

WINCHESTER COMMON COUNCIL
JUNE 10, 2014
AGENDA
7:00 P.M.

CALL TO ORDER AND ROLL CALL

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – May 13, 2014 Regular Meeting, May 20, 2014 Special Meeting, May 20, 2014 Work Session, May 27, 2014 Work Session, June 3, 2014 Special Meeting

REPORT OF THE MAYOR

REPORT OF THE CITY MANAGER

REPORT OF THE CITY ATTORNEY

PUBLIC HEARINGS

- 1.1 O-2013-40:** Second Reading – AN ORDINANCE TO AMEND AND RE-ENACT CHAPTER 9 OF THE WINCHESTER CITY CODE PERTAINING TO WATER PROTECTION (*Implementation of applicable provisions of the Virginia Stormwater Management Plan*)(**REQUIRES ROLL-CALL VOTE**)(pages 6-77)
- 1.2 O-2014-11:** Second Reading – AN ORDINANCE TO AMEND CHAPTER 11 OF THE WINCHESTER CITY CODE BY ADDING A NEW SECTION, 11-24.1, THAT ESTABLISHES A FEE FOR GARBAGE AND REFUSE COLLECTION (**REQUIRES ROLL-CALL VOTE**)(pages 78-82)
- 1.3 O-2014-12:** Second Reading – AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2014 (**REQUIRES ROLL-CALL VOTE**)(pages 83-92)
- 1.4 O-2014-15:** Second Reading – AN ORDINANCE TO APPROVE THE APPLICATION OF THE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS OF WINCHESTER, FREDERICK AND CLARKE COUNTIES FOR TAX EXEMPT STATUS BY DESIGNATION PURSUANT TO CHAPTER 27 DIVISION 5 OF CODE OF THE CITY OF WINCHESTER (**REQUIRES ROLL-CALL VOTE**)(pages 93-101)

- 1.5 O-2014-14:** Second Reading – AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 6, 7, 8, 9, 10, 13, 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, PERMITTED USES, AND USES REQUIRING A CONDITIONAL USE PERMIT FOR ALTERNATIVE FINANCIAL INSTITUTIONS **TA-14-118 (REQUIRES ROLL-CALL VOTE)(pages 102-110)**
- 1.6 O-2014-13:** Second Reading – AN ORDINANCE TO AMEND ARTICLES 1 AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF MEDICAL CARE FACILITY AND PERMITTED USES IN THE PLANNED COMMERCIAL (PC) DISTRICT **TA-14-120 (REQUIRES ROLL-CALL VOTE)(pages 111-118)**
- 1.7 O-2014-16:** Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 14-17 AND 14-18 OF THE CODE OF THE CITY OF WINCHESTER REGARDING VEHICLE LICENSE FEES **(REQUIRES ROLL-CALL VOTE)(pages 119-122)**
- 1.8 O-2014-17:** Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-72 OF THE CODE OF THE CITY OF WINCHESTER REGARDING MEALS TAX LEVY AND RATE **(REQUIRES ROLL-CALL VOTE)(page 123)**
- 1.9 O-2014-18:** Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-91 OF THE CODE OF THE CITY OF WINCHESTER REGARDING TRANSIENT LODGING TAX LEVY AND RATE **(REQUIRES ROLL-CALL VOTE)(page 124)**
- 1.10 O-2014-19:** Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-171 OF THE CODE OF THE CITY OF WINCHESTER REGARDING LEVY OF CIGARETTE TAXES **(REQUIRES ROLL-CALL VOTE)(page 125)**
- 1.11 O-2014-20:** Second Reading – AN ORDINANCE TO AUTHORIZE THE APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2015 **(REQUIRES ROLL-CALL VOTE)(pages 126-134)**
- 1.12 CU-14-230:** Conditional Use Permit – Request of Greenway Engineering on behalf of the Winchester SPCA for animal shelter use at 111 Featherbed Lane (*Map Number 252-01-31A*) zoned Commercial Industrial (CM-1) District (*Allows converting a former print shop building to a pet adoption center*)(pages 135-142)
- 1.13 CU-14-212:** Conditional Use Permit – Request of Braveger Enterprises, LLC for conversion of ground floor nonresidential use to residential use at 910 South Braddock Street (*Map Number 212-01-H-6*) zoned Central Business (B-1)

District (*Allows for converting a former personal service establishment to an apartment*)(pages 143-148)

