

City Council Work Session

Tuesday, February 24, 2015

7:00 p.m.

Council Chambers – Rouss City Hall

AGENDA

1.0 Call to Order

2.0 Public Comments: (Each person will be allowed 3 minutes to address Council with a maximum of 10 minutes allowed for everyone)

3.0 Items for Discussion:

3.1 Presentation: Winchester Parks and Recreation Needs Assessment Findings and Recommendations Report, as Prompted by the City of Winchester's 2014 Strategic Plan – Jennifer Jones, Director of Parks and Recreation and Art Thatcher, GreenPlay, LLC (pages 3-17)

3.2 Presentation: Presentation and Review of Request for Proposal for Professional Services of Developer to Assist the City of Winchester in Comprehensive Development of 200 & 214 N. Cameron Street (pages 18-49)

3.3 O-2015-05: AN ORDINANCE TO AMEND THE WINCHESTER CITY CODE REGARDING LOCAL MEALS AND ADMISSION EXCISE TAXES – Ann Burkholder, Commissioner of Revenue (pages 50-63)

3.4 O-2015-06: AN ORDINANCE TO AMEND AND REENACT SECTION 18-8-7 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO FREESTANDING AND BUILDING MOUNTED SIGNS PERMITTED IN THE RO-1 DISTRICT. TA-14-770 – Aaron Grisdale, Director of Zoning & Inspections (pages 64-68)

3.5 R-2015-08: Approves of the City Manager's execution of a lease between the City of Winchester and Branch Banking and Trust for professional office space - Eden Freeman, City Manager (pages 69-101)

4.0 Executive Session

4.1 MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE FROM THE CITY ATTORNEY AND LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY.

5.0 Monthly Reports

5.1 Fire & Rescue Department (pages 102-104)

5.2 Police Department (page 105)

6.0 Adjournment

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: February 24, 2015 **CUT OFF DATE:** February 18, 2015

RESOLUTION ___ **ORDINANCE** ___ **PUBLIC HEARING** ___

ITEM TITLE: Winchester Parks and Recreation Department Needs Assessment Findings and Recommendations Presentation

STAFF RECOMMENDATION: Adopt GreenPlay Consultants Recommendations

PUBLIC NOTICE AND HEARING: n/a

ADVISORY BOARD RECOMMENDATION: n/a

FUNDING DATA: \$47,000 was appropriated in the 2014 and 2015 Annual Budgets to contract the consultant GreenPlay LLC

INSURANCE: n/a

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Parks & Recreation Director	<i>[Signature]</i>		<u>2.18.2015</u>
2.			
3.			
4.			
5. City Attorney	<i>[Signature]</i>		<u>2/17/2015</u>
6. City Manager	<i>[Signature]</i>		<u>7 Feb 2015</u>
7. Clerk of Council			

Initiating Department Director's Signature: *[Signature]* 2.8.2015
Date

Revised: October 23, 2009



APPROVED AS TO FORM:
[Signature] 2/17/2015
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Jennifer Jones, Director of Parks and Recreation
Date: 2/3/2015
Re: Winchester Parks and Recreation Department Needs Assessment Findings and Recommendations

THE ISSUE: The Winchester Parks and Recreation Department Needs Assessment was conducted by GreenPlay LLC consultants to help the City allocate appropriate resources to parks and recreation services and amenities. The study was designed to provide a high level of service to residents while maximizing the resources available to the department.

RELATIONSHIP TO STRATEGIC PLAN: 4. Creating a More Livable City for All 2. Develop a High Performing Organization 1. Grow the Economy 3. Revitalization of Old Town

BACKGROUND: The Director of Parks and Recreation and the Park Advisory Board recommended a needs assessment be conducted instead of a master plan so the city could get a more comprehensive view of all aspects of WPRD services and facilities to include programming. In conducting this Needs Assessment, the City has identified areas of service strengths and weaknesses and what can be built upon to improve the delivery of parks, recreation, cultural arts, open space, trails, and facilities as well as programs and services.

BUDGET IMPACT: City Council appropriated \$47,000 in the WPRD operating budget for this analysis of parks and recreation facilities and services.

OPTIONS:

Option 1- Adopt the Needs Assessment Recommendations and Action Plan

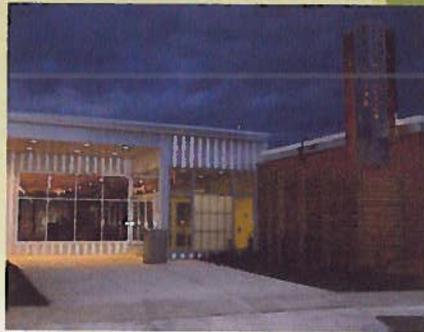
Option 2- Do not adopt the Needs Assessment Recommendations and Action Plan

RECOMMENDATIONS: Adopt the Needs Assessment Recommendations and Action Plan



Parks and Recreation Needs Assessment

Final Presentation
February 24, 2015



Project Timeline

- Start-up April 2014
- Community Meetings May 2014
- Community Needs Assessment Survey July-November 2014
- Presentation of Findings December 2014
- Data Review and Analysis December 2014
- Presentation of Final Report February 24, 2015

Strengths

- Jim Barnett Park
- Total acreage of parks 270
- Aquatics
- Green Circle Trail
- Affordability
- Variety of programs
- Do more with less
- Nature Preserves
- Great ballfields

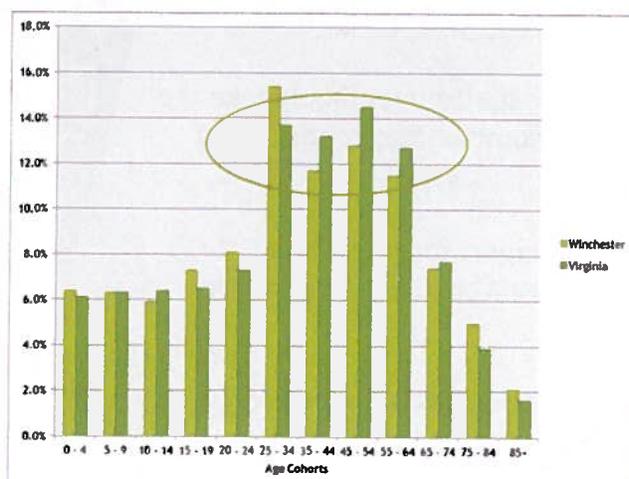
Most Essential Services

- Parks and Open Space preservation and maintenance
- Aquatics
- Athletics
- Athletic Facilities
- Affordable programs and opportunities
- Preserving natural spaces
- Youth & Senior programming

Improvements Next 5 – 10 Years

- Complete Green Circle Trail
- Upgrade building and facilities
- Awareness / communication
- Ongoing planning process w/ citizen engagement
- Aquatic Center
- Improve walkability
- Partnerships
- Acquire park land in North End
- Expand usage of neighborhood parks
- Bike racks
- Grass fields

Age Breakdown



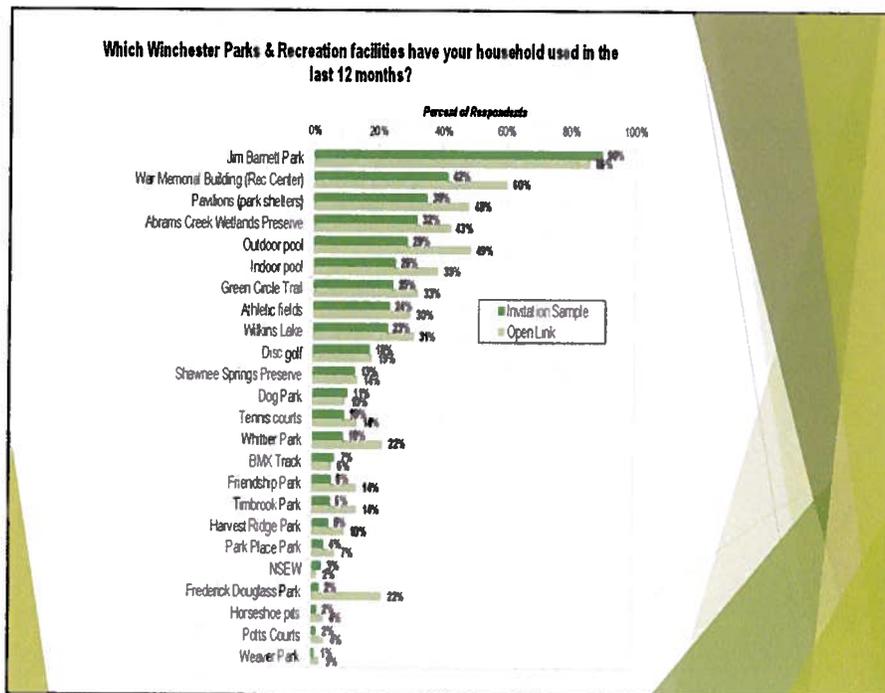
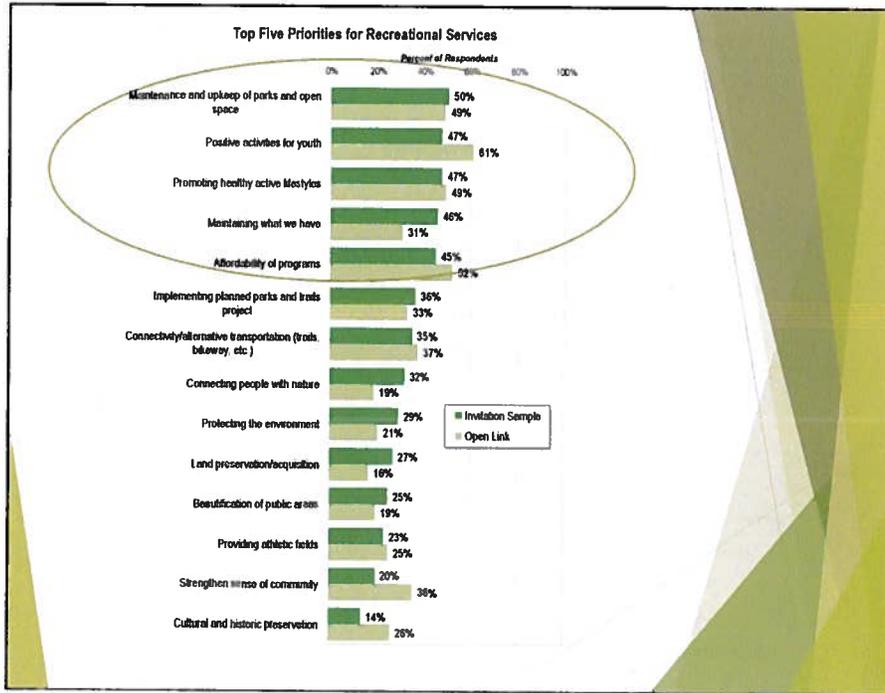
Ethnicity

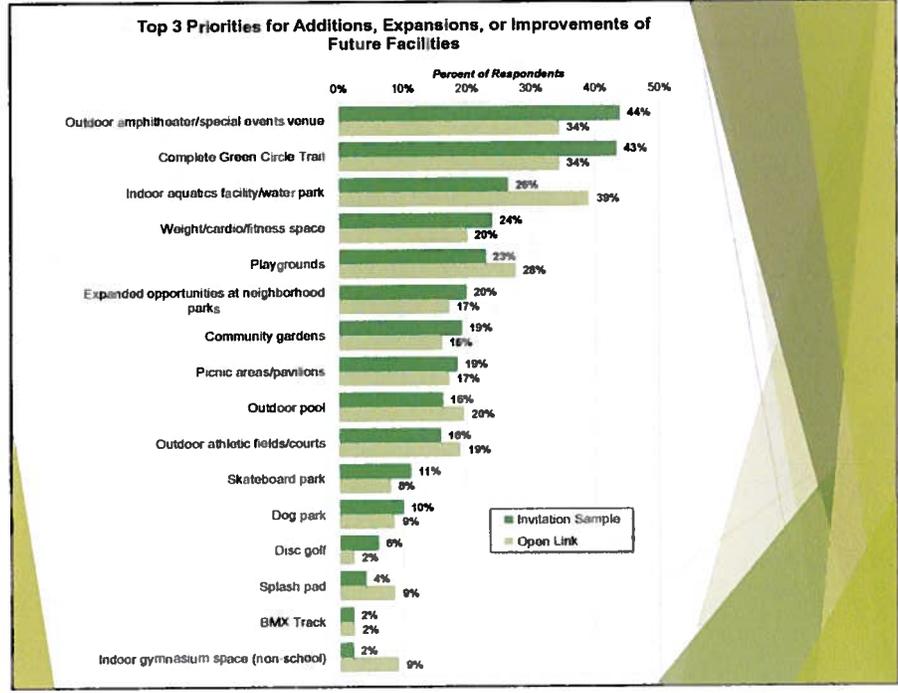
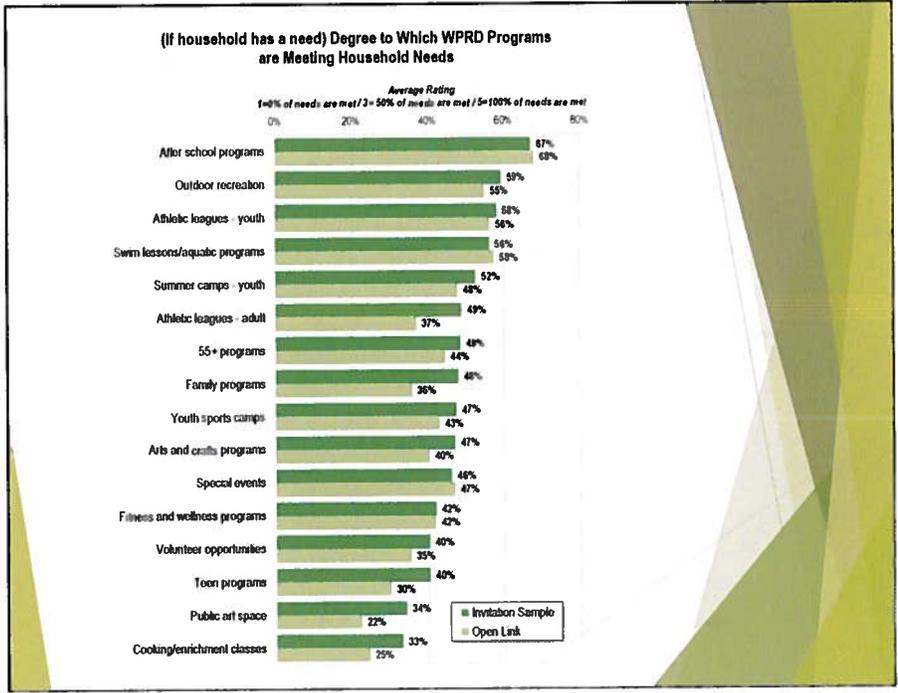
	Winchester	Virginia
Caucasian Alone	72.8%	67.6%
African-American Alone	10.8%	19.5%
American Indian Alone	0.5%	0.4%
Asian Alone	2.3%	5.7%
Some Other Race Alone	10.5%	3.6%
Two or More Races	3.2%	3.2%
*Hispanic Origin (Any Race)	18.4%	8.9%

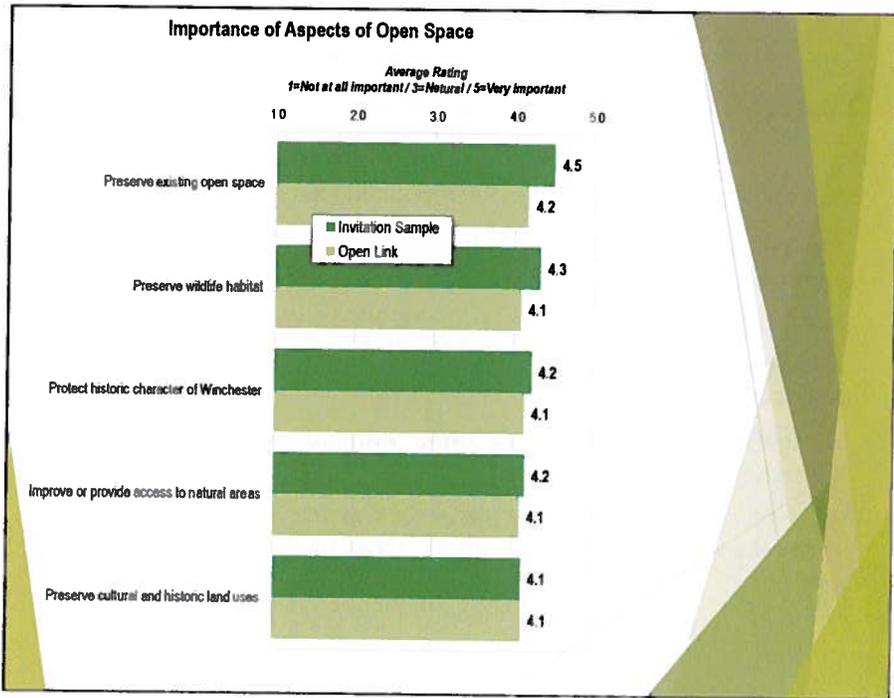
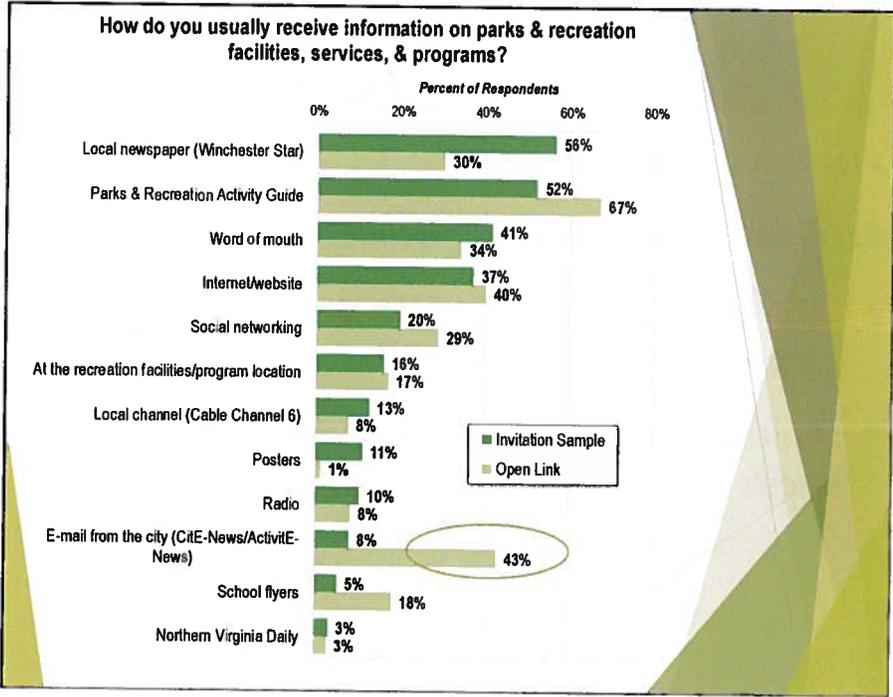
Trends

International City/County Management Association

- Parks & recreation departments should take the lead in developing communities conducive to active living.
- There is growing support for recreation programs that encourage active living within their community.
- One of the highest priorities is a cohesive system of parks and trails and accessible neighborhood parks.







Areas of Focus

- #1: High quality recreation**
- #2: Financial stability**
- #3: Marketing, communication and community engagement**
- #4: Cultural diversity and community needs**

#1: High quality recreation

1.1

Complete a comprehensive Park, Recreation Master Plan.

- Complete quantitative and qualitative inventory including level of service and gap analysis.
- Provide an analysis of current programs and services
- Identify priorities of future development of parks, programs and facilities
- Review Feasibility Study for McCormac Amphitheater (for if/when funds become available.)
- Develop capital improvement plan, cost and phasing recommendations and implementation plan for priority items/projects.

#1: High quality recreation

1.2

Create a short term plan to address immediate staffing needs and priority projects

- Increase park maintenance staffing to meet current demand for services and develop plan for future growth
- Address park maintenance backlog of projects and annual maintenance needs
- Address aging infrastructure
- Work with Public Services to complete the Green Circle Trail
- Brand Parks and Facilities: signage and style

#1: High quality recreation

1.3

Maintaining the quality of what we have

- Coordinate with Public Services to maximize cost savings
- Utilize various evaluation methods and instruments to measure level of services
- Emphasize continued training and mentoring of staff

1.4

Maximize partnerships

#2: Financial stability

2.1

Develop a resource allocation and cost recovery philosophy, model, and policy

2.2

Establish a pricing methodology

#3: Marketing, communication and community engagement

3.1

Develop and implement a plan for increased registrations, user participation and community engagement.

