1,462,600.

The current FY 2008 Capital Improvement Budget appropriated $553,212 which was later transferred to the Solid Waste Operating Budget, it is necessary to appropriate the balance of $909,388 to complete the project from the Closure and Post-Closure Care funds.

PRIOR ACTION(S): Finance Committee, October 2, 2007

FISCAL IMPACT: $909,388 from the Closure and Post-Closure Care funds

CONTACT(S): Dave Owen

ATTACHMENT(S): Resolution

REVIEWED BY: lkp

Resolution

BE IT RESOLVED That the FY 2008 Solid Waste Management Operating Budget is amended and $909,388 is appropriated with $909,388 from the Closure and Post-Closure Care fund for the construction and partial closure of Phase I of the City's landfill.

Introduced: Adopted:

Certified: ________________________________
Clerk of Council

134L

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **October 9, 2007**		AGENDA ITEM NO.: 13
CONSENT:	REGULAR: **X**	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	

ITEM TITLE: **Appropriations for Phase IV Construction of the City's Landfill**

RECOMMENDATION: Adopt a resolution to amend the FY 2008 Solid Waste Management Fund Capital Budget and appropriate $856,320 with $856,320 from the Reserve for Landfill Expansion for the construction of Phase IV of the City's landfill.

SUMMARY: The City began setting aside monies in FY 2005 to fund the construction and inspection activities for the final phase (Phase IV) of the City's landfill. Monies totaling $2,223,106 were placed in a reserve to cover the cost of constructing this final phase of the landfill.

The engineering and permitting work have been completed, the project bid out and the bids received for this work. The construction and inspection cost for the construction of Phase IV totals $1,959,675.

The FY 2008 Capital Improvement Budget provides $1,103,355 so it is necessary to appropriate the balance of $856,320 to complete the project.

PRIOR ACTION(S): Finance Committee, October 2, 2007

FISCAL IMPACT: $856,320 from the Reserve for Landfill Expansion

CONTACT(S): Dave Owen

ATTACHMENT(S): Resolution

REVIEWED BY: lkp

Resolution

BE IT RESOLVED That the FY 2008 Solid Waste Management Capital Budget is amended and $856,320 is appropriated with $856,320 from the Reserve for Landfill Expansion for the construction of Phase IV of the City's landfill.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

135L