- 1.14 CU-14-267:** Conditional Use Permit – Request of Eugene F. Dearing, III for extended stay lodging at 126 North Braddock St (*Map Number 173-01-F-5*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay (*Allows converting a former dental office and apartment building into 4 extended stay lodging units*)(pages 149-156)

2.0 PUBLIC COMMENTS

3.0 CONSENT AGENDA

- 3.1 O-2014-21:** First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-176 OF THE WINCHESTER CITY CODE REGARDING REFUND FOR UNUSED OR DAMAGED CIGARETTE STAMPS (pages 157-159)
- 3.2 O-2014-22:** First Reading: AN ORDINANCE AMENDING SECTIONS 6-5 AND 6-6 OF THE WINCHESTER LAND SUBDIVISION ORDINANCE PERTAINING TO APPROVAL OF MINOR SUBDIVISIONS **SA-14-199** (*The amendment eases restrictions on approving subdivisions administratively and ensures compliance with State Code on recording plats*)(pages 160-164)
- 3.3 O-2014-23:** First Reading: AN ORDINANCE TO REZONE 1.442 ACRES OF LAND AT 150 COMMERCIAL STREET (Map Number 153-01-J-3) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT TO COMMERCIAL INDUSTRIAL (CM-1) DISTRICT **RZ-14-193** (*Allow light industrial uses not otherwise allowed under B-2 zoning*)(pages 165-171)
- 3.4 O-2014-24:** First Reading: AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET (*Map Number 252-01-2*) FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY **RZ-14-35** (*Allows a 26 three-bedroom townhouse units on primarily vacant industrial property*)(pages 172-216)
- 3.5 R-2014-21:** Resolution – Adoption of the FY15 schedule of City Council Meetings (pages 217-220)
- 3.6 R-2014-24:** Resolution – Approval to refund prorated Business License Taxes to Oasis Brands in the amount of \$135,446 and to Winchester Emergency Physicians PC in the amount of \$2,771.80 (pages 221-225)
- 3.7 R-2014-25:** Resolution – Authorizing to execute a contract for Wide Area Network Services with Conterra Fiber Solutions. (pages 226-318)

- 3.8 R-2014-26:** Resolution – Adoption of the VRS Employer Contribution Certified Rate of 11.90% for the City and 8.72% for the City Schools (pages 319-325)
- 3.9** Motion to re-appoint Erica Truban as an “At-Large (Ward 4)” member and Vince Di Benedetto as a “Ward 2” member of the Winchester School Board each to serve a four year term ending June 30, 2018
- 3.10** Motion to appoint Craig Gerhart as the Clerk of Council.
- 3.11** Motion to appoint Craig Gerhart as a member of the Juvenile Detention Commission for an indefinite term.
- 3.12** Motion to appoint Craig Gerhart as the Local Board of Social Services for an indefinite term.
- 3.13** Motion to appoint Craig Gerhart as a member of the Winchester-Frederick County Metropolitan Planning Organization Policy Board for an indefinite term.
- 3.14** Motion to appoint Craig Gerhart as the Administrative Advisory Member of the Planning Commission for a term that is coextensive with the term in office.
- 3.15** Motion to appoint Craig Gerhart as a member of the Regional Jail Authority to fill an unexpired term ending February 28, 2017
- 3.16** Motion to appoint Craig Gerhart as an ex-officio member of the Social Services Advisory Board.
- 3.17** Motion to appoint Craig Gerhart as a member of the Community Policy and Management Team

4.0 AGENDA

- 4.1 R-2014-27:** Resolution – Adoption of a personnel action plan to begin hiring necessary staff positions in the City of Winchester (pages 326-330)
- 4.2** Motion to approve the Interim City Manager Agreement with Gerhart Enterprises, Inc.
- 4.3** Motion for the Nomination of _____ for appointment to the School Board and direct the Clerk of Council to issue a Notice of a Public Hearing for citizen comment on same in accordance with §22.1-29.1 of the Code of Virginia.

5.0 EXECUTIVE SESSION

- 5.1** 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 AND STATUS UPDATE FROM THE CITY

ATTORNEY AND LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION AND PURSUANT TO §2.2-3711(A) (7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF INFORMATION REGARDING THE SUBJECT OF THE EMPLOYMENT, ASSIGNMENT, APPOINTMENT, AND PERFORMANCE OF SPECIFIC PUBLIC OFFICERS APPOINTEES, AND EMPLOYEES OF THE CITY OF WINCHESTER INCLUDING THE APPOINTMENT OF OR PROSPECTIVE APPOINTMENT OF MEMBERS TO CERTAIN BOARDS AND COMMISSIONS.