- Increase community awareness
- Utilize technology

3.2

Identify, analyze and enhance communication methods

- Increase use of web based and social media
- Focus on improved “storytelling”

#3: Marketing, communication and community engagement

3.3

Conduct focus group meetings on an annual basis

3.4

Program offerings reflective of the city-wide initiatives

Play Your Heart Out – In Winchester Parks

#4: Cultural diversity and community needs

4.1

Provide diverse programming for families, seniors, and teens.

4.2

Increase programming

- Aquatics
- Wellness/fitness
- Cultural programming
- Special events
- For special needs populations



Thank you!

Art Thatcher, Project Manager

artt@greenplayllc.com

757-592-3103

Key Issues Analysis Matrix

2014 Data Source	Key Issue - Rating Scale a - priority b - opportunity to improve blank means the issue didn't come up or wasn't addressed	Qualitative Data						Quantitative Data			Facility Assessments/LOS	Consultant's Analysis and Professional Expertise
		Consultant Team	Staff Input	Public Input	Other Documents	Community Survey	Citizen Satisfactory Survey					
												 <p>Preliminary Recommendations</p> <ul style="list-style-type: none"> Develop Marketing Plan Hire and train staff for current and future parks maintenance demand Hire and train staff for current and future facility usage demand Adjust structure of Parks Maintenance to fit current demand Expand program opportunities for teens, seniors, youth in all locations Expand programs in wellness/fitness, aquatics, cultural, special needs Expand neighborhood & community special event opportunities Review current schedule to maximize usage and meet demand Continue to implement existing plans & Master Plan Work with other city departments to complete trail system Continue to develop greenways and expand to connect neighborhoods Future facility expansion should include additional aquatic facility Future facility expansion should consider additional entertainment venues Complete a comprehensive Parks and Recreation Master Plan Conduct an Alternative Provider assessment Develop Cost Recovery Policy Explore alternative funding opportunities Use recommendations from Needs Assessment to guide CIP submissions
Organizational												
Need better marketing and communication of activities and facilities		a	a	a	a	a						
Increase staffing for maintenance		a	a	a	a	a						
Increase staffing for facilities operations		a	a	a	a	a						
Reorganize Parks Maintenance Division		a	a	a	a	a						
Programs and Service Delivery												
Need more programming for families, teens, seniors		a	a	a	a	a						
Increase programs in wellness/fitness, aquatics, cultural, special needs		a	a	a	a	a						
Increase number of events		a	a	a	a	a						
Increase aquatic opportunities		a	a	a	a	a						
Facilities and Amenities												
Maintain and improve existing facilities		a	a	a	a	a						
Complete the Green Circle Trail		a	a	a	a	a						
Develop connections with greenways and trails		a	a	a	a	a						
Explore indoor aquatic facility		a	a	a	a	a						
Explore outdoor amphitheater / special event venue		a	a	a	a	a						
Level of Service												
Identify gaps												
Verify other Service Providers are not filling gaps												
Finance												
Utilize equitable user fees		a	a	a	a	a						
Pursue grant opportunities		a	a	a	a	a						
Structure CIP for maintenance, replacement and new construction		a	a	a	a	a						

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: February 24, 2015 **CUT OFF DATE:** ___

PRESENTATION X

ITEM TITLE: Presentation and Review of Request for Proposal for Professional Services of Developer to Assist the City of Winchester in Comprehensive Development of 200 N. Cameron Street

STAFF RECOMMENDATION: N/A

PUBLIC NOTICE AND HEARING: N/A

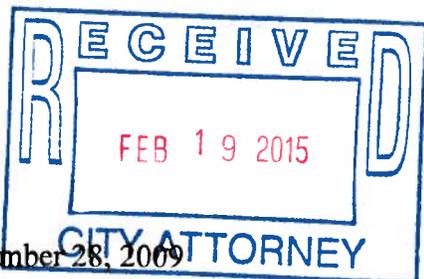
ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance _____	<i>fb</i>	_____	<i>2-18-15</i>
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney _____	<i>EW</i>	_____	<i>2/19/2015</i>
6. City Manager _____	_____	_____	_____
7. Clerk of Council _____	_____	_____	_____
Initiating Department Director's Signature: _____	<i>Edwin J. Juman</i>	_____	<i>18 Feb 15</i>
	City Manager		Date



APPROVED AS TO FORM:

[Signature] *2/19/2015*
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Eden Freeman, City Manager
Date: 2/24/15
Re: Presentation and Review of Request for Proposal (RFP) for Professional Services of Developer to Assist the City of Winchester in Comprehensive Development of 200 N. Cameron Street

THE ISSUE:

City Staff wishes to have the Winchester Common Council review the enclosed RFP to receive comments prior to its solicitation.

RELATIONSHIP TO STRATEGIC PLAN:

Goal One: Grow the Economy

BACKGROUND:

The adopted 2013-2014 Strategic Plan prompted City Staff to create a conference center development strategy. Following Council's prompt, the Economic Development Authority of the City of Winchester solicited the services of Strategic Advisory Group to determine the market feasibility of such a facility and its best potential location in Winchester. The City acquired the 200 N. Cameron Street (Winchester Towers) after receiving favorable recommendations from the consultant. To solicit the public's opinion of our pursuance of this development, City Staff held two public information open houses to determine what the public felt would be the highest and best use of the Winchester Towers. After compiling the responses, we determined that the public was heavily in favor of the creation of a conference/events center and hotel within the property. The enclosed RFP will be used to solicit the services of a development team to facilitate the completion of this project.

BUDGET IMPACT:

Unknown at this time.

OPTIONS:

1. Provide comments and recommendations and solicit RFP
2. Solicit RFP in its current state

RECOMMENDATIONS:

N/A



**NOTICE TO PUBLIC
REQUEST FOR PROPOSALS
RFP #201423**

**DEVELOPER TO ASSIST THE CITY OF WINCHESTER IN
COMPREHENSIVE REDEVELOPMENT OF 200 & 214 NORTH CAMERON STREET
(WINCHESTER TOWERS)**

The City of Winchester will accept proposals until 2:00 P.M. local time on June 5, 2015 in the office of the Finance Dept. - Purchasing Division, 15 N. Cameron Street, 1st Floor - Rouss City Hall, Winchester, VA 22601, to provide a developer to assist the City of Winchester in comprehensive redevelopment of 200 & 214 N. Cameron Street per the attached specifications and scope of work, herein. A pre-proposal conference will be held on March 23, 2015, 2:00 P.M. in 200 N. Cameron Street, Winchester, Virginia 22601 (Winchester Towers).

Copies of this Request for Proposal may be obtained upon request from the Office of the Finance Department - Purchasing Agent, telephone (540) 667-1815 EXT. 1477. This proposal may also be viewed on the city's web page: www.winchesterva.gov.

Offerors should carefully examine the specifications and fully inform themselves as to all conditions and matters, which would in any way, affect the equipment/materials/service or cost thereof. Should an Offeror find discrepancies in or omissions from the specifications or request for proposal, he/she should notify the Finance Director and obtain clarification prior to submitting the proposal. Only questions answered by formal Addenda will be binding; oral and other interpretations or classifications will be without legal effect.

The right is reserved, as the interest of the City may require, to revise or amend the specifications prior to the date set for opening proposals; the opening date may be postponed if deemed necessary by the Finance Director. Such revisions and amendments, if any, will be announced by written Addenda to the specifications. In addition, the City reserves the right to accept or reject any and all proposals, in whole or in part, and to waive any informality.

One (1) original and three (3) copies of proposals are to be submitted in a sealed envelope bearing the Offeror's company name, address, the proposal name, number and the date and time due and mailed or delivered to:

City of Winchester
Finance Dept. - Purchasing Division
15 N. Cameron Street, 1st Floor - Rouss City Hall
Winchester, VA 22601

BY: Michael Marzullo, CPPB
Purchasing Agent

PURPOSE:

The City of Winchester, Virginia (the City") is soliciting responses to this Request for Proposals ("RFP") from firms demonstrating the capability of meeting requirements set forth herein. This RFP requires the Respondent to propose a highly qualified and financially capable "Development Team" for the design, financing, construction and operation of a conference center (the "Project") in downtown Winchester at the current site of the Winchester Towers. The Development Team should include, but is not limited to, the Developer, architect, general contractor, equity owners, lender/underwriter, and for each hotel, the hotel "flag," and hotel operator (the "Operator"). The evaluation criteria will give favorable consideration to Development Teams with significant experience in developments similar in scope and quality to the proposed Project, and which also demonstrate that they have sufficient financial resources and experience to finance and complete the Project in accordance with a fixed schedule. It is contemplated that the successful developer will construct a conference/events center with at least 9,100sf of rentable meeting space, at least 100 onsite hotel rooms and secure a qualified operator that will manage both the conference/events center space and hotel rooms at 200 & 214 N. Cameron Street and the adjacent parking lots. However, the City welcomes and encourages creative proposals from development teams in response to this RFP that may or may not incorporate a conference/events center.

Through this RFP process, the City intends to select a Development Team and initially enter into a Memorandum of Understanding ("MOU") with the selected Respondent. The City also intends to enter into a subsequent negotiated Development Agreement with the Respondent to procure the development of the Project within an established development plan, schedule, and financing plan acceptable to the City. In addition, the selected Developer and Operator will be required to enter into a Room Block Agreement which reserves a certain number of rooms for potential conference center-related bookings for a specified period and makes the rooms available to convention center users at a to-be-negotiated competitive group discount rate. There should be a rate guarantee in all agreements when final rates are negotiated and agreed upon in contract. Industry accepted attrition clauses would be established and agreed upon and adhered to by the Operator in all contractual agreements.

OVERVIEW:

Tracing its history back to 1744 and incorporated in 1752, the City of Winchester ("City") is one of Virginia's most historically significant and culturally rich communities. The City is organized under the Council-Manager form of government. The governing body, the Common Council, is elected by voters under a ward system and consists of a nine-member body, including a Mayor who is elected at large. The City of Winchester has a growing permanent population of approximately 28,000 and is the only urban community in the Northern Shenandoah Valley. The estimated population density of the community is 3,043 people per square mile, but due to Winchester being the financial, employment, cultural and educational center of the region, the daytime population swells to more than 70,000 creating a population density of roughly 7,600 people per square mile. Winchester is 9.2 miles in size and is surrounded entirely by Frederick County. Winchester's proximity to Baltimore and Washington, D.C. allows the community to attract visitors from two of the largest metropolitan areas in the country due to the community's colorful cultural heritage.

The Winchester Common Council has made a substantial commitment to preserving Winchester's cultural heritage by promoting and facilitating the adaptive reuse of our many downtown historic buildings. It is through these efforts that Winchester's downtown possesses

a nationally renowned hotel, countless luxury apartments/condominiums and commercial properties.

The Common Council's Adopted 2013-2014 Strategic Plan directed City Staff to craft a conference center development strategy. The Economic Development Authority of the City of Winchester solicited the services of a consultant, and selected Strategic Advisory Group (SAG) to determine if Winchester's economy could support a conference center and determine a premier location for the facility. After receiving SAG's favorable opinion regarding the market support for the conference center (a copy of the report may be found on the City's website), it was determined the best site to house a conference center and recommended accompanying new hotel rooms would be 200 & 214 N. Cameron Street, also known as the Winchester Towers. Although this site is not our most historically significant downtown property, it provides unique advantages that no other structures in this area of Winchester could offer.

The Winchester Common Council acted on SAG's recommendation and purchased the Winchester Towers in 2014. Following the City's acquisition, a series of public information open houses were held to seek input from Winchester residents to determine the desired best use of the Winchester Towers. Although the Winchester Common Council desires the development of a conference/events center, they welcome and encourage creative proposals from development teams in response to this RFP that may or may not incorporate a conference/events center.

Through voicing their opinion at the events and through submissions of online comments, the public recommended the development of mixed use and conference/events center in the newly acquired Winchester Towers. The results of the public input process are listed below:

<u>November 19th</u>	
Conference/Events Center:	35
Mixed-use:	26
Other:	1
General Office Space:	1
Retail/Commercial:	7
Apartments/Condominiums:	7
<u>Higher Ed Classrooms/Housing:</u>	<u>0</u>
TOTAL:	77

<u>December 3rd</u>	
Conference/Events Center:	27
Mixed-use:	49
Other:	0
General Office Space:	2
Retail/Commercial:	1
Apartments/Condominiums:	0
<u>Higher Ed Classrooms/Housing:</u>	<u>2</u>
TOTAL:	81

<u>EVENT TOTAL</u>	
Conference/Events Center:	62
Mixed-use:	75
Other:	1
General Office Space:	3
Retail/Commercial:	8
Apartments/Condominiums:	7
<u>Higher Ed Classrooms/Housing:</u>	<u>2</u>
TOTAL:	158

These results were presented to the Winchester Common Council during the February 24, 2015 Work Session and the release of this draft RFP is scheduled to be approved during the March 10, 2015 Council Regular Meeting. The Common Council fully supports the use of a competitive RFP process to pursue the comprehensive redevelopment of 200 & 214 N. Cameron Street (Winchester Towers). It is desired that the redeveloped facility will accommodate a conference/events center and approximately 80 new hotel rooms, but creative proposals with alternative uses will also be accepted.

As indicated in the highlighted sections within the attached overhead maps, the City currently controls the Winchester Towers property and the adjacent parking lot that used to serve the structure. Adjacent to the Winchester Towers' parking lot are two additional parcels that are owned by a private entity (Glaize Development). The two parcels are used for one parking lot that serves Glaize Development's properties further north on Cameron Street. These privately owned parcels would need to be acquired in order to accommodate the City's desired redevelopment of the Winchester Towers. The parking lot owners have indicated a willingness to discuss the potential sale or lease of the property to the City or developer selected from as a result of this RFP. The City desires that the Developer negotiate with and include the owners of the parking lot in their RFP proposal responses.

Winchester Towers occupies 200 N. Cameron Street. The parcel is zoned B1, which accommodates the City's proposed renovated uses of the property. The 0.264-acre lot is improved by a four-story brick structure that was constructed in 1962. The parcel has approximately 120ft of frontage on N. Cameron Street and approximately 96ft of frontage on E. Piccadilly Street. The land and its improvements create a combined assessed value of \$934,700. As of this year, the property is eligible to receive federal and state historic tax credits.

Immediately adjacent and further north of Winchester Towers is another City-owned parcel. 214 N. Cameron Street is approximately 0.10 acres and is a parking lot that formerly served the Winchester Towers. This parcel has 46ft of frontage on N. Cameron Street and is 110ft in depth. The parcel has no additional frontage. The property is also zoned B1.

220 and 224 N. Cameron Street are located immediately adjacent to 214 N. Cameron Street. These privately owned parcels are also parking lots. 220 N. Cameron Street is 0.46 acres and has 20ft of frontage on N. Cameron Street. The depth of the parcel is 100ft and has no additional frontage on any streets. The property is zoned B1. 224 N. Cameron is owned by the same private entity and is also zoned B1. This parcel is 0.122 acres, has 52ft of frontage on N. Cameron Street and 102ft of frontage on Fairfax Lane.

Ownership or leasing of ALL the aforementioned properties is required to facilitate the City's desired reuse of the Winchester Towers.

The City has procured architectural services that have created a preliminary concept design for the conference/events center and new hotel rooms. Offerors should not infer that the City is committed to one design over another. Instead, the City encourages creative and diverse proposals. The proposed design utilizes the existing Winchester Towers and proposes the construction of an addition on the immediately adjacent parking lots. This proposed redevelopment utilizes federal and state historic tax credits. Please note, the City is familiar with historic tax credit projects and is aware of the limitations that are encountered during a historic rehabilitation project. The City is not requiring offers to preserve the existing Winchester Towers and does not discourage the demolition of the property.

The City intends to make various incentives available to the Developer. Also, Virginia Code Sections 58.1-3245 through 3245.5 allows localities to create tax increment financing (TIF) districts to stimulate private investment in development project area. Specifically, this will allow the City to collect certain taxes accrued from operation of the conference/events center, operation of the hotel rooms and any other tax generating business or property to pay the debt service related to the development of this project. It will be the Developer's responsibility to research applicable incentives and their expected value.

SCHEDULE OF EVENTS:

The schedule, as listed below, is the City's intended course of action for this project. The City will follow the schedule to the extent possible; however, the City reserves the right to change both the sequence and timing if deemed necessary.

Release of Draft RFP	February 24, 2015
Pre-Proposal Conference	March 30, 2015
Deadline for Receipt of Written Questions on Draft RFP	April 17, 2015
Deadline for Publication of Written Answers to Qualified Participants *	May 1, 2015
Issue final RFP	May 10, 2015
Proposals from Firms due	June 12, 2015
Proposal Review Process	June 2015
Interviews with Firms	TBD
Presentation to City Council.....	July 2015
Development Agreement Negotiation	August 2015
Deadline for Master Agreement Execution	September 2015

*The City may publish Answers more than once during the question and answer period.

QUESTIONS AND CLARIFICATIONS:

Questions and Clarifications may be addressed to:

City of Winchester
 Finance Dept. - Purchasing Division
 15 N. Cameron Street, 1st Floor - Rouss City Hall
 Winchester, VA 22601
 or
Michael.Marzullo@winchesterva.gov

Only questions answered by formal written Addenda will be binding; oral and other interpretations will be without legal effect.

11 Critical Things to Keep in Mind When Responding to an RFP for the City of Winchester

1. _____ **Read the *entire* document.** Note critical items such as: supplies/services required; submittal dates; number of copies required for submittal; contract requirements, if any (e.g. bonding and insurance requirements).
2. _____ **Note the Purchasing Manager's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the RFP and is an excellent source of information.
3. _____ **Attend the pre-proposal conference** if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the Project, or to notify the City of any ambiguities, inconsistencies, or errors in the RFP. This conference may be mandatory.
4. _____ **Take advantage of the "question and answer" period.** Submit your questions to the Purchasing Manager by the due date listed in the *Schedule of Events* and view the answers given in the formal "addenda" issued for the RFP. All addenda issued for an RFP will be distributed by email to the RFP participants.
5. _____ **Follow the format required in the RFP** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. _____ **Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Do not assume the City or Evaluation Committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the City. The responses are evaluated based solely on the information and materials provided in response to the RFP.
7. _____ **Use the forms provided**, e.g. cover page, reference questionnaire, etc.
8. _____ **Review the RFP document again** to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and complete. The copies are provided to the Evaluation Committee members and will be used to rank your submittal.
9. _____ **Submit your proposal on time.** Note all the dates and times listed in the *Schedule of Events* and within the document, and be sure to submit all required items on time. Late proposals will not be accepted.
11. _____ **Fill out and submit the enclosed information sheet.**

This checklist is provided for assistance only and should not be submitted with Offeror's proposal.

GENERAL SCOPE OF SERVICES:

The City seeks the development of a Conference Center, with a minimum of 9,100sf of rentable meeting space, at least 100 onsite hotel rooms and that the developer secures a qualified operator that will manage both the conference/events center space and hotel rooms at 200 & 214 N. Cameron Street and the adjacent parking lots. The City's broader goals are to leverage the economic benefits of the Conference Center to the City, add quality jobs for the City workforce, and increase tax revenues. Proposals offering development teams capable of constructing multiple related amenities (including shopping, restaurants, office, etc.) will be scored more favorably. This RFP does not expressly require any other specification, such as the mix and size of other functional or design elements however considerations should include banquet facilities, suites, meeting rooms, ballrooms, parking, connections to historic Old Town and a pool and fitness facilities. All hotels must meet the zoning criteria for the City set forth in the Zoning Ordinance of the City. By providing this flexibility, the City seeks to allow maximum possible creative latitude to the Development Teams.

The quality of design, materials, and furnishings of the new hotels must be commensurate with first-class (4-star or 5-star) conference hotels in comparable markets.

Although this RFP establishes targets for a certain scale and set of amenities for the Project, this is not intended to limit Respondents' creativity or ability to propose an alternative scale or set of features and amenities deemed to better suit the goals of the City through this Project. The City is open to proposals that offer distinctive features and amenities that go above and beyond those outlined above and put forward a finer class of development that would set the City apart from other destinations. The City reserves the right of final approval of the Project scale, features, and amenities.

The City seeks development proposals that create vibrant linkages and connections between downtown and the proposed hotel and conference center, all of which should enhance the entire City, especially the downtown area. The City expects competent, efficient management to operate and market the Project. It is strongly desired that the Operator selected to manage the property (a) have a prominent national sales office network and sales force positioned to primarily pursue conference and group-meeting demand, (b) have a series of conference center hotels in its portfolio in other U.S. conference destinations and (c) make a financial commitment to the Project.

The City is committed to providing greater opportunities for minority and women ownership in projects the City supports. To this end, the City strongly encourages respondents to indicate participation by minority and women owned firms, if any, in their proposals.