6.0 ADJOURNMENT

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: April 15, 2014 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE XX PUBLIC HEARING XX

ITEM TITLE: An ordinance to amend Chapter 9 - "Water Protection" of the Winchester City Code to comply with all applicable regulations of the Virginia Stormwater Management Program.

STAFF RECOMMENDATION: Adopt the ordinance.

PUBLIC NOTICE AND HEARING: Will be required.

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

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>4/8/14</u>
2. City Attorney	<u>AV</u>		<u>4/8/2014</u>
3. City Manager	<u>[Signature]</u>		<u>4-8-14</u>
4. Clerk of Council	<u>[Signature]</u>		<u>4-9-14</u>
Initiating Department Director's Signature.	<u>[Signature]</u>		<u>4/7/14</u> Date



APPROVED AS TO FORM:

[Signature] 4/8/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Perry Eisenach, Public Services Director
Date: June 10, 2014 (Council work session)
Re: Modifications to Chapter 9 – “Water Protection” of the Winchester City Code

THE ISSUE: An ordinance to amend Chapter 9 – “Water Protection” of the Winchester City Code to comply with all applicable regulations of the Virginia Stormwater Management Program.

RELATIONSHIP TO STRATEGIC PLAN: **Goal 4:** Create a More Livable City for All.

BACKGROUND: The Commonwealth of Virginia has adopted legislation that requires the City of Winchester to implement and enforce all applicable provisions of the Virginia Stormwater Management Program (VSMP). The deadline for implementing all these requirements is July 1, 2014.

The attached ordinance would make the necessary modifications to Winchester City Code Chapter 9 – “Water Protection” so that the City is in compliance with State Code.

NOTE: This ordinance was first presented to Council at the work session on November 19, 2013 and again at the work session on January 21, 2014. The General Assembly made some last minute changes to the legislation and SB423 was signed by the Governor on March 24. The ordinance has been modified to reflect all the changes and is now ready for Council action.

ADDITIONAL NOTE: Following the first reading of the ordinance that took place on May 13, the State Department of Environmental Quality has requested (at the last minute) that the City make two small changes to the ordinance. **These minor, non-substantive changes are shown in yellow highlight on pages 9-13 and 9-38 of the ordinance.**

BUDGET IMPACT: Implementing and enforcing these new regulations will require additional City resources. While some additional revenue from state mandated fees from developers will be generated, this revenue will most likely not cover the additional expenditures that will be required.

OPTIONS FOR CITY COUNCIL:

Either adopt or not adopt the proposed ordinance.

RECOMMENDATION:

Adopt the proposed ordinance.

**AN ORDINANCE TO AMEND AND RE-ENACT CHAPTER 9 OF THE WINCHESTER CITY CODE
PERTAINING TO WATER PROTECTION**

WHEREAS, the Commonwealth of Virginia has enacted legislation mandating that the City of Winchester implement all applicable provisions of the Virginia Stormwater Management Plan; and

WHEREAS, implementing these requirements will require numerous modifications to Chapter 9 of the Winchester City Code; and

WHEREAS, implementing these requirements is associated with more stringent stormwater discharge regulations being mandated by the federal government and state government.

NOW, THEREFORE, BE IT ORDAINED that Chapter 9 of the Winchester City Code is hereby amended and re-enacted to read as provided on the attached pages.

The effective date of this Ordinance shall be July 1, 2014.

Ordinance No. _____

ADOPTED by the Common Council of the City of Winchester on the ____ day of _____, 2014.

Witness my hand and the seal of the City of Winchester, Virginia.

Deputy Clerk of the Common Council

CHAPTER 9

WATER PROTECTION

- Art. I. In General, §§9-1--9-19
- Art. II. Erosion and Sediment Control, §§9-20--9-49
- Div. 1. In General, §§9-20--9-29
- Div. 2. Erosion and Sediment Control Plan for Land Disturbing Activities, §§9-30--9-49
- Art. III. Stormwater Management and Water Quality, §§9-50--9-79
- Div. 1. In General, §§9-50--9-55
- Div. 2. ~~Plan Requirements: Water Quantity and Water Quality Protection~~Requirements for Water Quantity and Water Quality Protection, §§9-56--9-79
- Art. IV. Stream Buffers, §§9-80--9-99
- Art. V. Storm Sewer Discharges, §§9-90--9-95

ARTICLE I. IN GENERAL

SECTION 9-1. SHORT TITLE.

This Chapter shall be known and may be cited as the City’s “Water Protection Ordinance.”

SECTION 9-2. AUTHORITY.

This Chapter is adopted pursuant to authority conferred by the Virginia Erosion and Sediment Control Law (Virginia Code ~~§§10.1-560~~62.1-44.15:51 et seq.), the Virginia Stormwater Management Act (Virginia Code ~~§10.1-603.1~~62.1-44.15:24 et seq.), ~~Virginia Code §10.1-2108~~ of the Chesapeake Bay Preservation Act (Virginia Code §62.1-44.15:67 et seq.), and the Federal Clean Water Act.

SECTION 9-3. PURPOSES.

The City Council finds that this Chapter is necessary to protect the general health, safety and ~~general~~-welfare of the citizens of the City and the Commonwealth of Virginia and to prevent stormwater from being rendered dangerous to the health of persons living in the City, and is supported by the findings of related studies that have been conducted. Therefore, the specific purposes of this Chapter are to:

Editor’s Note: Ordinance No. 15-2006, adopted April 11, 2006, repealed and re-enacted Chapter 9 in its entirety.

- (1) Inhibit the deterioration of ~~public water~~state waters and waterways resulting from land disturbing activities;
- (2) Protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased stormwater runoff from new land development and redevelopment;
- (3) Control nonpoint source pollution, erosion and sedimentation, and stream channel erosion;
- (4) Maintain the integrity of existing stream channels and networks for their biological functions, drainage, and natural recharge of groundwater;
- (5) Protect the condition of ~~public water~~state waters for all reasonable public uses and ecological functions;
- (6) Provide for the long-term responsibility for and maintenance of stormwater management facilities and best management practices;
- (7) Facilitate the integration of stormwater management and pollution control with other City ordinances and with federal, Commonwealth of Virginia and local programs, policies, regulations and guidelines; ~~and~~
- (8) Prohibit illicit connections and discharges to the City's municipal storm sewer system.;
- (9) Protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources;
- (10) Provide the framework for the administration, implementation, and enforcement of the provisions of the Virginia Erosion and Sediment Control Act and Virginia Stormwater Management Act and their attendant regulations by the City;
- (11) Establish a local Virginia Stormwater Management Program (VSMP) consistent with the requirements of §62.1-44.15:27 of the Code of Virginia;
- (12) Establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced; and
- (13) Establish the procedures and requirements to be followed in connection with land disturbance permits and VSMP authority permits issued by the City.

SECTION 9-4. RULES OF CONSTRUCTION.

This Chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. The following rules of construction shall apply in the construction of this Chapter, unless such application would be contrary to the purposes of this Chapter or the context clearly indicates otherwise:

- (1) All references to any statute, ordinance, regulation, guideline, handbook, manual or standard shall be to such statute, ordinance, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this Chapter and includes any amendment thereafter or reissue in a subsequent edition.
- (2) Any reference to "this Article," "Article II," "Article III," or "Article IV"

shall include references to all applicable references of Article I. (3) All references to “days” shall be to calendar days.

- (4) All references to a “fee schedule” shall mean and refer to a schedule of the fees and charges associated with the various applications, inspections, permits and approvals required by this Chapter, as approved and amended by the City Council from time to time. All required fees shall be made payable to the City Treasurer.

SECTION 9-5. DEFINITIONS.

The following terms, whenever used or referred to in this Chapter, shall have the respective meanings set forth below, unless the context clearly requires a contrary meaning or any such term is expressly defined to the contrary elsewhere in this Chapter:

Administrator or Program Administrator means the City Engineer for the City of Winchester, Virginia.

Agreement in lieu of a plan means a contract between the program authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence; this contract may be executed by the program authority in lieu of a formal erosion and sediment control plan.

Agreement in lieu of a stormwater management plan means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

Applicant means any person submitting a plan for approval, or applying for or requesting the issuance of a permit, when required, under this Ordinance authorizing land disturbing activities to commence.