A. Development Concept for Private Development:

Describe Offeror's planned concept for the Winchester Towers and adjacent property. The City desires that RFP responses include the plans for acquiring or facilitating the acquisition of the adjacent private parking lot. The City's objectives include a proposed mixed-use development on the site that will include the proposed conference/events center, hotel rooms and, size permitting, additional commercial space. The proposal should provide a detailed response to the following:

1. Provide a design of a hotel that creates 100 new hotel rooms and a conference/events center facility that includes no less than 9,100 net square feet ("NSF") of function space and up to 18,750 NSF, equating to roughly 16,000 to 33,000 gross square feet ("GSF")

that will offer primarily one large, highly divisible space with complimentary smaller spaces. Space should have the capability to host a banquet function capable of seating approximately 600 to 1,200 guests. Size permitting; incorporating additional commercial space into the structure will be supported.

- a. Propose terms acceptable to the City and enter into:
 - (1) MOU
 - (2) Development Agreement, and
 - (3) Room Block Agreement
- b. Prepare and provide construction plan for the proposed facility.
- c. Develop and construct the proposed facility.
- d. Select an operator to market and manage the facility.
- e. Provide pricing and financing for the development acceptable to the City.
- f. Propose acceptable detailed project timeline.
- g. Include additional commercial space, as dictated by market demand. Please note, the City is aware that space limitations may prohibit the inclusion of additional uses within the property.
- h. Address potential parking issues that could arise from the usage of the facility
- i. Propose fee structure for services.
- j. It is the City's goal to attain the most distinctive, highest-quality and marketable Project possible. Proposals must include a financial analysis that details the assumptions used in the recommended development program. The financial analysis should include operating projections by the Operator and detail the assumptions and market support for such projections. In addition, a financing plan and project schedule must be submitted. Respondents may include such supplemental information as deemed necessary to explain the finance plan and its underlying assumptions.

END OF SCOPE OF SERVICES

PROPOSAL REQUIREMENTS:

A. FORM

Proposals shall be submitted in 8 1/2" by 11" size packaging, envelope or other method that uses a simple technique of fastening. Offers shall be typed and shall not include any unnecessarily elaborate or promotional material.

B. TABLE OF CONTENTS

Include a complete Table of Contents in your proposal.

C. PROJECT METHODOLOGY

Responses should describe the overall philosophy and a recommended development program for the Project to include a conference/events center and 100 new hotel rooms and/or commercial or residential space. The City welcomes any combination of uses, but the desired conference/events center space and hotel rooms are strongly recommended to be included. Also, please include information on the firm's operational philosophies regarding typical length of time projects are held after completion. Describe what assistance your proposal expects from City staff, if any.

D. STATEMENT OF QUALIFICATIONS & EXPERIENCE

RFP responses should include a cover letter providing an introduction to the entity responding to the RFP. An authorized representative on behalf of the Respondent shall sign the cover letter. The RFP should also include Project Team resumes and a Qualifications Statement containing the following information:

1. Experience and Qualifications of the Project Team: Each Respondent shall submit a brief explanation of why the proposed Project Team is qualified for this Project. The Respondent shall also describe its internal policies/procedures to assure a quality product and completion of tasks on schedule and within budget. Specifically, Respondents shall identify the following:

The person (or persons) who will:

- a. Be the primary point of contact between the City and the Project Team.
- b. Be responsible for ensuring that adequate personnel and other resources are made available for this Project.
- c. Be authorized to handle all contractual matters for the Project Team and coordinate all applications, submittals, and meetings related to the Project.
- d. Be ultimately responsible for the quality, costs and timeliness of the Project Team's performance.
- e. Be responsible for all development aspects of the Project. State the person's position and authority within the Project Team. Discuss previous projects similar in nature for which this person has performed a similar function. Discuss relevant experience, professional registrations, education, awards and other components of qualifications applicable to this Project.
- f. Be responsible for the operation and management of the Project and other team members.

- g. Identify other members of the Project Team that provide special expertise or will perform key tasks. Describe their anticipated roles and provide a brief statement of qualifications and experience for each.

2. Qualifications of the Respondent and Available Resources:

- a. Identify the legal structure of the Respondent and/or consortium of entities (together "Respondent"). Describe the business experience of the Respondent as relates to carrying out projects of this type.
- b. Describe the organizational structure of the Respondent, including roles. Describe the role of each entity comprising a partnership or consortium presenting a response with respect to carrying out the specifications and requirements of this RFP.
- c. Furnish examples of no more than five (5) private, public or government projects similar to the requirements of this RFP. However, public or government projects will be given greater consideration. Discuss each project and Respondent's success in achieving budgets and timelines. These examples should best illustrate the experience of the Respondent and the personnel being assigned to the Project described in this RFP. Provide contact information (name, title, email and phone) for references.
- d. Describe any management experience with projects of similar scale, including:
 - (1) Prior successful experience in alternative project delivery arrangements such as, but not limited to, performance based mechanisms and long-term partnership arrangements.
 - (2) Experience in managing and maximizing commercial opportunities in mixed-use projects that were profitable and created long-term value.
 - (3) Experience working with other proposed Project Team members in previous successful projects.
- e. Describe architectural and engineering design experience and capability to develop similar projects in an urban setting including working with all types of uses proposed in this Project.
- f. Describe construction experience including:
 - (1) The technical and financial capability to plan, construct and commission a large project and infrastructure with various components within a specified time frame.
 - (2) Prior experience of the construction members of the Project Team on projects of similar scale and complexity.
- g. Describe financing experience including:
 - (1) Prior experience in providing financing for similar projects within specified financial closing time parameters and ability to provide financing for the project.
 - (2) Ability and demonstrated experience with alternative financial delivery methods, including, but not limited to, taxable and tax-exempt financing or other creative financing mechanisms.
- h. Describe experience programming and operating mixed-use projects.

- i. Describe Respondent's procedure for developing, monitoring and maintaining Project budgets and schedules.
- j. Indicate the resources available to perform the work for this Project. Discuss how this Project would impact current and anticipated workload.
- k. Describe any notable expertise or other special capabilities of members of the Project Team that uniquely qualify the Respondent to accomplish the requirements and specifications of the RFP.
- l. Provide a brief conclusion supportive of the Project Team's information/qualifications, including any unique capabilities and/or qualifications of the Project Team that may be of special interest to the City.

E. FINANCIAL STRUCTURE/ FINANCIAL STABILITY

Provide a conceptual financial structure, including public and private sources of funding. The City welcomes financial proposals that maximize the value of the resulting developments and their positive economic and fiscal impacts on the conference/events center and the City as a whole. The Respondent should provide examples of any other publicly financed projects similar to those being proposed, if public financing is included as part or whole of the response.

Respondent must provide evidence of the firm's financial capability to undertake the Project. Evidence should cover the last five (5) years. If a syndicate of two or more entities is submitting your response, provide evidence for each firm that would be a part of the Project. Suitable documentation includes audited or reviewed financial statements, partnership or corporation tax returns, bank or financial institution commitments or other verifiable information demonstrating financial stability necessary to support a project of this size. Submission of this RFP provides consent to the City or its assigns to confirm the information provided in response to this question.

F. BONDS - Performance, Payment, and Other Bonds

1. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
 - a. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.
 - b. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Contractor shall promptly notify Owner and shall, within 20 days

after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraph H.

G. LICENSED Sureties and Insurers

1. **All bonds and insurance** required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the General Terms and Conditions.

H. GENERAL INFORMATION

1. **Proposed Uses:** Square footage estimates for all proposed structures and uses in the development. Describe why this development has a realistic opportunity to be successful.
2. **Site Plan:** Show the proposed private development areas, including building shape and orientation, location of parking lots (if needed) or, sidewalks, site amenities and proposed landscaped design, including hardscape and planting.
3. **Elevation Drawings:** Show proposed architectural character, including proposed materials, architectural treatment, fenestration, height, roof treatment and other details as appropriate to describe developer's conceptual design.
4. **Architectural Rendering(s):** Show proposed development on the parcel, including at a minimum, a bird's eye perspective of the entire site and other sketches/renderings as required describing the scheme.
5. **Project Team:** Identify all firms and Project team members anticipated to be involved. **Full acknowledgement/clarification of your Project team must be identified in the proposal.** Qualification Statements should be provided for each member of the team as described in the evaluation criteria. In addition, please address how Offeror proposes to address potential loss of key team members during the duration of this project should it occur.
6. **Conference/Events Center and Hotel Operator:** Offeror must secure an operator for the conference/events center and new hotel rooms. Qualification statements **MUST** be included for the selected operator.
7. **Pricing and Financing:** Include information about the firm's proposed price for development, and if applicable, purchase or leasing arrangement to acquire the land, relevant financing information and a signed Letter of Intent. The City is interested in selecting and negotiating with a firm having a realistic plan, fair financial proposal and demonstrated willingness to move forward diligently to bring the Project to completion.
8. The City is open to responses that consider all types of financing alternatives, including taxable or tax-exempt financing or other powers pursuant to State and Local Code. The City expects to receive fair market value for any land it sells or leases. Specifically this section should include:

- a. Price – Describe the firm’s proposed development price and any relevant business terms or schedules for payment. The proposed price of development should clearly indicate whether or not the Offeror would require the acquisition of the property or an alternative proposal such as a long-term lease. The proposed development price should also indicate any proposed use of City incentives.
9. Proposed project timeline: Provide detailed timeline for all phases of project through completion.
10. Describe pending litigation of relevance to fulfillment of a contract between your firm and the City.
11. Affirm that your firm's due diligence process has examined the potential relationship between the City and your firm from a conflict-of-interest standpoint and that all such real or potential conflicts-of-interest are fully disclosed.
12. If the Offeror's firm is a corporation, provide Corporate Charter Registration chartered with the State Corporation Commission..
13. Show standard insurance coverage carried by the primary Offeror.

I. COST OF SERVICES

The proposed pricing should clearly state the proposed cost and fee schedule for the services specified in the Scope of Services.

If applicable, note any costs that may be optional. The total price for the engagement should include all consultant expenses, including travel, incidentals and "other costs".

EVALUATION CRITERIA

The Proposal Review Team will review and evaluate each proposal based on the City code 21-26E and the following (The order of which does not indicate their weight or importance):

A. GENERAL COMPLIANCE WITH RFP REQUIREMENTS AND CLARITY OF RESPONSE

B. METHODOLOGY IN PROVIDING AND IMPLEMENTING SCOPE OF SERVICES

C. STATEMENT OF QUALIFICATIONS AND EXPERIENCE

1. Firm's general qualifications such as longevity, structure, services offered and location.
2. Firm's experience and performance on similar projects.
3. Qualifications and experience of similar municipal projects.
4. Principal consultant's and other assigned personnel skills, experience and performance.
5. Firm's availability and capability.

D. THE PROPOSAL'S ALIGNMENT WITH THE GOALS, VISIONS AND INTENT OF THE CITY'S DESIRE TO HAVE CONFERENCE/EVENTS CENTER AND 100 NEW HOTEL ROOMS

1. The divisibility of the conference/events center space.
2. The developer's ability to address potential parking issues that could arise from the usage of the facility.
3. The required experience and credentials of the Developer's selected operator.
4. The timeline submitted.
5. The capacity to accommodate the financial and other obligations related to this project.

E. COST OF PROJECT AND SERVICES

PROPOSAL EVALUATION PROCESS

All proposals will be evaluated against the criteria above, with priorities established by the City of Winchester. The City reserves the right to award the contract based on expertise, qualifications and knowledge for one Contractor.

In-person presentations and interviews may be conducted for the acceptable Offerors. Following in-person interviews, the City will evaluate Offeror based on the criteria stated in this RFP. The selection committee will make a recommendation to City Council of the Offeror that best meets the evaluation criteria. The Winchester Common Council will make the final selection. The City anticipates there will be financial and contract negotiations with a single potential Developer who serves as the lead of a team. The City may select another Offeror and begin negotiations should negotiations fail to yield a mutually acceptable contract.

OTHER: Ownership of all data, materials, and documentation originated and prepared for the City of Winchester pursuant to the RFP shall belong exclusively to the City of Winchester and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; provided, however, the Offeror must invoke the protections of Section 11-52 of the Virginia Public Procurement Act prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

GENERAL CONDITIONS AND PROVISIONS:

SUBMISSION OF PROPOSALS:

Sealed Proposals to provide a developer to assist the City of Winchester, VA in comprehensive redevelopment of 200 N. Cameron Street (Winchester Towers) and related services will be received by the Purchasing Agent until 2:00pm local time on June 12, 2015.

The right is reserved, as the interest of the City may require, to revise or amend the specifications prior to the date set for opening proposals; the opening date may be postponed if deemed necessary by the Finance Director. Such revisions and amendments, if any, will be

announced by written Addenda to the specifications. In addition, the City reserves the right to accept or reject any and all proposals, in whole or in part, and to waive any informality.

While the City of Winchester has every intention to make an award as a result of this solicitation, issuance of the RFP in no way constitutes a commitment by the City to designate a Developer or to award and execute a contract. Upon a determination such actions would be in its best interest, the City, in its sole discretion, reserves the right to:

1. Cancel or terminate this RFP at any time. A notice of cancellation will be issued in writing to the RFP participants. If the RFP is cancelled, the City will not reimburse any Offeror for the preparation of its proposal. Proposals may be returned upon request if unopened;
2. Reject any or all proposals received in response to this RFP, make a contract award based directly on the proposals received in the best interest of the City, in its sole discretion, or enter into further discussions with one (1) or more Offerors;
3. Make partial award or no award if it is in the best interest of the City to do so.

Responses to this RFP must be submitted in writing in hard copy (one (1) original marked "Original," four (4) copies marked "Copy" and one (1) scanned PDF copy saved to a CD or USB flash drive) no later than 2:00 PM on June 12, 2015. Responses received after this time and date will not be considered. Submissions must be contained in a sealed envelope marked: "RFP # 201423 FOR PROFESSIONAL SERVICES OF DEVELOPER TO ASSIST THE CITY OF WINCHESTER IN COMPREHENSIVE REDEVELOPMENT OF 200 NORTH CAMERON STREET (WINCHESTER TOWERS)," addressed to:

City of Winchester
Finance Department - Purchasing Division
15 North Cameron Street, 1st Floor - Rouss City Hall
Winchester, Virginia 22601

FINANCIAL RESOURCES:

The City shall be able to request of the Offerors satisfactory evidence that they have the necessary financial resources to accomplish the requirements of the RFP.

PROPOSAL DEVELOPMENT COST:

The costs for developing and delivering responses to this RFP and any subsequent presentations of the response as requested by the City are entirely the responsibility of the Offeror. The City is not liable for any expense incurred by the Offeror in the preparation and presentation of its response.

CONTRACT AGREEMENTS

The City anticipates entering into a contract with the Offeror, based upon the submittal judged by the City to be in the best interest of the City. This Request for Proposal does not constitute an offer or a contract with the respondent. A contract shall not exist until approved by the appropriate levels of authority in the City and properly executed.

CONTRACT TERM

The initial term of this contract shall be from the date of signing, and will end upon the Consultant's completion, and the City's acceptance, of all services described in this RFP.

LATE PROPOSALS:

It is the responsibility of the firm to insure the Purchasing Agent receives the submittal by the proposal due date and time. No submittals or modifications to submittals will be accepted after the proposal due date/time. Late Proposals will be returned to Offeror unopened, if the container is properly identified with the firm's return address.

CONTACT:

From the date this RFP is issued until a Project team is selected, Offerors shall not communicate with any staff or elected officials of the City regarding this procurement, except at the direction of Michael Marzullo, purchasing agent, for the City in charge of this solicitation ("Purchasing Manager"). Any unauthorized contact may disqualify the Offeror from further consideration. Contact information for the single point of contact is as follows:

Purchasing Manager:	Michael Marzullo, CPPB
Address:	15 N. Cameron Street Winchester, VA 22601
E-mail Address:	<u>Michael.Marzullo@winchesterva.gov</u>

ACCEPTANCE OR REJECTION OF PROPOSALS:

The City reserves the right to waive information in Proposals, to reject any or all Proposals after all have been examined or to accept the Proposal(s) of the Offeror(s) which it deems most favorable to the interests of the City in accordance with the VPPA.

REQUIRED GENERAL TERMS AND CONDITIONS

- A. APPLICABLE LAWS AND COURTS
- B. ANTI-DISCRIMINATION
- C. ETHICS IN PUBLIC CONTRACTING
- D. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- E. DEBARMENT STATUS
- F. ANTITRUST
- G. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS
- H. CLARIFICATION OF TERMS
- I. PAYMENT
- J. PRECEDENCE OF TERMS
- K. QUALIFICATIONS OF BIDDERS OR OFFERORS
- L. TESTING AND INSPECTION
- M. ASSIGNMENT OF CONTRACT
- N. SEVERABILITY
- O. CHANGES TO THE CONTRACT
- P. DEFAULT
- Q. TAXES
- R. USE OF BRAND NAMES
- S. TRANSPORTATION AND PACKAGING
- T. INSURANCE

- U. ANNOUNCEMENT OF AWARD
- V. DRUG-FREE WORKPLACE
- W. NONDISCRIMINATION OF CONTRACTORS
- X. AVAILABILITY OF FUNDS
- Y. LICENSES AND PERMITS
- Z. TERMINATION
- AA. HOLD HARMLESS INDEMNIFICATION
- BB. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION
- CC. BID PRICE CURRENCY

These General Terms and Conditions are required for all sealed and unsealed written or verbal solicitations issued by the City of Winchester for procurements that are subject to the Winchester City Code unless changed, deleted or revised by the City Attorney.

A. APPLICABLE LAWS AND COURTS:

This solicitation and any resulting contract shall be governed by the laws of the Commonwealth of Virginia. Any dispute arising from the performance or non-performance of this Agreement shall be resolved or otherwise litigated in the Circuit Court for the City of Winchester, Virginia or the Fourth Circuit Federal District Court in Harrisonburg, Virginia. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute following the Winchester City Code, Chapter 21-61. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

B. ANTI-DISCRIMINATION:

By submitting their (bids/proposals), (Bidders/Offerors) certify to the City of Winchester that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1 and 2 below apply:

1. During the performance of this contract, the contractor agrees as follows: The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- a. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - b. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

C. ETHICS IN PUBLIC CONTRACTING:

By submitting their (bids/proposals), (Bidders/Offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (Bidder/Offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

D. IMMIGRATION REFORM AND CONTROL ACT OF 1986:

By submitting their (bids/proposals), (Bidders/Offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

E. DEBARMENT STATUS:

By submitting their (bids/proposals), (Bidders/Offerors) certify that they are not currently debarred by the Federal Government, Commonwealth of Virginia, or by any City, Town or County from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

F. ANTITRUST:

By entering into a contract, the contractor conveys, sells, assigns, and transfers to the City of Winchester all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Winchester under said contract.

G. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS:

Failure to submit a bid/proposal on the official City form provided for that purpose may be a cause for rejection of the bid/proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the bid/proposal; however, the City of Winchester reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal.

H. CLARIFICATION OF TERMS:

If any prospective (Bidder/Offeror) has questions about the specifications or other

solicitation documents, the prospective (Bidder/Offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent, or designee.

I. PAYMENT:

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which department is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City of Winchester shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the City of Winchester for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the City of Winchester, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City of Winchester.

J. PRECEDENCE OF TERMS:

The following General Terms and Conditions APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply and take precedence.

The City's procurement, Contractor's response and written negotiation summary shall form part of the Contract. In the case of conflicts, discrepancies, errors or omissions among the City's procurement, the Contractor's response, written negotiation summary and the main body of the Contract, the documents and amendments to them shall take precedence and govern in the following order:

1. Contract
2. Negotiation Summary
3. City's Procurement Document(s)
4. Contractor's Response
5. Other Documents

K. QUALIFICATIONS OF (BIDDERS/OFFERORS):

The City of Winchester may make such reasonable investigations as deemed proper and necessary to determine the ability of the (Bidder/Offeror) to perform the services/furnish the goods and the (Bidder/Offeror) shall furnish to the City of Winchester all such information and data for this purpose as may be requested. The City of Winchester reserves the right to inspect (Bidder's/Offeror's) physical facilities prior to award to satisfy questions regarding the (Bidder's/Offeror's) capabilities. The City of Winchester further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (Bidder/Offeror) fails to satisfy the City of Winchester that such (Bidder/Offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

L. TESTING AND INSPECTION:

The City of Winchester reserves the right to conduct any test/inspection it may deem

advisable to assure goods and services conform to the specifications.

M. ASSIGNMENT OF CONTRACT:

A contract shall not be assignable by the contractor in whole or in part without the written consent of the City of Winchester.

N. SEVERABILITY OF CONTRACT:

In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

O. CHANGES TO THE CONTRACT:

1. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or ten thousand dollars (\$10,000), whichever is greater, without the advance written approval of the City Council. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an Offeror from the consequences of an error in its bid or offer (Winchester City Code 21-44).

2. Changes can be made to the contract in any of the following ways:

- a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
- b. The City of Winchester may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the City of Winchester a credit for any savings. Said compensation shall be determined by one of the following methods:

(1) By mutual agreement between the parties in writing; or

(2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the City of Winchester's right to audit the contractor's records and/or to determine the correct number of units independently; or

(3) By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The

contractor shall present the City of Winchester with all vouchers and records of expenses incurred and savings realized. The City of Winchester shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the City of Winchester within thirty (30) days from the date of receipt of the written order from the City of Winchester. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the City of Winchester Code. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the City of Winchester or with the performance of the contract generally.

P. DEFAULT:

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City of Winchester, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City of Winchester may have.

Q. TAXES:

Sales to the City of Winchester are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.

R. USE OF BRAND NAMES:

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (Bidders/Offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (Bidder/Offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City of Winchester to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (Bidder/Offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

S. TRANSPORTATION AND PACKAGING:

By submitting their (bids/proposals), all (Bidders/Offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the

outside with purchase order number, commodity description, and quantity.

T. INSURANCE:

By signing and submitting a bid or proposal under this solicitation, the Bidder or Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Bidder or Offeror further certifies that the contractor and any subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the City of Winchester of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract. The insurer must have an A.M. Best rating of A- or better.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The City of Winchester must be named as an additional insured and so endorsed on the policy by the insurer. A notation on the certificate of insurance is not sufficient.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Cont.	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$1,925,000 per occurrence, \$3,000,000 aggregate

Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

U. ANNOUNCEMENT OF AWARD:

Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the Purchasing Agent will publicly post such notice on the City of Winchester's web site (www.winchesterva.gov/purchasing) for a minimum of 10 days.

V. DRUG-FREE WORKPLACE:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. NONDISCRIMINATION OF CONTRACTORS:

A Bidder, Offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the Bidder or Offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

U. AVAILABILITY OF FUNDS:

In the event that funds are not appropriated for this Contract for any City fiscal year, following the City's current year, the Contract shall terminate automatically as of the last day for which funds were appropriated without the City providing written notice to the Contractor prior to the date of termination. The City shall not consider termination of the Contract pursuant to this section default. Upon such termination, the City shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.

V. LICENSES AND PERMITS:

Contractors will be responsible for all licenses and permits, if required. Any person, firm, or corporation responding to the City's procurement which is required to have a current and valid City of Winchester business license and, in fact, does not, will not be considered a "responsive Bidder" as such term is defined by the Code of Virginia §2.2-4301, as amended. Any bid received from such an entity may be rejected, at the City's sole option, for that reason alone. In addition, the successful Bidder or Offeror will be required to produce affirmative evidence, satisfactory to the Purchasing Agent, or designee that it has such a license, or is not required to have such a license, prior to approval and execution of any contract to perform the work herein described.

W. TERMINATION:

1. Termination for Convenience: The City of Winchester may terminate a contract, in whole or in part, whenever the City of Winchester determines that such termination is in the best interest of the City of Winchester, without showing cause, upon giving ten (10) days written notice to the vendor.
2. Termination for Default: When the vendor has not performed or has unsatisfactorily performed the contract, the City of Winchester may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the City of Winchester. The Vendor will be paid for work satisfactorily performed prior to termination.

X. HOLD HARMLESS:

Bids/Proposal shall provide that during the term of the contract, including warranty period, for the successful Bidder/Offeror indemnifying, defending, and holding harmless the City, its officers, employees, agent and representatives thereof from all suits, actions, claims of any kind (including claims for attorney's fees) brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The vendor agrees that this clause shall include claims involving infringement of patent or copyrights.

Y. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:

The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally

identifiably information as parts of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information.

Contractors shall allow the City to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

Z. BID PRICE CURRENCY:

Prices are to be stated in US dollars unless otherwise specified in the solicitation.

AA. ROYALTIES AND PATENTS

The Contract Sum includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and save harmless the City, its officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under this Contract, and shall indemnify the City, its officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work.

BB. NO CLAIM AGAINST CITY OFFICIALS:

The Contractor shall make no claim whatsoever against any elected official, appointed official, authorized representative or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

It is the responsibility of the Offeror to inquire about and clarify any requirement of the RFP that is not understood. **NO VERBAL INQUIRIES ABOUT THIS RFP WILL BE ACCEPTED.** All inquiries concerning this RFP must be submitted in writing to:

**Michael Marzullo, CPPB
Purchasing Agent
Rouss City Hall
15 N. Cameron Street
Winchester, Virginia 22601
FAX: 540-723-0238**

All written inquiries must be received by the issuing office on or before 2:00 PM, on April 17, 2015. The City of Winchester is under no obligation to respond to inquiries received after this date.

RFP# 201423

HOLD HARMLESS AGREEMENT

This agreement between the City of Winchester, and _____ shall, for the term of the contract, including warranty period, indemnify, defend and hold harmless the City, its officers, employees, agents and representatives thereof from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of any rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. Contractor agrees that this clause shall include claims involving infringement of patent or copyrights.

Contractor: _____

Address: _____

Name & Title: _____

Signature: _____

Date: _____

APPENDIX A

**SCOPE OF SERVICES
AUTHORIZATION TO PROCEED AGREEMENT
RFP #201423**

DEVELOPER TO ASSIST THE CITY OF WINCHESTER IN COMPREHENSIVE REDEVELOPMENT OF
200 N. CAMERON STREET (WINCHESTER TOWERS)

SERVICES TO BE PROVIDED:

DURATION OF PROJECT: _____ TO _____
START DATE END DATE

COST OF SERVICES:

TOTAL COST: _____

INCORPORATED DOCUMENTS:

The following documents are hereby incorporated by reference into this Scope of Services as if set out in full:

1. Winchester City Code - Chapter 21: Purchases, as amended.
2. Virginia Public Procurement Act, as amended.
3. RFP #201423, as amended.
4. Contract number 201423, as amended.
5. Contractor's fee schedule, insurance, and hold harmless agreement, herein.

CONTRACTOR:

CITY OF WINCHESTER:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

INFORMATION PAGE

RFP #201423

THE FIRM OF: _____

Address: _____

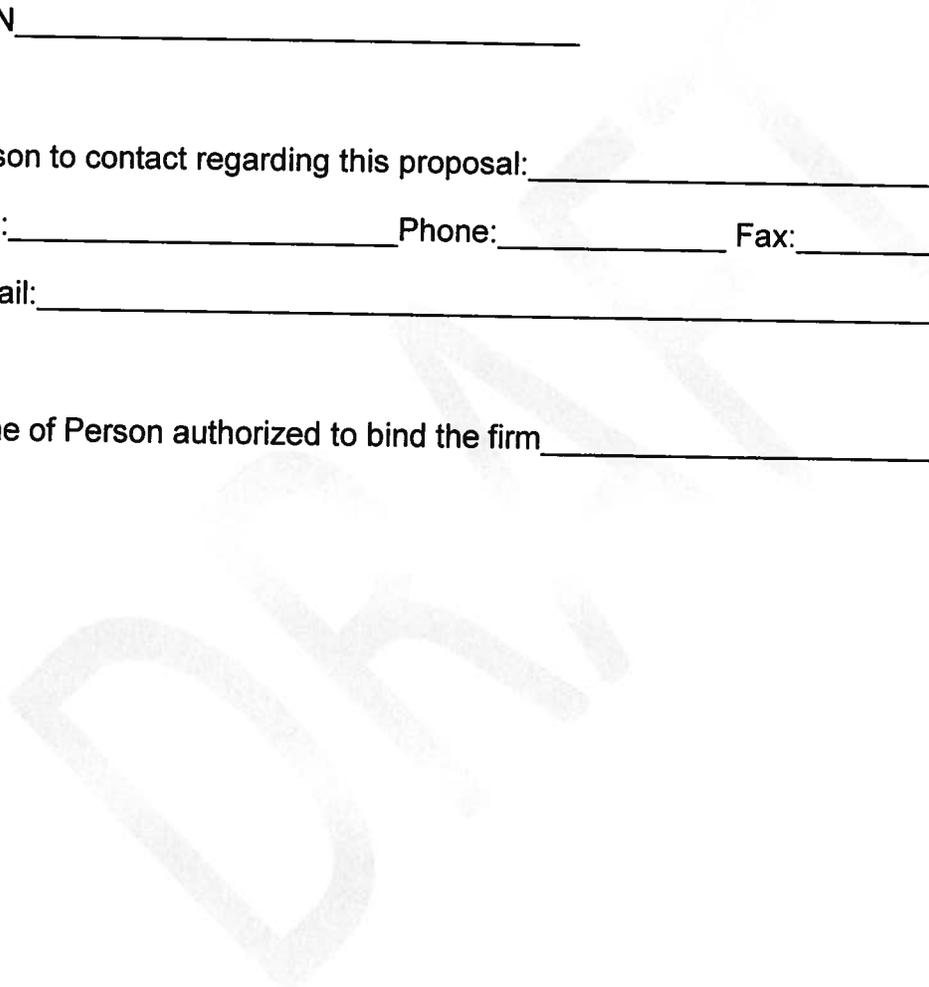
FEIN _____

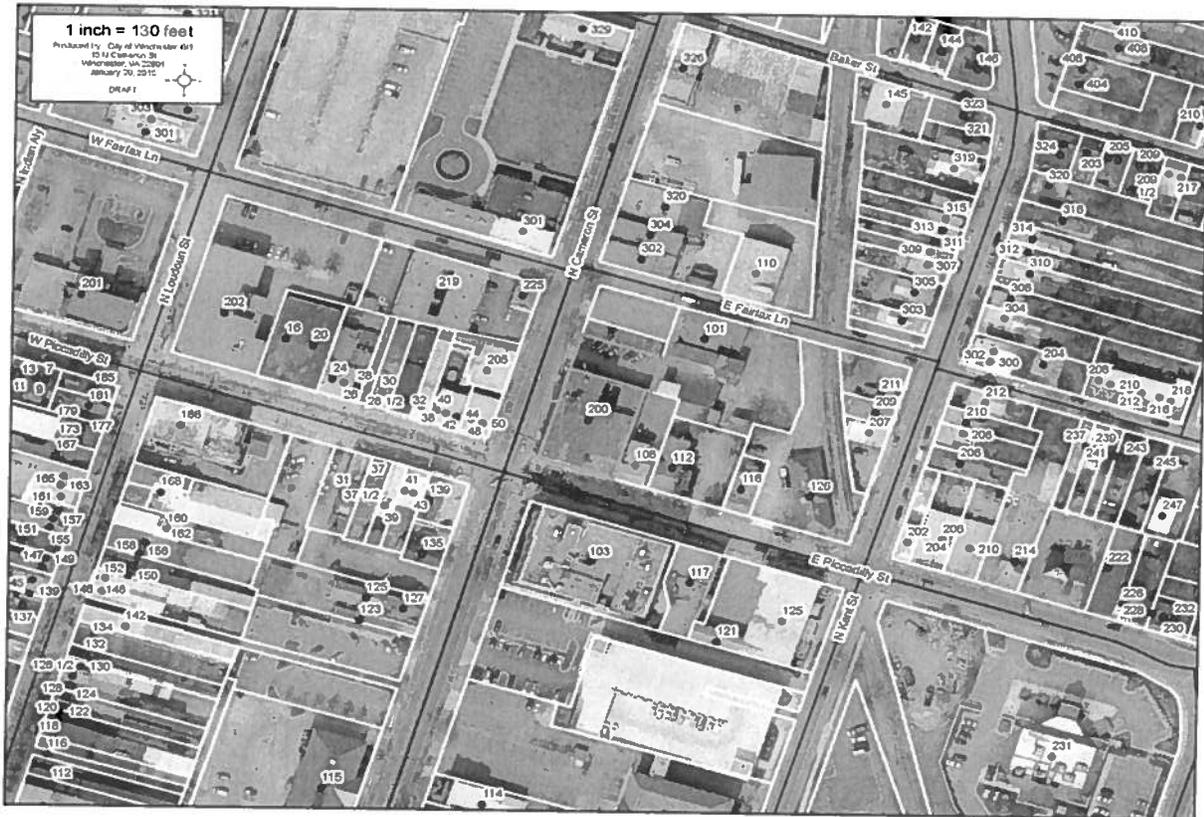
Person to contact regarding this proposal: _____

Title: _____ Phone: _____ Fax: _____

E-mail: _____

Name of Person authorized to bind the firm _____





2015-05

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 02/24/2015 **CUT OFF DATE:** _____

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** ___

ITEM TITLE: Amendments to City Code Regarding Local Meals and Admissions Excise Taxes

STAFF RECOMMENDATION: Approve

PUBLIC NOTICE AND HEARING:

ADVISORY BOARD RECOMMENDATION:

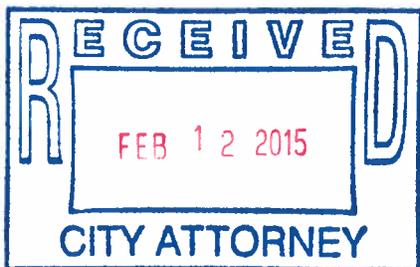
FUNDING DATA:

INSURANCE:

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<i>JB</i>		2/12/15
2. Treasurer	<i>JB</i>		2/12/15
3. _____			
4. _____			
5. City Attorney	<i>W</i>		2/12/2015
6. City Manager	<i>HT</i>		17 Feb 2015
7. Clerk of Council			

Initiating Department Director's Signature: *Chris T. Bell* Date: 02/12/2015



APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Ann T. Burkholder, Commissioner of the Revenue
Date: February 12, 2015
Re: Changes to City Code regarding Excise Taxes for Meals and Admissions

THE ISSUE: Updates to City Code in compliance with applicable State Code, and recommended Code amendments specifically in regard to exemption of non-profit organizations from certain local meals and admissions taxes.

RELATIONSHIP TO STRATEGIC PLAN: Recognizing the value that non-profit organizations bring to the City's overall well-being relates to each of the City's stated goals.

BACKGROUND: Historically non-profit entities within the City have not been held liable for meals and admissions taxes for a variety of reasons, including varying interpretations of existing code, the concern that the cost of resources required for such assessment may outweigh the resulting revenue received, and a desire to generate good will with nonprofit organizations. Many local nonprofits provide services on a volunteer basis which reduce the need for corresponding City services while others provide social or intellectual benefits. Finally, many of these organizations pay a fee to local restaurants or hotels to host their events. Deterring such activity would have a negative economic impact on these businesses.

Meals Tax: A recent update to Code of Virginia §58.1-3840 has been incorporated in corresponding City Code. Of note, this code exempts most nonprofits from meals taxes on meals sold as fundraising activity, up to a certain limit. The intent is to minimize the competitive advantage over for-profit restaurants which such activity becomes frequent.

Admissions Tax: Most notably is the proposed exemption for IRS 501(c) organizations, provided that the proceeds of the event are directly solely toward the mission of the organization.

Other changes are to improve consistency of administration amongst the various excise taxes and for compliance with corresponding Code of Virginia sections.

Fiscal Impact: There is minimal fiscal impact in adopting these changes as there is no loss of existing revenue, and a potentially high cost of collecting revenue were the existing Code interpreted in the strictest sense.

RECOMMENDATION: It is the recommendation of the Commissioner of the Revenue that City Council adopt the proposed amendments to City Code.

ARTICLE VI. MEALS TAX

SECTION 27-70. TAX ON MEALS PURCHASED FROM FOOD ESTABLISHMENTS.

There is hereby imposed and levied by the City of Winchester, Virginia, a tax, as more fully described hereafter in Section 27-72, on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, whether consumed on the premises or not. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

State Law Reference-- Code of Virginia, §58.1-3840.

SECTION 27-71. DEFINITIONS.

For the purposes of this section, the following words or phrases shall have the meanings respectively ascribed to them by this article.

- (a) CATERER shall mean a person who furnishes meals on the premises of another for compensation.
- (b) FOOD shall mean all food, beverages, or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time, or place of service.
- (c) FOOD ESTABLISHMENT shall mean any place in or from which food or food products are prepared, packaged, sold, or distributed in the City of Winchester, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.
- (d) MEAL shall mean any prepared food and/or drink, including alcoholic beverages, offered or held out for sale by a food establishment for the purpose of being consumed by an individual or group of individuals at one time to satisfy the appetite, and which is ready for human consumption. All such food and/or drink shall be included, unless hereinafter specifically exempted, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, dinner, supper, or by some other name, and without regard to the manner, time or place of service. By way of illustration, and without limitation, the term "meal" shall include individual donuts or other pastries, individual fountain drinks, individual cold soft drinks, a salad or food bar in a food or other store, individual sandwiches, prepared pizzas or slices of pizza,

and individual servings of potato chips or other snack foods.

- (e) PURCHASER shall mean any person who purchases a meal.
- (f) SALE shall mean the final sale to the ultimate consumer.
- (g) SELLER shall mean any restaurant or caterer selling meals, or the person operating such business.

(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 024-91, 6-11-91; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

SECTION 27-72. LEVY AND RATE.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, there is hereby levied and imposed on the purchaser of every meal served, sold, or delivered in the City by a food establishment or a caterer a tax equivalent to percent (6%) of the amount paid for the meal, whether consumed on the premises or not, with one-half cent (\$0.005) or more being treated as one cent (\$0.01).

This situs of taxation shall be the City, county or town in which sales are made, namely the locality in which each place of business is located without regard to the locality of delivery or possible use by the purchaser. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 013-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01; Ord. No. 015-2004, 4-28-04; Ord. No. 2014-17, 6-10-14)

(Note: The effective date of this Ordinance shall be July 1, 2014)

State Law Reference-- Code of Virginia, §58.1-3841.

SECTION 27-73. PAYMENT AND COLLECTION OF TAX.

In every case the tax shall be collected by the seller and paid by the purchaser at the time the charge for the meal becomes due and payable, whether payment is to be made in cash, check or on credit by means of a credit card or otherwise, ~~provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such tax.~~ The seller shall add the tax to the amount charged for the meal, and shall pay the taxes collected to the City as provided by Section 27-75.

(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

SECTION 27-74. COLLECTION IN TRUST FOR THE CITY.

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them, until remitted to the City as provided by Section 27-75.
(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-75. REPORTS AND REMITTANCES.

The Commissioner may require all prospective sellers of meals licensed to do business in the City to register for collection of tax imposed by this article. Every seller shall make a report for each calendar month, showing the amount of charges collected for meals and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the Commissioner and shall be signed by the seller. They shall be delivered to the Commissioner on or before the twentieth (20th) day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the Treasurer. The Commissioner shall promptly transmit all taxes received to the Treasurer.

(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-76. PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article, and make timely report and remittance thereof, or if the Commissioner has reasonable cause to believe that an erroneous statement has been filed, the Commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the City, and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the Commissioner .

As soon as the Commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report, or remit such tax, the Commissioner shall proceed to determine and assess against such person the tax, penalty and interest provided in this chapter, and shall notify the person by certified or registered mail sent to his or her last known address of the amount of such tax, penalty, and interest. The total amount thereof shall be payable ten (10) days after the date such notice is sent. (Ord. No. 044-88, 11-15-88; Ord. No. 017- 92, 11-10-92)

SECTION 27-77. PRESERVATION OF RECORDS.

It shall be the duty of every person liable for the collection and remittance of the taxes imposed by this article to keep and preserve for a period of two years, records showing all purchases taxable under this article, the amount charged the purchaser for each purchase,

the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article. The Commissioner shall have the power to examine such records at reasonable times and without reasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts of all or any parts thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-78. DUTY OF PERSON GOING OUT OF BUSINESS.

Whenever any person required to collect and remit to the City any tax imposed by this article, shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable and the person shall immediately make a report and remittance thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-79. ADVERTISING PAYMENT OR ABSORPTION OF TAX; PROHIBITED.

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this article, will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the tax. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-80. TIPS AND SERVICE CHARGES.

~~Where a purchaser provides a tip for an employee of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account; provided, in the latter case, the full amount of the tip is turned over to the employee by the seller. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92) No such taxes on meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales prices of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price.~~

SECTION 27-81. EXEMPTIONS.

The following classes of meals shall not be subject to tax under this article.

- (a) Meals furnished by restaurants to employees as part of their compensation when no charge is made to the employee.
- (b) Meals sold by day care centers, public or private elementary or secondary schools, or food sold by any college or university to their students or employees.

- (c) Meals purchased by agencies of federal, state or local governments or by officers or employees thereof while on official business.
- (d) Meals furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or handicapped, or homes for battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
- (e) Meals furnished by a non-profit charitable organization to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
- ~~(e)~~(f) Meals furnished by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
- ~~(f)~~(g) Meals furnished by a college fraternity or sorority to its members.
- ~~(h)~~ Meals sold by a non-profit educational, religious, charitable or benevolent organization on an occasional basis as a fundraising activity. volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations; the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes.
- (i) Meals served by churches to their members as a regular part of their religious observances.
- (j) Meals served by age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.
- ~~(g)~~(k) Meals sold by a blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purposes.
- ~~(h)~~(l) Meals or food sold from vending machines.
- ~~(i)~~(m) Any other sale of a meal which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or any administrative rule or regulation issued pursuant thereto.
- ~~(j)~~(n) Non-alcoholic beverages, popcorn, candy, and similar confections sold in theaters.

~~(k)~~(o) The following items shall not be subject to the tax created by this ordinance when served exclusively for off-premises consumption:

- 1) Factory prepackaged candy, gum, nuts, and other items of essentially the same nature.
 - 2) Factory prepackaged snack foods such as donuts, ice cream, crackers, chips, cookies, and items of essentially the same nature.
 - 3) Food sold in bulk. For purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary, and usual portion sold for premises consumption (e.g., a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.
 - 4) Alcoholic and non-alcoholic beverages sold in factory-sealed containers.
 - 5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
 - 6) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C., Section 2012, as amended, EXCEPT hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items, whether or not purchased for immediate consumption, are excluded from the said definition of food in the federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory sealed beverages.
- (l) A grocery store, supermarket, or convenience store shall not be subject to the tax created by this ordinance EXCEPT for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02/13/2001; Ord. No. 2011-21, 10-11-11)

SECTION 27-82. ENFORCEMENT.

- (a) It shall be the duty of the Commissioner to ascertain the name of every person operating a restaurant in the City liable for the collection of the tax imposed by this article who fails, refuses, or neglects to collect such tax or to make the reports and remittance required by this article. The Commissioner may have a summons issued for such person, and the summons may be served upon such person by any city law enforcement officer in the manner provided by law. One return of the original summons shall be made returnable to the General District Court for the City of Winchester.
- (b) In the event the purchaser of any meal refuses to pay the tax imposed by this article,

the seller may call upon the police department for assistance and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the General District Court as provided by law. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-21, 10-11-11)

SECTION 27-83. VIOLATIONS.

Any person violating or failing to comply with any of the provisions of this article, shall, upon conviction thereof, be guilty of a Class 3 misdemeanor punishable as provided in Section 1-11 of this code. Convictions shall not relieve any person from the payment, collection, or remittance of the tax as provided in Article IX. Each violation or failure shall be a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-84. COMMISSIONER OF THE REVENUE; OTHER POWERS AND DUTIES.

It shall be the duty of the Commissioner to ascertain the name of every person operating a business in the City liable for the collection of the tax levied in this article.

The Commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the Commissioner's office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article.

SECTIONS 27-845 - 27-89. RESERVED.

ARTICLE XIV. ADMISSIONS TAX

SECTION 27-180. DEFINITIONS.

The following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) **ADMISSION CHARGE.** "Admission charge" means the charge made for admission to any amusement or entertainment, exclusive of any federal tax thereon, including a charge made for season tickets.
- (b) **PLACE OF AMUSEMENT OR ENTERTAINMENT.** "Place of amusement or entertainment" means any place in the City wherein or whereat any of the following, or amusements or entertainment's similar to the following, are located, conducted, performed, exhibited and operated: Circuses, carnivals, menageries, amusement parks, moving picture shows, fairs, shows and exhibitions of all kinds; dances; basketball, football, wrestling, boxing and sports of all kinds; swimming pools, bowling alleys, roller rinks, golf courses, miniature golf, charter boats, drift boats, party boats, party boats solely operated within the corporate limits and within one mile into the adjacent waters, and other such things of a similar nature; concerts, theatrical, vaudeville, dramatic, operatic and musical performances and performances similar thereto; lectures, talks, literary readings, and performances similar thereto; such attractions as merry-go-rounds, Ferris wheels, roller coasters, leap-the-dips and the like, and all other public amusements, performances and exhibitions not specifically named herein; and any roof garden, cabaret or other similar place furnishing a public performance for profit, which shall include any room in any hotel, restaurant, hall or other public place where music and dancing privileges or any other entertainment is offered the patron in connection with serving or selling of food, refreshments or merchandise. A performance shall be regarded as being furnished for profit for purposes of this article even though the charge made for admission, refreshment service or merchandise is not increased by reason of the furnishing of such performance. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law References--Admissions tax, Code of Virginia, §§ 58.1-3817, 58.1-3840.

SECTION 27-181. LEVIED; AMOUNT.

There is hereby imposed and levied a tax of five percent (5%) of the amount paid for admission to any place of amusement or entertainment, to be paid by every person who pays an admission charge to such place. Except as otherwise provided in Section 27-~~322182~~, if any person is admitted free to any place of amusement or entertainment at any time when an admission charge is made to other persons, an equivalent tax is hereby levied and shall be collected based on the price charged to such other persons of the same class for the same or similar accommodations, such tax to be paid by the person so admitted. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-182. ~~EXCEPTION~~EXEMPTION FOR CERTAIN FREE ADMISSIONS.

No tax shall be payable under this article by the following, if admitted to any place of amusement or entertainment free:

- (a) Bona fide officers and employees of such place. The word "officers" shall include any director, if such place is operated by a corporation.
- (b) Any federal, state, city, county or city official or employee on official business.
- (c) Any person whose admission to such place is required for the performance of some duty to or work for the proprietor thereof.
- (d) Any newspaper reporter, photographer, telegrapher, radio announcer or person performing a similar vocation who is admitted for the performance of special duties in connection with any event and whose special duties are the sole reason for his presence.
- (e) Children twelve (12) years of age and under.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-183. ~~EXCEPTION~~EXEMPTION FOR CERTAIN EVENTS.

- (a) Notwithstanding any other section of this article, there shall be no tax payable on charges made for participating in participatory sports such as, but not limited to: Golf courses, tennis, bowling, swimming, and roller skating. However, admission charges for observing these sports shall be subject to the tax.
- (b) No tax shall be payable on charges for admissions to the following categories of events:
 - 1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.
 - 2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.
 - 3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.
 - 4. Admissions charged for attendance at events sponsored by ~~any governmental agency~~ a tax-exempt nonprofit organization classified by the United States Internal Revenue Code as a 501(c)

organization, provided that the purpose of the event is solely to raise money for the stated mission of that organization.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)
State Law Reference-- Code of Virginia, §58.1-3817.

SECTION 27-184. COMMISSIONER OF THE REVENUE; OTHER POWERS AND DUTIES. REPEALED.

(Ord. No. 2011-21, 10-11-11)

It shall be the duty of the Commissioner to ascertain the name of every person operating a business in the City liable for the collection of the tax levied in this article.

The Commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the Commissioner's office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article.

SECTION 27-185. COLLECTION.

Every person receiving any payment for admission to any place of amusement or entertainment or for refreshments, service or merchandise on which a tax is levied under this article shall collect the amount of tax imposed by this article from the person making the payment, at the time of the payment of such admission or purchase, or from the person admitted free, at the time of such admission. If tickets or cards of admission are issued, the tax shall be collected at the time for the issuance of such tickets or cards. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect the same until remitted as provided in this article.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-186. REPORTS AND REMITTANCES GENERALLY.

- (a) The person collecting any tax as provided in Section 27-185 shall make out a report, upon such forms and setting forth such information as the Commissioner may prescribe or require, showing the amount of admission charges collected, exclusive of the federal tax thereon, and the tax from the admission or purchases for which he is liable, and shall sign and deliver such report to the Commissioner with a remittance of such tax. Such reports and remittances shall be made on or before the twentieth day of each month covering the amount of tax collected during the preceding month.
- (b) If the remittance under this section is by check or money order, such check or money order shall be payable to the Treasurer.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-187. REPORTS, REMITTANCES AND DEPOSITS BY TEMPORARY OR TRANSIENT PLACES OF AMUSEMENT OR ENTERTAINMENT.

- (a) Whenever any place of amusement or entertainment of a temporary or transitory nature makes an admission charge which is subject to the tax levied by this article, or does not make such an admission charge but does sell refreshments, services or merchandise which is subject to the tax levied by this article, the Commissioner may require the report and remittance of the requisite tax to be made on the day following the conclusion of a series of performances or exhibitions, or at such other reasonable time or times as he shall determine. Failure to comply with any such requirement of the Commissioner as to the report and remittance of the tax so required shall be unlawful.
- (b) Before any temporary or transient place of amusement or entertainment mentioned in subsection (a) above shall begin operation and before any license shall be issued therefor, if a license is required, the person operating the same shall deposit with the Treasurer a sum of money, to be determined by the Treasurer, sufficient to cover the tax required to be collected by such person under the provisions of the article, as security for the collection and payment to the City of such tax. At the conclusion of such temporary or transient operation in the City, such person shall file with the Commissioner the report required by this article and pay such tax collected to the City. Upon the filing of such report and the making of such payment, the Treasurer shall refund such deposit. Should any such person fail to file such report and pay such amount of tax collected within five (5) days from the termination of the operation of such amusement or entertainment, the Commissioner may thereupon assess such person with such tax at the amount of such deposit and the Treasurer shall retain such deposit in full payment of the tax collected by and due the City by such person.
(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-188. COLLECTOR'S RECORDS.

It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this article to keep and to preserve, for a period of two (2) years, such suitable records as may be necessary to determine the amount of such tax he may have been responsible for collecting and paying to the City. The Commissioner may inspect such records at all reasonable times.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-189. DUTY OF COLLECTOR GOING OUT OR DISPOSING OF BUSINESS.

Whenever any person required to collect and pay to the City a tax under this article shall quit

business or otherwise dispose of his business, any tax payable under this article to the City shall become immediately due and payable and such person shall immediately make a report and pay the tax due.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-190. PROCEDURE UPON FAILURE TO COLLECT, REPORT, ETC., TAXES.

- (a) If any person, whose duty it is so to do, shall fail or refuse to collect the tax imposed under the article and to make, within the time provided in this article, any report and remittance required by this article, the Commissioner shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such person the tax and penalties provided for by this article and shall notify such person, by registered mail, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten (10) days from the date of such notice.
- (b) It shall be the duty of the Commissioner to ascertain the name of every person operating a place of amusement or entertainment in the City, liable for the collection of the tax levied by this article, who fails, refuses or neglects to collect the tax or to make, within the time provided by this article, the reports or remittances required in this article. The Commissioner may have a summons issued for such person in the manner provided by law and shall make one return of the original to the general district court of the City.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-191. VIOLATIONS OF ARTICLE.

Any person violating or failing to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Each such violation or failure to pay shall constitute a separate offense, but conviction thereof shall not relieve any person from the payment, collection or remittance of the taxes, penalties and interest provided for in this chapter.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

This ordinance will be effective as of June 1, 1991

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 2/24/15, **CUT OFF DATE:** 2/18/15
3/10/15 (1st Reading) 3/24/15 (2nd Reading/Public Hearing)

RESOLUTION **ORDINANCE** X **PUBLIC HEARING** X

ITEM TITLE:

TA-14-770 - AN ORDINANCE TO AMEND AND REENACT SECTION 18-8-7 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO FREESTANDING AND BUILDING MOUNTED SIGNS PERMITTED IN THE RO-1 DISTRICT. (Proposal will increase permanent signage allowances for properties in the RO-1 district which obtained a CUP for increased building footprint.)

STAFF RECOMMENDATION:

Adopt the text amendment.

PUBLIC NOTICE AND HEARING:

Public hearing required with 2nd reading on 3/24/2015.

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously forwarded with favorable recommendation.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Planning Director			<u>2/18/15</u>
2. City Attorney			<u>2/18/2015</u>
3. City Manager			<u>18 FEB 2015</u>
4. Clerk of Council			

Initiating Department Director's Signature: 2/18/15
(Zoning and Inspections)



APPROVED AS TO FORM:
 2/18/2015
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections
Date: February 24, 2015
Re: TA-14-770 - AN ORDINANCE TO AMEND AND REENACT SECTION 18-8-7 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO FREESTANDING AND BUILDING MOUNTED SIGNS PERMITTED IN THE RO-1 DISTRICT. *(Proposal will increase permanent signage allowances for properties in the RO-1 district which obtained a CUP for increased building footprint.)*

THE ISSUE:

This is a privately sponsored text amendment to modify permanent signage opportunities for properties in the Residential Office (RO-1) district.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2 – Create a More Livable City for All, Objective 3 – Manage future growth, development and redevelopment consistent with City’s vision, comprehensive plan and development standards and policies

BACKGROUND:

Specifically the applicant is proposing to increase the permanent building mounted and freestanding sign allowances for properties that obtained a conditional use permit for building footprint in the Corridor Enhancement (CE) district (Section 14.2-6.10). Presently properties are limited to one building mounted sign of 10 square feet and one freestanding sign of up to 25 square feet. The proposal is to increase the allowance for qualifying properties to up to 50 square feet of building mounted signage and up to 50 square feet of freestanding signage (either 1x 50 sq. ft. sign or 2x 25 sq. ft. signs).
(Full staff report attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Adopt the text amendment
- Adopt the text amendment with modifications
- Decline to adopt the text amendment

RECOMMENDATIONS:

The Planning Commission unanimously recommended approval.

City Council
 February 24, 2015

TA-14-770 AN ORDINANCE TO AMEND AND REENACT SECTION 18-8-7 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO FREESTANDING AND BUILDING MOUNTED SIGNS PERMITTED IN THE RO-1 DISTRICT. *(Proposal will increase permanent signage allowances for properties in the RO-1 district which obtained a CUP for increased building footprint.)*

REQUEST DESCRIPTION

This is a privately sponsored text amendment to modify permanent signage opportunities for properties in the Residential Office (RO-1) district. Specifically the applicant is proposing to increase the sign allowances for properties that obtained a conditional use permit for building footprint in the Corridor Enhancement (CE) district (Section 14.2-6.10). As stated within the applicant's letter, he desires that allowances be provided to enable a larger amount of proportionate signage for larger structures. The text amendment involves the following:

Sign Type	Current Provisions	Allowances Proposed for Larger Footprint Properties
Building Mounted Signs	1 per building, maximum 10 square feet	1 square foot per linear foot of building frontage, up to maximum 50 square feet
Freestanding Signs	1 per building, maximum 25 square feet	May Choose One Option: A) 1 sign up to 50 square feet B) 2 signs up to 25 square feet each

Presently a majority of RO-1 properties are within the Amherst Street CE district. The existing CE standards included in Article 14.2 will still apply for such properties within the zoning overlay, including a prohibition on internally illuminated signage and requirements that the new freestanding signage be a monument style and be of a design consistent with the main building's design.

STAFF COMMENTS

Staff believes it is good planning practice in this instance to allow for a proportional signage allowance for larger buildings. Amherst Street, which includes has a majority of the RO-1 zoned properties, has long history of Council wanting to protect the attractiveness of this entry corridor and establishing sign standards that will not lead to sign clutter and detract from the corridor's character. Staff believes that this change is consistent with the intent of the RO-1 district and supports this request.

RECOMMENDATION

At their February 17, 2015 meeting, the Planning Commission forwarded TA-14-770 with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for appropriate and proportional signage options for larger buildings in the Residential Office district.

**GATEWAY PROFESSIONAL CENTER
1705 AMHERST ST
WINCHESTER, VA**

January 29, 2015

Dear Aaron,

Thank you for your time and guidance regarding signage for the Gateway Professional Center. The city council approved our larger footprint in the R-01 district with a conditional use permit. Therefore we would like signage that would be in proportion to our building and still maintain the integrity and intent of the Amherst St corridor.

Thank you for your consideration.

Sincerely,

Scott Rosenfeld

AN ORDINANCE TO AMEND AND REENACT SECTION 18-8-7 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO FREESTANDING AND BUILDING MOUNTED SIGNS PERMITTED IN THE RO-1 DISTRICT.

TA-14-770

Draft 1 – (12/17/14)

Ed. Note: The following text represents an excerpt of Article 18 of the Zoning Ordinance that subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

ARTICLE 18
GENERAL PROVISIONS

SECTION 18-8. SIGNS.

18-8-7 SIGNS PERMITTED IN THE RO-1 DISTRICT.

18-8-7.1 Freestanding Signage, limited to one (1) for each building on the premises, and limited to a maximum sign area of twenty-five (25) square feet. Such signs shall not extend higher than six (6) feet, except on properties which are also designated within the Historic Winchester (HW) District in which case signs shall not extend higher than twelve (12) feet. No sign shall be internally illuminated. (5/8/90, Case TA-90-01, Ord. No. 016-90; 7/12/11, Case TA-11-222, Ord. No. 2011-20)

18-8-7.2 Building Mounted Signs, limited to one (1) for each building on the premises, with sign area limited to a maximum of ten (10) square feet.

18-8-7.3 Directory Signs, restricted to two (2) signs for any building. Such signs shall not exceed two (2) square feet per person or office listed on the sign.

18-8-7.4 Properties that obtained a conditional use permit pursuant to Section 14.2-6.10 pertaining to building footprint in lieu of the above provisions of 18-8-7, may have the following signage:

A. **Freestanding Signage, a property may either have one fifty (50) square foot sign or two (2) twenty-five (25) square foot signs. If more than one sign is utilized, the signs must be located at least 100 feet from one another.**

B. **Building Mounted Signs, limited to one square foot per linear foot of building frontage, up to a maximum of fifty (50) square feet.**

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: February 24, 2015 **CUT OFF DATE:** __

RESOLUTION X ORDINANCE PUBLIC HEARING

ITEM TITLE: Resolution that Approves of the City Manager's Execution of a Lease between the City of Winchester and Branch Banking and Trust for Professional Office Space

STAFF RECOMMENDATION: Approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: Annual rent of \$262,040.96 will be sourced from the City's General Fund.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance _____	<u> B </u>	_____	<u>2-19-15</u>
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney _____	<u> AS </u>	_____	<u>2/19/2015</u>
6. City Manager _____	_____	_____	_____
7. Clerk of Council _____	_____	_____	_____

Initiating Department Director's Signature: Edwin Juman 18 Feb 2015
City Manager Date



APPROVED AS TO FORM:

2/19/2015
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Eden Freeman, City Manager

Date: 02/24/2015

Re: Adoption of a Resolution that Approves of the City Manager's Execution of a Lease Between the City of Winchester and Branch Banking and Trust for Professional Office Space

THE ISSUE: The Winchester City Council's adoption of the attached resolution approves of the City Manager's execution of a lease between the City of Winchester and Branch Banking and Trust to provide office space for the City of Winchester Commonwealth Attorney's Office.

RELATIONSHIP TO STRATEGIC PLAN: Goal Three: Develop a High Performing Organization.

BACKGROUND: The Winchester-Frederick County Joint Judicial Center's impending renovations requires that the City of Winchester Commonwealth Attorney's Office and the Juvenile and Domestic Relations Court Services office to move to new office space to accommodate additional judges and court staff. The City issued Request for Proposal Number 201419 (RFP) to solicit offers for professional office space that would meet the needs of the Commonwealth Attorney's Office. Branch Banking and Trust's bid met the RFP's requirements and provided the necessary space for the Commonwealth Attorney's Office.

BUDGET IMPACT: Annual rent of \$262,040.96 will be sourced from the City's General Fund. The lease commences March 1, 2015 and will last for 60 months; however, the lease includes a credit for the first six months. However, since the Juvenile and Domestic Relations Court Services (J&DRCS) unit serves both the City of Winchester and Frederick County, Frederick County has agreed to cover ½ the cost of the space to be occupied by J&DRCS. This amounts to \$50,630.

OPTIONS: Council may approve or disapprove the attached resolution.

RECOMMENDATIONS: City Staff recommends the adoption of this resolution.

A RESOLUTION THAT APPROVES OF THE CITY MANAGER'S EXECUTION OF A LEASE BETWEEN THE CITY OF WINCHESTER AND BRANCH BANKING AND TRUST FOR PROFESSIONAL OFFICE SPACE FOR THE CITY OF WINCHESTER COMMONWEALTH ATTORNEY'S OFFICE

WHEREAS, the City of Winchester's Commonwealth Attorney's Office and Juvenile and Domestic Relations Court Services Unit are currently located in the Winchester-Frederick County Joint Judicial Center; and,

WHEREAS, the impending renovations to the Winchester-Frederick County Joint Judicial Center require the relocation of the City of Winchester Commonwealth Attorney's Office and Juvenile and Domestic Relations Court Services Unit from the facility; and,

WHEREAS, the City of Winchester issued Request for Proposal Number 201419 that sought bids from all qualified entities to lease professional office space in the City of Winchester for the Commonwealth Attorney's Office; and,

WHEREAS, Branch Banking and Trust submitted a bid sheet that offered 7,625 square feet of professional office space at 112 N. Loudoun Street and 12,107 square feet of professional office space at 100-110 N. Loudoun Street for lease; and,

WHEREAS, Branch Banking and Trust's bid was the only submitted bid that meets all requirements listed in the City of Winchester's Request for Proposal Number 201419; and,

WHEREAS, the Selection Committee for RFP 201419 and Staff recommend that Council approves of the Manager's execution of a contract on behalf of the City pursuant to Branch Banking and Trust's submitted response to RFP 201419; and,

WHEREAS, the Lease Agreement submitted by Branch Banking and Trust provides that lease payments shall not commence until July 1, 2015, and therefore, this authorization and the appropriation of necessary funds shall be further memorialized in the City's FY2016 Budget Ordinance; and,

WHEREAS, the Manager and Staff have recommended that Council approve of the Manager's execution of the attached lease in order to continue moving forward with the relocation of the Commonwealths Attorney's Office and the Juvenile and Domestic Relations Court Services Unit in furtherance of the renovations of the Joint Judicial Center.

NOW THEREFORE BE IT RESOLVED, that the Winchester City Council approves of the City Manager's execution of the attached lease between the City of Winchester and Branch Banking and Trust for professional office space at 112 N. Loudoun Street and 100-110 N. Loudoun Street.



City of Winchester, Virginia

Office of the City Attorney
Rouss City Hall
22601
540-667-1815
Fax: 667-2259

CONTRACT

#201419

THIS CONTRACT WAS MADE AND ENTERED INTO THIS 10TH DAY OF FEBRUARY, 2015 BY AND BETWEEN **BRANCH BANKING AND TRUST COMPANY**, A NORTH CAROLINA BANKING CORPORATION, 115 N CAMERON ST, WINCHESTER VIRGINIA 22601, F.I.N. NUMBER 54-1027360 ("CONTRACTOR"), AND THE **CITY OF WINCHESTER, VIRGINIA**, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA ("CITY").

WHEREAS, THE CITY HAS PREVIOUSLY ISSUED REQUEST FOR PROPOSAL NUMBER 201419 ("RFP#201419"), DATED NOVEMBER 10, 2014 SEEKING BIDS FROM ALL QUALIFIED CONCERNS TO LEASE PROFESSIONAL OFFICE SPACE IN THE CITY OF WINCHESTER, AS MORE FULLY DESCRIBED IN THE RFP, AND;

WHEREAS, CONTRACTOR HAS SUBMITTED A BID SHEET AND PROPOSAL IN RESPONSE TO THE RFP DATED DECEMBER 5, 2014 BY JOHN SCHROTH, WHICH STATES SPECIFIED LEASE PRICE.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. THE CONTRACTOR SHALL LEASE THE CITY WITH THE BUILDING OUTLINED IN RFP #201419, WHICH IS INCORPORATED IN ITS ENTIRETY HEREIN BY REFERENCE. THE CITY SHALL PAY THE CONTRACTOR THE SPECIFIED RATES HEREIN FOR THE RENTAL OF THE BUILDING. THE CITY SHALL PAY SUCH RENT IN ACCORDANCE WITH THE PROMPT PAYMENT ACT PROVISIONS OF THE VIRGINIA PUBLIC PROCUREMENT ACT, WHICH ARE INCORPORATED HEREIN BY REFERENCE.
2. THE TERM OF THIS CONTRACT SHALL BE FROM MARCH 1, 2015 UNTIL, FEBRUARY 29, 2020. UNLESS SOONER TERMINATED. THE CITY AT ITS SOLE OPTION CAN RENEW THIS CONTRACT FOR AN ADDITIONAL FIVE (5) TWELVE (12) MONTH PERIODS.
3. THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM ANY AND ALL CLAIMS OF ANY DESCRIPTION WHATSOEVER ARISING FROM OR CAUSED BY THE CONTRACTOR'S PERFORMANCE OR NONPERFORMANCE OF THIS CONTRACT. IN ADDITION, THE CONTRACTOR HAS, AT THE TIME OF ITS EXECUTION OF THIS

CONTRACT, PROVIDED THE CITY WITH A CERTIFICATE OF INSURANCE SHOWING THAT IT HAS CURRENTLY IN FORCE ALL OF THE INSURANCE REQUIRED BY RFP #201419, WITH THE CITY NAMED AS AN "ADDITIONAL INSURED" ON SUCH CERTIFICATE. CONTRACTOR COVENANTS THAT SUCH CERTIFICATE SHALL REMAIN IN FULL FORCE AND EFFECT THROUGHOUT THE TERM OF THIS CONTRACT, AND THAT IT WILL PROMPTLY NOTIFY THE CITY IN THE EVENT SUCH INSURANCE IS NO LONGER IN EFFECT FOR WHATEVER REASON.

4. THE FOLLOWING GENERAL TERMS AND CONDITIONS APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT SHALL APPLY IN ALL INSTANCES. IN THE EVENT THERE IS A CONFLICT BETWEEN ANY OF THE OTHER GENERAL TERMS AND CONDITIONS AND ANY SPECIAL TERMS AND CONDITIONS IN THIS SOLICITATION, THE SPECIAL TERMS AND CONDITIONS SHALL APPLY AND TAKE PRECEDENCE.

THE CITY'S PROCUREMENT, CONTRACTOR'S RESPONSE AND WRITTEN NEGOTIATION SUMMARY SHALL FORM PART OF THE CONTRACT. IN THE CASE OF CONFLICTS, DISCREPANCIES, ERRORS OR OMISSIONS AMONG THE CITY'S PROCUREMENT, THE CONTRACTOR'S RESPONSE, WRITTEN NEGOTIATION SUMMARY AND THE MAIN BODY OF THE CONTRACT, THE DOCUMENTS AND AMENDMENTS TO THEM SHALL TAKE PRECEDENCE AND GOVERN IN THE FOLLOWING ORDER:

1. CONTRACT
2. CITY'S PROCUREMENT DOCUMENT(S)
3. CONTRACTOR'S RESPONSE
4. CONTRACTOR'S LEASE AGREEMENT

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS INSTRUMENT ON THE DATE INDICATED BELOW.

CONTRACTOR:

CITY OF WINCHESTER:

BY: Brenda H. Shamloo

BY: _____

TITLE: Vice President

TITLE: _____

DATE: 2/11/2015

DATE: _____

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), is made as of the 10th day of February, 2015, by and between BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, (the "Landlord") and CITY OF WINCHESTER (the "Tenant").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. DESCRIPTION OF LEASED PROPERTY.

(A) Subject to the terms and conditions hereinafter set forth, Landlord hereby Leases to Tenant, and Tenant hereby Leases from Landlord, 7,625 square feet on the first and second floors in that certain building located at 112 N. Loudoun Street, Winchester, Virginia (the "112 Building") and 12,107 square feet on the second floor in that certain building located at 100-110 N. Loudoun Street, Winchester, Virginia (the "100 Building"; the 112 Building and the 100 Building are collectively referred to as the "Building") (collectively the "Premises"), the Premises being more particularly shown on Exhibit "A" attached hereto and incorporated by this reference herein.

(B) Tenant acknowledges and agrees, that: (i) Landlord has not made, is not making and specifically disclaims any representation, warranty, guarantee or assurance to Tenant regarding the Building or the Premises, express or implied, including, without limitation, any representation, warranty, guaranty or assurance regarding title, physical condition, suitability, zoning, mold or mildew; and (ii) except as otherwise specifically provided in this Lease, the Premises are being leased to Tenant in their present state and condition, "AS IS - WHERE IS" and with all faults.

2. TERM. (A) The term of this Lease shall be for a period of sixty (60) months (the "Term"), beginning on March 1, 2015 (the "Commencement Date"). The Term shall expire and terminate at midnight sixty (60) months from the Commencement Date (the "Expiration Date"). A "Lease Year" shall be defined as each successive period of twelve (12) consecutive calendar months commencing on the Lease Commencement Date and ending on the day that is exactly twelve (12) months thereafter.

3. RENT.

(A) Beginning on the Commencement Date and throughout the term of the Lease, Tenant shall pay to Landlord as rental for the Premises, an annual rent of \$262,040.96, payable in monthly installments of \$21,836.75. In the event the lease Commencement Date shall be a day other than the first day of a calendar month or the Expiration Date shall be a day other than the last day of a calendar month, the monthly rental installment for such first or fractional month shall be prorated on the basis of the number of days during the month this Lease was in effect in relation to the total number of days in such

month. Rent for the first four (4) months of the Term shall be abated provided that no Event of Default exists under this Lease.

(B) Rent shall be payable in advance on the first day of each month during the Term of this Lease and shall be mailed to BB&T, Tenant Income Account, PO Box 890943, Charlotte, NC 28289-0943 or such other place as Landlord may designate to Tenant by written notice. Tenant's obligation to pay Rent is an independent covenant, and Landlord's failure to perform any of its obligations or responsibilities under this Lease shall not result in an abatement of Rent, entitle Tenant to withhold Rent or otherwise affect Tenant's liability for the payment of Rent. All Rent shall be paid by Tenant to Landlord without deduction, demand, notice or offset. The acceptance of any Rent by Landlord shall not constitute or be deemed to be: (i) a waiver of any claim or right, including, but not limited to, any claim based on Tenant's default under or non-compliance with the terms of this Lease, (ii) a grant of consent or permission with respect to any matter, or (iii) an acknowledgment of Tenant's purported exercise of any option.

(C) If Tenant fails to pay any installment of Rent within ten (10) days after the same is due, Tenant shall pay to Landlord a late charge equal to one 1% percent of such unpaid installment to cover Landlord's administrative costs and other expenses. In addition, any past due installment of Rent shall bear interest from the date due until paid at a rate which is the lesser of (i) eighteen percent per annum, or (ii) the maximum rate permitted under applicable laws. The parties agree that the provisions of this subsection are reasonable and shall not be deemed to be (i) a consent by Landlord to late payments, (ii) a penalty, (iii) a waiver of Landlord's right to insist on the timely payment of Rent, or (iv) a waiver or limitation of the rights and remedies available to Landlord on account of the late payment of any Rent.

4. USE OF PREMISES.

(A) Tenant shall have the right to use the Premises only for business/government office purposes (the "Permitted Use") and for no other use without the prior written consent of Landlord. Tenant shall comply with all laws, ordinances, rules and regulations (state, federal, municipal and other agencies or bodies having jurisdiction thereof) relating to the use, condition or occupancy of the Premises. Tenant shall comply and cause its agents, employees, contractors, representatives and invitees to comply with the rules and regulations attached hereto as Exhibit "B" and incorporated herein by this reference, as same may be reasonably amended, modified or supplemented from time to time by Landlord; provided that Tenant has notice of any such amendments or modifications of said rules and regulations. Any failure by Landlord to enforce the rules and regulations shall not constitute a waiver of same. Tenant shall not to permit any use of the Premises, which will constitute waste or nuisance.

(B) Notwithstanding anything herein to the contrary, Tenant shall not use the Premises for banking or other similar financial, lending, savings or mortgage related or securities services (including without limitation, the sale of and provision of services related to all types of insurance and insurance related products (including claims inspections), mortgages, credit cards, auto loans, deposit and checking accounts,

investment products, or automatic teller machines), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion.

(C) Tenant shall not commit or allow waste or damage to be committed on any portion of the Premises. Tenant shall not occupy, use or permit any portion of the Premises to be occupied or used for any business or purpose which is unlawful, disreputable or deemed to be extra-hazardous on account of fire, or permit anything to be done which would in any way increase the rate of fire or liability or any other insurance coverage on the Building. At the expiration or earlier termination of this Lease, Tenant shall deliver the Premises to Landlord in as good condition as the Commencement Date, ordinary wear and tear and damage by insured casualty excepted.

(D) Tenant acknowledges and agrees that Landlord operates an ATM at 112 N. Loudoun Street. Landlord shall continue to operate the ATM and shall have access to the ATM room located in the 112 Building at all times. Tenant agrees that it will not interfere in any way with such ATM operations or do anything to prohibit Landlord from having access to the ATM room. Tenant shall comply with all security rules and regulations, if any, developed by Landlord in addition to the rules and regulations set forth in Exhibit B, upon Tenant's notice of same.

5. IMPROVEMENTS AND ALTERATIONS. Tenant shall not make any improvements or alterations to the Premises, without first having obtained the prior written consent of Landlord, which consent shall not be unreasonably withheld. If approved, any said alterations, additions or improvements shall be in compliance with all applicable building codes. All alterations, additions and improvements in or on the Premises made by Tenant (except Tenant's furniture, trade fixtures, and any equipment and shelving installed by Tenant or furnished at Tenant's expense and removable without damaging the Premises in any manner) shall become the property of Landlord and shall remain and be surrendered with the Premises as a part thereof at the termination or other expiration of the Term of this Lease unless at the time of giving its consent, Landlord notifies Tenant that such specified alterations, additions or improvements are to be removed upon expiration or termination of this Lease and in such event, Tenant shall remove same prior to expiration or termination of this Lease and restore the Premises to the condition immediately preceding such alteration, addition or improvement, ordinary wear and tear and damage by insured casualty excepted. Tenant shall promptly repair any damage to the Building or Premises caused by the installation or removal of its furniture, trade fixtures, equipment or shelving.

6. PERSONAL PROPERTY AND REMOVAL. Tenant agrees hereby that all fixtures and other property of any nature, description and kind placed in, upon or about the Premises by Tenant, its agents, servants, employees, licensees, and invitees, shall be at the sole risk of the Tenant. Provided that Tenant is not in default under the terms of this Lease, beyond any applicable cure period, Tenant shall have the right to remove from the Premises any and all equipment and trade fixtures placed in or upon said Premises by Tenant, such removal to be completed prior to the Expiration Date. Tenant

shall promptly repair any damage to the Premises or the Building caused by the removal or installation of such fixtures and/or property.

7. UTILITIES/REPAIRS. Tenant covenants and agrees during the Term of this Lease to pay promptly when due all telephone, cable, internet, license fees and all other charges of any nature and kind whatsoever, imposed, charged or levied against the Premises, in connection with the use and occupancy of the Premises by Tenant, and the cost of any repairs caused by any negligence or intentional misconduct on the part of Tenant and/or its employees or independent contractors employed by it.

8. ASSIGNMENT AND SUBLETTING. Tenant may not assign or encumber the Lease or sublet the Premises under any circumstances without Landlord's prior written approval, such consent not to be unreasonably withheld. It will be reasonable for Landlord to withhold its consent for reasons, including but not limited to, if the proposed assignee or subtenant will be of a type which in the reasonable judgment of Landlord will compete with the business operations of Landlord or any of its subsidiaries or affiliates, or is not of a type that is consistent with the use of the Building for general office purposes, or is engaged in a business involving serving members of the public on a retail basis, i.e. requiring a large number of visitors to the Premises, or is not financially able to pay the Rent due under this Lease in the judgment of Landlord, or has a business reputation or standing which the Landlord deems unacceptable or with which the Landlord is prohibited from conducting business or which will cause the Landlord to comply with reporting requirements. In the event Landlord consents to any assignment or sublease, Tenant shall be responsible for paying all of Landlord's actual, out-of-pocket costs (including, but not limited to, attorneys' fees) associated with such assignment or sublease. Further, Tenant shall not be released from its obligations under this Lease following an approved assignment or sublease, unless released in writing by Landlord.

9. MAINTENANCE AND REPAIRS.

(A) Landlord covenants that it will (i) make such repairs to the roof, outside walls, gutters and downspouts and other structural portions of the Building as may be necessary in order to keep the Building in good condition and repair, and (ii) make such repairs to any plumbing, electrical, and mechanical systems that are located within the Premises, except for repairs caused by the negligence or intentional misconduct of Tenant or Tenants agents, contractors or employees (in such event Tenant shall be responsible for the repairs at its sole cost and expense). Except as otherwise specifically provided herein, Landlord shall not be required to make any improvements to, replacements or repairs of any kind or character to the Building or the Premises during the Term of this Lease, except such repairs as may be reasonably deemed necessary by Landlord. Any improvements made by Landlord to the Premises shall be limited to Building standard items, consistent with other similar spaces in the Building.

(B) Tenant shall, at its sole cost and expense, maintain the Premises in good and clean condition and perform all repairs, replacements and/or maintenance

required as a result of the actions or inactions of Tenant's or Tenant's agents, contractors, employees or invitees. In the event Tenant fails to promptly make repairs, replacements or perform maintenance as required by this Section 9(B), Landlord may, at its option, make such repairs, replacements or perform such maintenance and Tenant shall reimburse Landlord for such reasonable costs within thirty (30) days of Tenant's receipt of Landlord's invoice for same.

10. LIENS FOR WORK DONE ON PREMISES. If Tenant shall cause any material to be furnished to the Premises or labor to be performed thereon or therein, Landlord shall, under no circumstances, be liable for the payment of any expenses incurred or for the value of any work done or material furnished. Also, such work shall be at Tenant's expense and Tenant shall be solely responsible to all contractors, laborers, and materialmen furnishing any labor and/or material to the Premises. Nothing herein shall authorize Tenant or any persons dealing through, with or under Tenant to charge the Premises, or any interest of the Landlord therein, or this Lease with any mechanics' or materialmen's liens or other lien or encumbrance. On the contrary, and notice is hereby given, the right and power to charge any lien or encumbrance of any kind against Landlord, this Lease, or the Premises is hereby expressly denied. Notwithstanding the foregoing, should any mechanic's, materialmen's or other lien be filed against the Premises, or any part thereof, for any reason whatsoever by reason of Tenant's acts or omissions or because of a claim against Tenant, Tenant shall cause the same to be cancelled and discharged of record by bond or otherwise within thirty (30) days after notice by Landlord and shall hold Landlord harmless and indemnify Landlord from all costs including costs of defense, expenses and reasonable attorney fees, incurred by Landlord as a result of such lien.

11. HOLDOVER. If Tenant shall holdover beyond the termination of this Lease or any renewal or extension thereof, the occupancy by Tenant subsequent to the termination of this Lease or expiration of the Lease Term without a written agreement with Landlord, shall be from month-to-month and shall not be considered as a renewal or an extension of this Lease. Such continued occupancy shall not defeat Landlord's right to possession of the Premises and shall be at a rental rate of 150% of the rental rate in effect immediately prior to such expiration or termination of this Lease. All other covenants, provisions, obligations and conditions of the within Lease shall remain in full force and effect during such month-to-month tenancy.

12. CHANGE IN OWNERSHIP OF PREMISES. Landlord shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Building and property referred to in this Lease, and in such event and upon such transfer, no further liability or obligation shall thereafter accrue against Landlord under this Lease which arises from and after such transfer and assignment, provided, however, that the transferee and assignee assumes the obligations of Landlord hereunder. If the name or address of the party entitled to receive Rent hereunder shall be changed, Tenant shall, until receipt of proper notice of such change, continue to pay the Rent and other charges herein reserved, accrued and to accrue hereunder, to the party to

whom and in the manner in which the last preceding installment of Rent or other charge was paid.

13. SERVICES.

(A) Landlord shall provide the following utilities and services to or for the Premises: (i) reasonable heating and air conditioning in season Monday through Friday from 8:00 a.m. to 6:00 p.m. and Saturday from 8:00 a.m. to 12:00 p.m., except for the following holidays recognized by the City of Winchester: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day; (ii) maintenance and repair of the common areas of the Building; and (iii) electricity for the equipment or machinery of Tenant which is of a type normally used in an office setting (will not necessitate structural changes to the Building and does not require high electricity consumption for operation). Tenant acknowledges and agrees that Landlord shall not provide janitorial services for the Premises and that Tenant will be responsible for same.

(B) Except as expressly provided herein, Landlord's inability to furnish to any extent, these defined services, or any cessation thereof, resulting from any causes, shall not render Landlord liable for damages to either person or property, nor be construed as an eviction of Tenant nor work an abatement of any portion of Rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof, including but not limited to the payment of Rent, provided, however, that Landlord uses reasonable diligence to restore such service promptly, which Landlord covenants to do. Landlord shall have no responsibility or liability for interruption, curtailment or failure to supply cooled or outside air, heat, elevator, plumbing or electricity when prevented by strikes, labor troubles or accidents or by any cause reasonably beyond Landlord's control, or by failure of independent contractors to perform or by laws, orders, rules or regulations of any federal, state, county or municipal authority, or failure of fuel supply, or inability by exercise of reasonable diligence to obtain suitable fuel or by reason of governmental preemption in connection with a national emergency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency. The exercise of such right or such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any compensation or to any abatement or diminution of Rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise.

14. CONDEMNATION. If the whole of the Premises, or such substantial portion thereof as will make Premises unusable for the purposes referred to herein, be condemned by any legally constituted authority for any public use or purpose, then in either of said events, the Term hereby granted shall terminate at the time when possession thereof is taken by the condemning authority, and rental shall be accounted for as between Landlord and Tenant as of that date. Tenant shall have no claim against Landlord or the condemning authority for any portion of the amount of the condemnation award or settlement that Tenant claims as its damages arising from such condemnation or

acquisition or for the value of any unexpired term of the Lease. Landlord shall be entitled to receive the entire award paid on account of a taking of all or any portion of the Premises, except Tenant shall be entitled to receive amounts expressly awarded to cover Tenant's moving expenses, trade fixtures, equipment and personal property if applicable, but Tenant shall not have such claim against Landlord, nor shall Tenant's award reduce the award to Landlord. In the event a portion condemned is such that the remaining portion can, after restoration and repair, be made useable for Tenant's purpose, then this Lease shall not terminate; however, the Rent shall be reduced equitably by the amount of the Premises taken. In such an event, Landlord shall make such repairs as may be necessary as soon as the same can be reasonably accomplished, to a condition which substantially conforms to the condition immediately preceding the taking, provided however, in no event shall Landlord be required to spend more than the award paid Landlord on account of such taking.

15. SUBORDINATION. The parties hereto understand that Landlord may, from time to time, desire to encumber Landlord's interest in the Building with a mortgage or deed of trust, and may desire, in connection with the execution of such mortgage or deed of trust, to cause the within Lease to be made subordinate in lien and claim to the lien or liens of such mortgage or deed of trust. Tenant therefore covenants and agrees that Tenant will, from time to time, at the request of Landlord, execute an instrument or instruments in such form as may be required by Landlord or by the mortgagee of such mortgage or deed of trust as evidence of such subordination.

16. INSURANCE.

(A) Landlord shall pay during the Term hereof, the cost of fire insurance covering the Premises and the cost of insurance covering such other risks as are from time to time included in standard extended coverage endorsements in such amounts as are reasonably acceptable to Landlord. Landlord shall be entitled to self insure any of the coverages required to be maintained by Landlord under this Lease. Tenant shall insure all personal property owned by Tenant or others and located in the Premises and Landlord shall have no responsibility as to any such property. Tenant further agrees that it shall not suffer anything to remain upon or about the Premises, nor carry on nor permit in the Premises any trade or occupation, or suffer to be done anything which may render an increased or extra premium payable for the insurance on the Premises against fire, or other perils included under standard extended coverage insurance, unless Landlord shall consent in writing. Tenant shall pay (and defend against) all costs, expenses, damages, claims, losses and liabilities to the same extent that a third party insurance company would have under the policies hereunder.

(B) Tenant, at its sole cost, shall obtain and maintain in full force and effect at all times during the Term of this Lease: (i) hazard insurance (written on an "all risk" and full replacement value basis with an extended coverage endorsement) insuring against damage to and loss of Tenant's improvements, fixtures, equipment, furniture and all other personal property in and about the Premises; (ii) commercial general liability insurance insuring against any liability imposed for, or arising, directly or indirectly, out of injuries to person or property arising out of the ownership, maintenance, occupancy or

control of the Premises on an occurrence basis in the amount of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate combined for bodily injury and property damage, and not less than \$500,000.00 for property damage for any one occurrence, (iii) workers compensation or similar insurance in form and amounts required by law.

(C) All such policies of insurance obtained by Tenant hereunder shall be issued in the name of Tenant and include Landlord as additional insured. Except after the insurance companies have endeavored to provide thirty (30) days prior written notice to the Landlord (except ten (10) days for the nonpayment of premium), such insurance may not be (i) cancelled, or (ii) amended so as to reduce the coverage amount or materially reduce the type of coverage. Tenant shall deliver to Landlord a certificate of insurance upon the Commencement Date and thereafter within ten (10) days upon request by Landlord.

(D) In the event any insurance required to be maintained by Tenant under this Lease shall expire, be withdrawn, lapse, become void or un-secure by reason of Tenant's breach of any condition therefore or by reason of the failure or impairment of the capital of any carrier thereof, or if for any reason whatsoever the insurance shall be unsatisfactory to Landlord, Tenant shall immediately place new insurance on the Premises which conforms to the insurance requirements set forth in this Lease. Further, in the event of any default beyond any applicable notice and cure period by Tenant with respect to its obligations pertaining to insurance, Landlord, at its option but without being obliged to do so, and in addition to any other rights and remedies Landlord may have on account of such default, shall have the right to cure such default upon prior written notice to Tenant (including, without limitation, the right to purchase single interest coverage protecting only the interest of Landlord and the right to make premium payments), whereupon all costs and expenses incurred by Landlord in curing such default together with interest at the Default Rate from the respective dates of expenditures by Landlord, shall be paid by Tenant within thirty (30) days of receipt of an invoice from Landlord.

17. INDEMNITY.

It is the intention of the parties that Tenant look solely to its insurers in the event of any injury, damage to Tenant's property or any interruption of Tenant's use of the Premises. Accordingly, except to the extent caused by the gross negligence or willful misconduct of Landlord, its employees or agents, Tenant hereby expressly waives and releases all claims it may, now or hereafter, have against Landlord as a result of any injury, damage to property, or interruption of Tenant's use of the Premises, including, but not limited to, any injury, damage or interruption caused by (i) wind, water, flooding, snow, ice, act of God or act of nature, (ii) any interruption of utility service to the Premises, (iii) any defect in the Premises (latent or otherwise), (iv) any failure of a mechanical system, electrical system, plumbing system or heating and air conditioning system, (v) the backing up of any sewer pipe or downspout, or (vi) the bursting, breaking, leaking or running of any tank, tub, washstand, water closet, drain or pipe.

18. CASUALTY DAMAGE.

(A) In the event that the Premises or the Building are damaged for any reason whatsoever and Tenant will be unable, in Landlord's reasonable determination, to carry on its normal business operations in the Premises for a period of ninety (90) days or more, Landlord shall notify Tenant and Tenant shall have the right to terminate this Lease by giving notice of such termination to Landlord no later than thirty (30) days after the occurrence of such damage. Upon such termination, Tenant's obligations hereunder and each of them, including the obligation to pay Rent of any kind or nature, shall cease as of the day the Premises were so damaged, except as otherwise specifically provided herein.

(B) In the event the Premises are partially damaged by fire or other casualty and Landlord and Tenant shall reasonably determine that Tenant is able to carry on its normal business operations, Tenant shall pay Rent for only such portion of the Premises which Tenant occupies during the time required to make repairs. All repairs necessary to repair or restore the Premises to a condition similar to that immediately preceding the damage or casualty shall be (i) commenced within ninety (90) days after the occurrence of such damage; (ii) performed in a diligent and workmanlike manner with material of at least the same quality utilized originally in the construction of the Premises; and (iii) completed by Landlord at Landlord's sole expense. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to commence the repair of the Premises following any fire or other casualty until Landlord has received the insurance proceeds required to fund same, nor shall Landlord be obligated to spend in excess of the insurance proceeds in making such repairs. Tenant shall be required to pay the full amount of rent following Landlord's notice to Tenant of its substantial completion of repairs.

19. USE OF HAZARDOUS MATERIALS.

(A) Tenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Building or the Premises. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including attorneys' fees and court costs) which arise during or after the Lease Term as a result of such breach.

(B) As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and waste that are or become regulated under any similar local, state or federal law, other than cleaning and office supplies property stored and used in compliance with any and all applicable local, state or federal laws.

20. WAIVER OF RIGHTS. No waiver by Landlord of any provision hereof shall be deemed to be waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent similar act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of said preceding breach at the time of acceptance of such rent.

21. NOTICES. All notices, consents, approvals and other communications (collectively, "Notices") that may or are required to be given by either Landlord or Tenant under this Lease shall be properly made only if in writing and sent to the address of Landlord or Tenant, as applicable, set forth below, as the same is modified in accordance herewith, by U.S. Certified Mail (Return Receipt Requested) or national recognized overnight delivery service.

Landlord: Branch Banking and Trust Company
2400 Reynolda Road, 2nd Floor
Winston-Salem, NC 27106
Attention: Real Estate / Rental Income

With a copy to: Ashley P. Harris
Parker, Pollard, Wilton & Peadar, P.C.
6802 Paragon Place, Suite 300
Richmond, VA 23230

Tenant: City of Winchester

Either party may change its address for Notices by giving written notice to the other party in accordance with this provision or by email transmission with a receipt. Change of address is the only notice which may be sent by email transmission. Notices shall be deemed received: (i) if sent by overnight delivery service, on the date of delivery; and (ii) if sent by United States Certified Mail (Return Receipt Requested), on the day of actual delivery to the intended recipient. The refusal to accept delivery shall constitute acceptance.

22. EVENTS OF DEFAULT.

(A) The following shall each be deemed to be a default by Tenant under this Lease (an "Event of Default"):

(i) Tenant's failure to pay any Rent when due, where such failure shall continue for a period of five (5) days after it receives written notice of the same from Landlord, provided however, Tenant shall not be entitled to more than two (2) notices in any twelve (12) month period and the failure to pay

on the due date a third (3rd) time during such twelve (12) month period will constitute a default; or

(ii) Tenant's failure to comply with any of the terms of this Lease related to assignment or subletting, or insurance requirements; or

(iii) Tenant's failure to comply with any of the terms of this Lease other than those pertaining to the payment of Rent, assignment or subletting or insurance requirements, where such failure shall continue for a period of thirty (30) days after Tenant receives written notice of the same from Landlord; provided if such failure cannot reasonably be cured within thirty (30) days, no Event of Default shall be deemed to have occurred so long as Tenant commences to cure such failure within thirty (30) days after receiving written notice of the same from Landlord and completes such cure within a reasonable time thereafter, not to exceed ninety (90) days; or

(iv) (a) the bankruptcy or insolvency of Tenant, (b) the filing by or against Tenant of a petition seeking to have Tenant declared bankrupt or insolvent or seeking to reorganize Tenant, unless the petition is dismissed with sixty (60) days after its filing, (c) the appointment of a receiver or trustee for all or a substantial portion of Tenant's assets, or (d) the assignment of all or substantially all of Tenant's assets for the benefit of its creditors.

(B) Remedies. Upon the occurrence of an Event of Default, Landlord may, in addition to other remedies available hereunder, at law or in equity:

(i) Terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises and Landlord shall have the right to recover its actual damages from Tenant, including without limitation, the cost of recovering possession of the Premises, reasonable attorneys fees, if so ordered by a court of competent jurisdiction, reasonable expenses of reletting, including necessary renovation and alteration of the Premises and real estate commissions, and the balance of the Rent for the remainder of the Term less the fair market value of the Premises for said period. If Tenant fails to surrender the Premises to Landlord after the termination of this Lease, Landlord shall have the right, without notice, to retake possession of the Premises and to expel Tenant and its effects therefrom, without being liable for prosecution or any claim for damage.

(ii) Without terminating this Lease, terminate Tenant's right to possession of the Premises and, if necessary, expel Tenant and its effects therefrom pursuant to applicable law, without being liable for prosecution or any claim for damages. If Landlord retakes possession of the Premises from Tenant pursuant to this subparagraph, Landlord may re-enter and relet the Premises for the benefit of Tenant, at such rent, for such duration and upon such other terms as Landlord, in its sole and absolute discretion, deems advisable, and Landlord may remodel the Premises to the condition as it existed on the Commencement Date of

this Lease to facilitate such reletting. Tenant shall be liable immediately to Landlord for all reasonable costs Landlord incurs in reletting or endeavoring to relet the Premises pursuant to this subparagraph, including, without limitation, reasonable attorneys fees, brokers' commissions, advertising expenses and such remodeling costs. Notwithstanding the termination of Tenant's right to possession of the Premises pursuant to this subparagraph, Tenant shall continue to pay the Rent, when due; provided if Landlord is successful in reletting the Premises, any rent received by Landlord from such reletting that is allocable to periods falling within the Term shall be applied to reduce the amounts Tenant owes Landlord under this Lease, in such order as Landlord reasonably determines proper, including, without limitation, costs and expenses that Landlord incurs to effect compliance with Tenant's obligations hereunder, costs Landlord incurs to recover possession of the Premises, reletting costs, damages, and rental deficiencies. If the rent received by Landlord from reletting the Premises that is allocable to periods falling within the Term exceeds the amounts Tenant owes under this Lease, Landlord shall be entitled to such excess and Tenant shall not have any right thereto.

(iii) Enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease, without being liable for prosecution or any claim for damages, and Tenant agrees to reimburse Landlord for all reasonable costs and expenses that Landlord incurs in connection therewith, if so ordered by a court of competent jurisdiction.

(iv) Obtain specific performance of the terms of this Lease or injunctive relief.

The foregoing remedies are cumulative and non-exclusive and the exercise by Landlord of any of its remedies under this Lease shall not prevent the subsequent exercise by Landlord of any other remedies provided herein. All remedies provided for in this Lease may, at the election of Landlord, be exercised alternatively, successively, or in any other manner. No provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing and signed by Landlord. Landlord's acceptance of Rent following any Event of Default shall not be construed as a waiver of such Event of Default. No custom or practice between the parties in connection with the terms of this Lease shall be construed to waive or lessen Landlord's right to insist upon strict performance of the terms hereof. No act by Landlord with respect to the Premises shall be deemed to terminate this Lease, including, but not limited to, the acceptance of keys or the institution of dispossessory proceedings; it being understood that this Lease may only be terminated by express written notice from Landlord to Tenant, and any reletting of the Premises shall be presumed to be for and on behalf of Tenant, unless Landlord expressly provides otherwise in writing to Tenant. The provisions contained in this section shall be in addition to and shall not prevent the enforcement of any claim Landlord may have against Tenant for anticipatory breach of the unexpired Term of this Lease.

23. COMPLIANCE WITH GOVERNING LAWS.

(A) This Lease shall be governed by and construed under the laws of Virginia and other applicable statutes and regulations of said state. Tenant shall promptly execute and comply with all laws, ordinances, rules regulations and requirements of any or all federal, state and municipal authorities having jurisdiction over the manner in which Tenant's business is conducted, but only insofar as these laws, ordinances, rules, regulations and requirements are violated by the conduct of Tenant's business.

(B) Landlord shall be responsible for ensuring that all common areas of the Building (including parking serving the Building) are in compliance with applicable requirements of the Americans With Disabilities Act (the "ADA") as of the Commencement Date. Tenant shall be responsible for any changes to the Premises required by the ADA, as amended or any successor statute, following the Commencement Date.

24. ENTIRE AGREEMENT. This writing contains and embodies the entire agreement of the parties hereto and shall supersede any and all previous lease agreements or amendments. No representations, inducements or agreements, oral or otherwise between the parties not contained and embodied herein shall be of any force or effect, and same may not be modified, changed or terminated in whole or in part, orally or in any other manner that by agreement in writing duly signed by all of the parties hereto.

25. ATTORNEYS FEES. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party shall be entitled to recover reasonable attorneys' fees from the losing party, if so ordered by a court of competent jurisdiction.

26. JOINT AND SEVERAL LIABILITY. If two or more individuals, corporation, partnership or other businesses, associations or any combination of two or more thereof, shall sign this Lease as Tenant, the liability of each of them shall be joint and several.

27. ESTOPPEL CERTIFICATES. Within ten (10) business days after Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord or its designee a written statement: (i) acknowledging that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as modified, is in full force and effect); (ii) setting forth the date to which the monthly Rent has been paid; (iii) certifying there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord under this Lease (or specifying any such defaults known to Tenant); and (iv) confirming any other facts related to the status of this Lease or the condition of the Premises, but only to the extent of Tenant's knowledge thereof. Any such statement may be relied upon by a prospective purchaser or lender of Landlord.

28. **FORCE MAJEURE.** In the event compliance with any of Landlord's or Tenant's obligations under this Lease is impractical or impossible due to any strike, lockout, labor dispute, embargo, flood, earthquake, storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance or disobedience, riot sabotage, terrorism, restraint by court order or other occurrence beyond the reasonable control of the party in question ("Event of Force Majeure"), then the time for performance of such obligations shall be extended for a period equivalent to the duration of the Event of Force Majeure; provided, however, the provisions of this section shall not operate to (i) extend the Commencement Date, (ii) excuse, extend or abate Tenant's obligation to pay any Rent, or (iii) excuse Tenant's inability to perform its obligations hereunder because of inadequate finances.

29. **BROKERS.** Landlord and Tenant acknowledge and agree that Colony Realty is representing Landlord in this Lease (the "Broker"). Landlord shall pay the Broker pursuant to a separate agreement. Except for the Broker, each party (i) represents and warrants that it has not dealt with any broker, finder or listing agent in connection with this Lease.

30. **SUCCESSORS AND ASSIGNS.** This Lease shall be binding on the Landlord, Tenant and their respective heirs, successors, executors, administrators and assigns, provided the foregoing shall not be construed to permit any assignment of this Lease requiring consent.

31. **SEVERABILITY.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision will be added as part of this Lease that is similar to the illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

32. **EXHIBITS.** Landlord and Tenant acknowledge and agree that all schedules, addendum and exhibits referenced in this Lease are attached hereto and incorporated herein.

33. **ACCORD AND SATISFACTION.** Neither the acceptance by a party of a lesser sum than it is due under this Lease, nor any statement on a check or instrument accompanying payment, nor acceptance of Rent shall be deemed an accord and satisfaction, and either party may accept any check or payment without prejudicing such party's right to recover all outstanding amounts due under this Lease and pursue all remedies available hereunder or at law or in equity.

34. **RELATIONSHIP.** The relationship of Landlord and Tenant is solely that of independent third parties engaged in an arms length transaction. Nothing contained in this Lease shall be deemed or constructed as creating a partnership, joint venture, agency relationship or other similar relationship between Landlord and Tenant.

35. **INTENTIONALLY OMITTED.**

36. ACCESS AND LANDLORD ENTRY RIGHTS. Landlord shall have the right to enter the Premises upon reasonable notice to Tenant, to (A) conduct inspections, (B) show the Premises to prospective purchasers, lenders and tenants, and (C) access the maintenance and telecommunications rooms within the Premises, if any, and provided Landlord shall not unreasonably interfere with the operation of Tenant's business on the Premises. In addition, Landlord (and its agents, employees, contractors, and representatives) shall have the right to enter upon the Premises for purposes of performing its obligations and exercising its rights under this Lease, upon notice to Tenant (except in the event of an emergency in which case notice is not required). During the six (6) months prior to the expiration of the Term, Landlord may place "for rent," "for sale," and other similar notices in the Premises and Tenant shall permit such notices to remain without molestation. Additionally, Landlord shall have the right to enter the Premises in accordance with Section 22(B) of this Lease and in the event of emergency without prior notice.

37. PROHIBITED TRANSACTIONS AND PERSONS.

(A) Tenant represents and warrants that to the best of Tenant's knowledge: (i) Tenant and each person or entity owning an interest in Tenant, or occupying any portion of the Premises, is (a) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC List"), and (b) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), and (iii) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

(B) Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time during the Lease Term shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not knowingly permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of the Lease.

(C) In connection with this Lease or any proposed Assignment of this Lease or sublease, Tenant shall, upon request by Landlord, provide to Landlord the names of the persons holding an ownership interest in Tenant or any proposed assignee or

sublessee, as applicable, for purposes of compliance with Presidential Executive Order 13224 (issued September 24, 2001), as amended.

38. **LIMITATION OF LANDLORD LIABILITY.** Tenant shall look solely to the Landlord's equity in the real estate and the proceeds thereof of which the Premises are part and to no other assets or property of the Landlord for satisfaction of any liability in respect of this Lease and shall not seek recourse against any other property of Landlord, or against the individual partners, members, managers, directors, trustees, officers or shareholders of Landlord or any of their personal assets for such satisfaction.

39. **AUTHORITY.** Tenant hereby represents to Landlord that the execution and delivery of this Lease has been duly authorized by Tenant and that the persons executing this Lease on behalf of Tenant is duly authorized to do so and that same constitutes a binding obligation on the part of the Tenant. Landlord hereby represents to Tenant that the execution and delivery of this Lease has been duly authorized by Landlord and that the persons executing this Lease on behalf of Landlord is duly authorized to do so and that same constitutes a binding obligation on the part of the Landlord.

41. **COUNTERPART EXECUTION.** This Lease may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

42. **OPTION TO RENEW.**

Subject to the provisions set forth below, the Term may be renewed, at the option of Tenant (the "Renewal Option"), for two (2) additional periods of 60 months (the "Renewal Terms"). The Renewal Terms will be upon the same terms, covenants and conditions contained in this Lease, except the Rent due for such Renewal Terms will be as set forth in this Section. Any reference in this Lease to the "Term" will be deemed to include the Renewal Terms and apply thereto, unless it is expressly provided otherwise. Tenant will have no renewal option beyond the aforesaid period.

(a) The Rent during the Renewal Term for the Premises will be at a rate equal to the then Fair Market Rent (as defined in Exhibit C) as determined by Landlord, and for a term equal or comparable to the Renewal Term.

(b) Tenant will be deemed to have accepted the renewed Premises in "as-is" condition as of the commencement of the Renewal Term, and Landlord will have no additional obligation to improve, renovate or remodel the Premises or any portion of the Building or provide any allowance therefor as a result of Tenant's exercise of its option to renew.

(c) In order to exercise such option to renew, Tenant must first deliver to Landlord an initial nonbinding notice to Landlord no later than 90 days before, and no earlier than 180 days before, the Renewal Exercise Deadline, in which Tenant expresses its intention to exercise or interest in exercising such option to

renew and requesting Landlord's determination of Fair Market Rent. Within 30 days thereafter, Landlord will notify Tenant ("Landlord's Renewal Notice") of Landlord's calculation of the Fair Market Rent for the Premises. If Tenant fails to give its initial nonbinding notice when due as provided in this Section, Tenant will irrevocably be deemed to have waived its option to renew. For purposes hereof, the "Renewal Exercise Deadline" means ninety (90) days prior to the Lease Expiration Date.

(d) On or before the Renewal Exercise Deadline, Tenant will deliver to Landlord a final binding notice in which Tenant (i) elects to renew the Lease and accepts the terms stated in Landlord's Renewal Notice, or (ii) declines to renew the Term, in which case Tenant's rights under this Section 42 will be null and void. If Tenant fails to notify Landlord by the Renewal Exercise Deadline, time being of the essence, then Tenant's Renewal Option will be null and void.

(e) After Tenant delivers Tenant's binding notice exercising an option to renew, Landlord will deliver to Tenant an amendment to this Lease reflecting the terms of the renewal, and Tenant will execute such amendment and deliver it to Landlord within 30 days after receipt, but Landlord's failure to prepare such amendment, or either party's failure or refusal to execute and deliver the same, will have no effect on the effectiveness, validity, or enforceability of Tenant's exercise of the Renewal Option. Time is of the essence with respect to the giving of Tenant's exercise notices and execution of such amendment.

(f) Tenant's right to exercise its option to renew this Lease pursuant to this Section 42 is subject to the following conditions: (i) that on the date that Tenant delivers notice of its election to exercise its option to, and at the commencement of the Renewal Term, no Event of Default exists; (ii) that Tenant has not been in Monetary Default (as defined in Section 22) under the Lease two or more times during the Term; and (iii) that Tenant has not assigned the Lease.

43. PARKING. Tenant shall have the exclusive use of thirteen (13) parking spaces adjacent to City Hall on the west side and as shown on Exhibit D attached hereto. Tenant shall have the right, at its' own expense, to install "Reserved" parking signage at each parking space.

44. SIGNAGE. Tenant shall be permitted to install signage on the exterior of the Building. Such signage shall be in the form of a brass plaque similar to the other signage installed at the Building. All signage shall be in compliance with local ordinances and the rules of the Winchester Historic Society and shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this instrument to be executed under seal for the uses and purposes herein stated, pursuant to authority granted, as of the day and year first above written.

LANDLORD:

BRANCH BANKING AND TRUST COMPANY,
a North Carolina banking corporation

By: Brenda H. Shambo

Title: Vice President

TENANT:

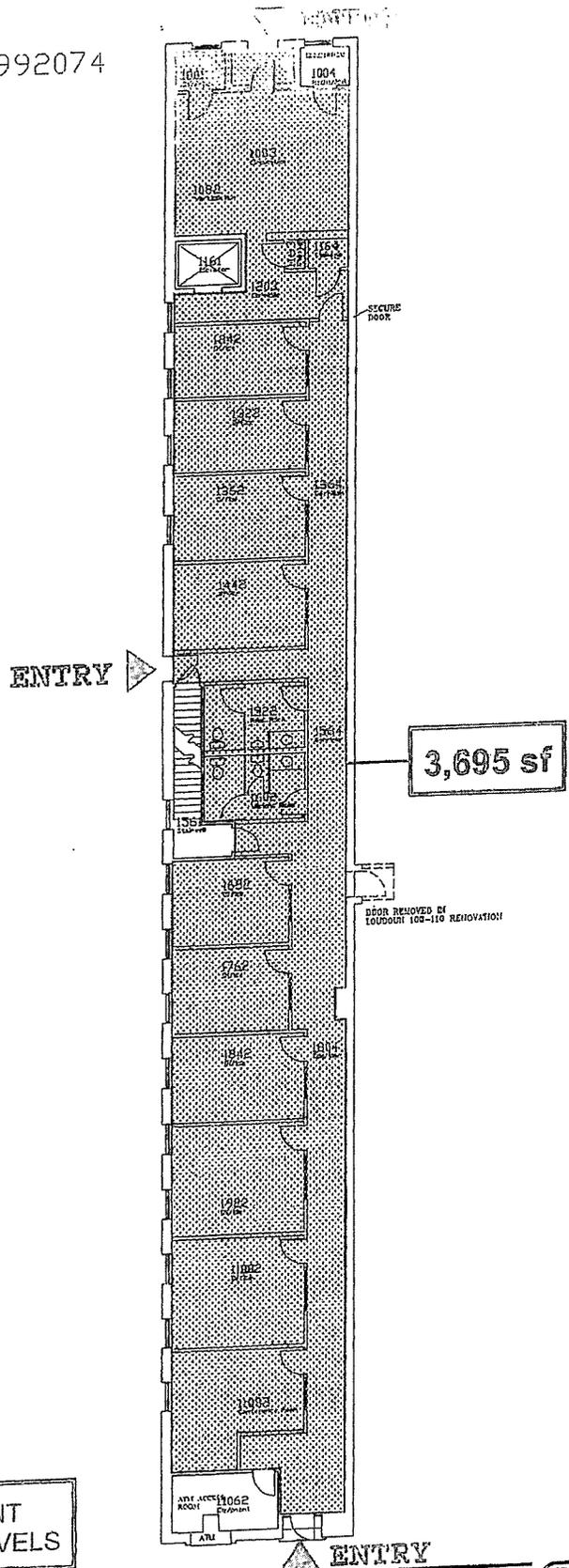
CITY OF WINCHESTER

By: _____

Title: _____

**EXHIBIT A
(PREMISES)**

Property Code - 992074



 TENANT AREA

OPTION 1 - SINGLE TENANT
OCCUPIES ALL THREE LEVELS



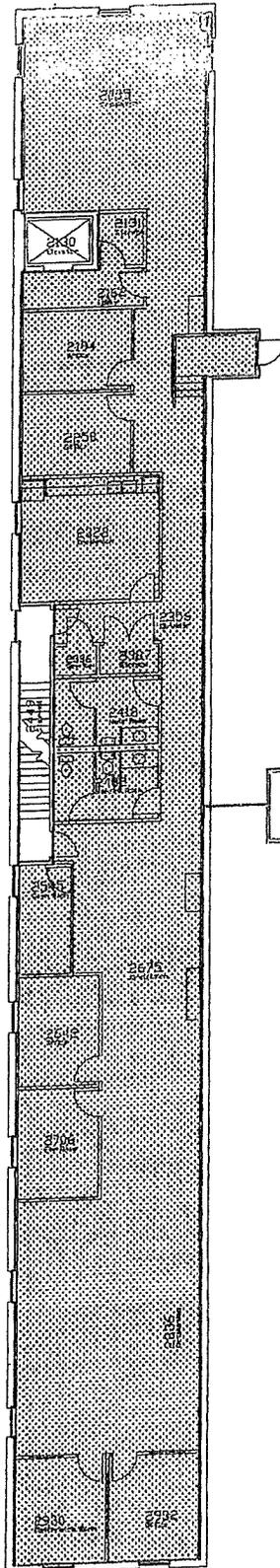
1st Floor
112 North Loudon St.
Winchester VA

REVISIONS	SCALE
	N.T.S.
	DRAWN BY
	MM
	DATE

10.22.13



Property Code - 992074



 TENANT AREA

OPTION 1 - SINGLE TENANT
OCCUPIES ALL THREE LEVELS



2nd Floor
112 North Loudon St.
Winchester, VA

REVISION
3/10/05
3/18/05
4/15/05

SCALE
N.T.S.
DRAWN BY MM
DATE 3/3/05

10.22.13


EXHIBIT B

RULES AND REGULATIONS

OFFICE LEASE

The following Rules and Regulations have been formulated for the safety and well-being of all the tenants of the Building and become effective upon occupancy. Strict adherence to these Rules and Regulations is necessary to guarantee that each and every tenant will enjoy a safe and unannoyed occupancy in the Building. Any repeated or continuing violation of these Rules and Regulations by tenant after notice from Landlord shall be sufficient cause for termination of this Lease at the option of Landlord.

The Landlord may, upon request by any tenant, waive the compliance by such tenant of any of the foregoing Rules and Regulations provided that (1) no waiver shall be effective unless signed by Landlord or Landlord's authorized agent, (2) any such waiver shall not relieve such tenant from the obligation to comply with such rule of regulation in the future unless expressly consented to by Landlord and (3) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the foregoing Rules and Regulations unless such other tenant has received a similar waiver in writing from Landlord.

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors of halls or other parts of the Building not occupied by any tenant shall not be obstructed or encumbered by any tenant or used for any purpose other than ingress and egress to and from the demised premises and if the demised premises are situated on the ground floor of the Building the tenant thereof shall, at said tenant's own expense, keep the sidewalks and curb directly in front of said premises clean. Landlord shall have the right to control and operate the public portions of the Building, and the facilities furnished for the common use of the tenants, in such manner as Landlord deems best for the benefits of the tenants generally. No tenant shall permit the visit to the demised premises of persons in such numbers or under such conditions as to interfere with the use and enjoyment by other tenants of the entrances, corridors, elevator and other public portions or facilities of the Building.
2. No awning or other projections shall be attached to the outside walls of the building without the prior written consent of Landlord. No drapes, blinds, shades or screens shall be attached to or hung in or used in connection with any window or door of the demised premises without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord.
3. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any tenant on any part of the outside or inside of the demised premises or Building without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to the tenant or tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each tenant by Landlord, and shall be of a size, color and style acceptable to Landlord.

1855_Rules_and_Regulations revised: 8/3/2010

4. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules without the prior consent of Landlord.
5. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.
6. There shall be no marking, painting, drilling into or in anyway defacing any part of the demised premises or the Building. No boring, cutting or stringing of wires shall be permitted. No tenant shall construct, maintain, use or operate, within the demised premises or elsewhere within or on the outside of the Building, any electrical device, writing or apparatus in connection with a loud speaker system or other sound system.
7. No bicycles, vehicles or animals, birds or pets of any kind, shall be brought into or kept in or about the premises, and no cooking shall be done or permitted by any tenants on said premises, except for a tenant's employees own use. No tenant shall cause or permit any unusual or objectionable odors to be produced upon or permeate from the demised premises.
8. No space in the Building shall be used for manufacturing, for the storage of merchandise or for the sale of merchandise, goods or property of any kind at auction.
9. No tenant shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises of those having business with them whether by the use of any musical instruments, radio, phonograph, unmusical noise, whistling, singing or in any other way.
10. Tenant shall not throw anything out of doors or windows or down corridors or stairs.
11. No inflammable, combustible or explosive fluids, chemicals or substances shall be brought or kept upon the demised premises. Burning of candles are prohibited.
12. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or the mechanics thereof. The doors leading to the corridors or main halls shall be kept closed during business hours except as they may be used for ingress or egress. Each tenant shall, upon the termination of his tenancy, restore to Landlord all keys of stores, offices, storage and toilet rooms either furnished to or otherwise produced by such tenant, and in the event of the loss of any keys so furnished, such tenant shall pay to Landlord the cost thereof.
13. All removals, or the carrying in or out of any safes, freight, furniture or bulky matter of any description must take place during the hours which landlord or its agents may determine from time to time. Landlord reserves the right to inspect all freight to be brought into the

Building and to exclude from the Building all freight which violates any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

14. Any person employed by any tenant to do janitorial work within the demised premises must obtain Landlord's consent and such person shall, in the Building and outside of said demised premises, comply with all instructions issued by the superintendent of the Building. No tenant shall engage or pay any employee on the demised premises, except those actually working for such tenant on said premises.
15. No tenant shall purchase spring water, ice, coffee, soft drinks, towels or other like service from any company or persons whose repeated violations of Building regulations have caused, in Landlord's opinion, a hazard or nuisance to the Building and/or occupants.
16. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, such tenant shall refrain from or discontinue such advertising.
17. Landlord reserves the right to exclude from the Building at all times any person who is not known or does not properly identify himself to the building management or watchman on duty.

Landlord may, at its option, require all persons admitted to or leaving the Building between the hours of 6:00 p.m. and 8:00 a.m. Monday thru Friday and at all times on Saturday, Sunday and legal holidays to register. Each tenant shall be responsible for all persons for whom he authorizes entry into or exit out of the Building and shall be liable to Landlord for all acts of such persons.

18. The premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.
19. No tenant shall occupy or permit any portion of the demised premises to be used or occupied as an office for a public stenographer or typist, or for the possession, storage, manufacture or sale of liquor, narcotics, dope, tobacco in any form, or as a barber or manicure shop, or as an employment bureau, unless said tenant's lease expressly grants permission to do so. No tenant shall engage or pay any employees of said premises nor advertise for laborers giving as address said premises.
20. The requirements of tenants will be attended to only upon application at the office of the Building. Building employees shall not perform any work or do anything outside of their regular duties unless under special instruction from the management of the Building.
21. Canvassing, soliciting and peddling in the Building is prohibited and each tenant shall cooperate to prevent the same.
22. No water cooler, plumbing or electrical fixtures shall be installed by any tenant.

1855_Rules_and_Regulations revised: 8/3/2010

23. Hand trucks, except those equipped with rubber tires and side guards, shall not be used in any space, or in the public halls of the Building, either by any tenant or by the jobbers or others, in the delivery or receipt of merchandise.
24. Where carpet is installed over access plates to underfloor ducts, tenant will be required, at tenant's expense, to provide access when necessary.
25. Mats, trash or other objects shall not be placed in the public corridors.
26. Landlord does not maintain suite finishes which are nonstandard, such as kitchens, wallpaper, special lights, etc. However, should the need for repair arise, Landlord will arrange for the work to be done at the tenant's expense.
27. No employees of tenant shall park in any area around Building other than those spaces designated for tenant parking. Landlord shall not be responsible for lost or stolen property, equipment, money or any article taken from Premises, building or parking facilities regardless of how or when loss occurs, except in the case of gross negligence by Landlord and its agents.
28. The use of any tobacco products is prohibited throughout the entire office building interior including stairwells, hallways, corridors, elevators, foyers, restrooms, any leased premises and in other existing common areas.

EXHIBIT C

The term "Fair Market Rental" shall mean the market rental rate for the time period such determination is being made for office space in downtown historic district buildings in the Winchester area ("AREA") of comparable condition for space of equivalent quality, size, utility, and location. Such determination shall take into account all relevant factors, including, without limitation, the following matters: the credit standing of Tenant; the length of the term; expense stops; the fact that Landlord will experience no vacancy period and that Tenant will not suffer the costs and business interruption associated with moving its offices and negotiating a new lease; construction allowances and other tenant concessions that would be available to tenants comparable to Tenant in the AREA (such as moving expense allowance, free rent periods, and lease assumptions and take-over provisions, if any, but specifically excluding the value of improvements installed in the Premises at Tenant's cost), and whether adjustments are then being made in determining the rental rates for renewals in the AREA because of concessions being offered by Landlord to Tenant (or the lack thereof for the Renewal Lease Term in question). For purposes of such calculation, it will be assumed that Landlord is paying a representative of Tenant a brokerage commission in connection with the Renewal Term in question, based on the then current market rates.

EXHIBIT D (Parking)



2015 Fire and Rescue Department Statistics

Month	Incidents											Casualties		Training Hours		Resuscitation Efforts	
	EMS	Fire	Total	Struc. Fire	Fire Other	ALS 1	ALS 2	BLS	Pt. Ref.	Mutual Aid Given	Mutual Aid Recvd.	Fire	Civ.	Dept. Personnel	LFCC Ride-Along Students	Cardiac Arrest	Cardiac Arrest Saved
January	356	111	467	8	103	190	5	123	23	43	12	0	2	1204	0	4	2
February			0		0												
March			0		0												
April			0		0												
May			0		0												
June			0		0												
July			0		0												
August			0		0												
September			0		0												
October			0		0												
November			0		0												
December			0		0												
TOTAL	356	111	467	8	103	190	5	123	23	43	12	0	2	1204	0	4	2
	76.23%	23.77%		7.21%	92.79%	53.37%	1.40%	34.55%	6.46%	9.21%	2.57%						50.00%
	% of Total			% of Fire		% of EMS Responses				% of Total							26.3% National Average

10 Years of Incidents											
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
4932	5288	5711	5673	5571	5365	5407	5539	5541	5756	5605	5888

Other Monthly Activity:



Volunteer and Career Live Burn Training in Shenandoah County, FF Dunn Operational Clearance

FY 2015 EMS Revenue Recovery Statistics

	Gross Revenue	Manual Contractural Allowances	Automatic Contractural Allowances	Refunds	Net Collectable	Payments from Patients	Payments from Insurance	Total Deposits
JULY	\$137,770.00	\$9,086.48	\$25,204.96	\$572.00	\$102,906.56	\$7,553.06	\$81,705.89	\$89,258.95
AUGUST	\$152,144.00	\$5,850.90	\$28,995.09	\$86.20	\$117,211.81	\$5,639.83	\$79,022.58	\$84,662.41
SEPTEMBER	\$167,371.00	\$5,788.36	\$32,894.74	\$0.00	\$128,687.90	\$3,870.80	\$65,254.01	\$69,124.81
OCTOBER	\$176,373.00	\$13,803.42	\$30,490.83	\$481.21	\$131,597.54	\$5,531.26	\$104,650.23	\$110,181.49
NOVEMBER	\$150,539.00	\$11,969.51	\$23,077.46	\$1,606.49	\$113,885.54	\$5,146.74	\$87,407.18	\$92,553.92
DECEMBER	\$172,016.00	\$7,560.54	\$34,430.04	\$0.00	\$130,025.42	\$4,406.02	\$86,192.37	\$90,598.39
JANUARY	\$176,435.00	\$10,421.65	\$28,624.64	\$496.24	\$136,892.47	\$5,036.24	\$91,141.31	\$96,177.55
FEBRUARY					\$0.00			\$0.00
MARCH					\$0.00			\$0.00
APRIL					\$0.00			\$0.00
MAY					\$0.00			\$0.00
JUNE					\$0.00			\$0.00
TOTALS	\$1,132,648.00	\$64,480.86	\$203,717.76	\$3,242.14	\$861,207.24	\$37,183.95	\$595,373.57	\$632,557.52



2015 Fire Marshal Division Statistics

Month	City Fire Property Dollar Loss/Save			Plan Review		Inspections/Investigations						Public Education					
	Loss	Value	Saved	#	Revenue Generated	Fire Insp.	Follow-up	Sprinkler	Alarm	Supres.	Site	Other Insp.	FMO Staff Investig.	Smoke Alarms Installs	Car Seat Installs	Pub Ed Children	Pub Ed Adult
January	\$212,000.00	\$1,869,100.00	\$1,657,100.00	10	\$272.34	9	27	2	0	1	0	13	3	2	8	0	9
February			\$0.00														
March			\$0.00														
April			\$0.00														
May			\$0.00														
June			\$0.00														
July			\$0.00														
August			\$0.00														
September			\$0.00														
October			\$0.00														
November			\$0.00														
December			\$0.00														
TOTAL	\$212,000.00	\$1,869,100.00	\$1,657,100.00	10	\$272.34	9	27	2	0	1	0	13	3	2	8	0	9



A Virginia Accredited Law Enforcement Agency

Timbrook Public Safety Center
231 East Piccadilly Street
Winchester, VA 22601

Telephone: (540) 545-4700
FAX: (540) 542-1314
Website: www.winchesterva.gov

**WINCHESTER POLICE DEPARTMENT
MONTHLY COUNCIL REPORT
January 2015**

5 YEAR TREND FOR MAJOR CRIMES- JANUARY

	2011	2012	2013	2014	2015
THEFT	48	52	42	82	46
GRAND THEFT	9	19	24	9	16
MVT	1	2	2	1	0
ROBBERY	1	2	4	0	0
RAPE	0	1	1	0	1
B&E	9	10	11	11	6

5 YEAR TREND ENFORCEMENT -Enforcement for JANUARY - 5 year trend

	2010	2011	2012	2013	2014
Felony Arrests	26	15	25	37	19
Misdemeanor Arrests	133	95	148	154	110
Legal Document - Felony	14	19	35	24	49
Legal Document - Misdemeanor	149	139	146	68	98
DUI Arrests	28	7	26	18	13
Incident Reports	308	254	290	290	266
Field Contacts Documented	41	24	36	16	12
Speeding - Radar	171	140	101	101	64
Traffic Violations	400	244	334	292	215
Vehicle Crash Investigations	48	48	37	21	52
Warning Citations				92	70
Vehicle Stops	1368	1417	1085	1196	1029
Parking Violations	217	134	105	117	102

Up-to-date statistics can be found at <http://winchesterpolice.org/crime-statistics> and up-to-date crime maps are available at <http://winchesterpolice.org/city-of-winchester-crime-map>.

“Committed to improving the quality of life for all people by preventing crime in the city.”