Authorized City Official means includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter, except for where the context clearly indicates otherwise.

Best management practices (“BMP’s”) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices and facilities, both structural and nonstructural, to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, ~~receiving waters, or~~ stormwater conveyance systems, and other receiving waters, including surface waters and groundwater. BMP’s also include treatment practices, operating procedures, and practices to control site runoff, stormwater discharges from land disturbing activities, spillage or leaks, or combination of practices that is determined by the Commonwealth of Virginia, ~~a designated area wide planning agency,~~ or the program authority; to be the most effective, practical means of preventing or reducing

the amount of surface water runoff and pollution generated by nonpoint sources to a level compatible with water quality goals.

Board or *State Board* means: ~~(i) as used in Article I, the Virginia Soil and Water Conservation Board, and (ii) as used in Article II, the Virginia Board of Conservation and Recreation~~ State Water Control Board.

Certified inspector means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program who (1) holds a certificate of competence from the Virginia ~~Soil and Water Conservation~~ State Water Control Board in the area of project inspection or (2) is enrolled in that Board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

Certified plan reviewer means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program, who (1) holds a certificate of competence from the Virginia ~~Soil and Water Conservation~~ State Water Control Board in the area of plan review, (2) is enrolled in that Board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (3) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Virginia Code § 54.1-400, et seq.

Certified program administrator means an employee or agent of the program authority implementing the City's local erosion and sediment control program or stormwater management program who (1) holds a certification of competence from the Virginia ~~Soil and Water~~ State Water Control ~~Conservation~~ Board in the area of program administration, or (2) is enrolled in that Board's training program for program administration and successfully completes such program within one (1) year after enrollment.

Channel means a natural stream or human-made waterway.

City means the City of Winchester, Virginia.

Clean Water Act (CWA) means the Federal Water Pollution Control Act (33 U.S.C. §-1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, and any subsequent amendments thereto.

Common plan of development or sale means a contiguous area where separate and distinct construction activities occur at different times or according to different schedules.

Conservation plan, ~~erosion and sediment control plan or plan and specifications~~ means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with necessary interpretations, and a record of

decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Conservation standards, criteria or specifications means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation whether promulgated by the program authority or contained in (1) the Virginia Erosion and Sediment Control Handbook and other regulations promulgated by the Virginia ~~Soil and Water Conservation~~State Water Control Board or (2) the Stormwater Management Handbook and other regulations promulgated by the Virginia ~~Department of Conservation and Recreation~~Department of Environmental Quality.

Construction record drawing means a drawing or plan showing the exact dimensions, geometry, and location of completed stormwater management facilities.

Control measure means any best management practice or stormwater management facility, or other method used to minimize the discharge of pollutants to state waters.

DEQ or VDEQ means the Virginia Department of Environmental Quality.

Development, land development and land development project as used within this Chapter each refer to any manmade change to, or construction on, a land surface that potentially changes its runoff characteristics, or the landform resulting from any such manmade change to the land surface or associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, or the clearing of land for purposes other than agricultural or silviculture. A land disturbing activity as defined herein shall be considered land development for the purposes of administering this Chapter.

Director, for the purposes of Article V of this Chapter, shall mean and include the City's Director of Public Utilities or the City Engineer, and the employees and agents authorized by either of them to exercise authority or to take enforcement action under the provisions of Article V.

Discharge means to dispose, deposit, spill, pour, inject, dump, leak or place by any means, and also refers to that which is disposed, deposited, spilled, poured, injected, dumped, leaked or placed by any means.

Drainage Basin means a watershed.

Erosion and sediment control plan means a document which sets forth the major soil and water resources conservation measures that will be implemented to assure that the unit or units of land will be so treated to achieve the conservation objectives of this Chapter, and which may also include appropriate illustrations in the form of maps or a site plan, and appropriate narratives, such as a soil and water plan inventory and management information with needed interpretations, a record of decisions contributing to conservation treatment,

and any specifications submitted with the plan.

Erosion impact area means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of five thousand (5,000) square feet or less used for residential purposes.

General Permit means the state permit titled “General Permit for Discharges of Stormwater from Construction Activities” found in 9VAC25-880-1 et seq. of the regulations authorizing a category of discharges under the federal Clean Water Act and the Virginia Stormwater Management Act within a geographical area of the Commonwealth of Virginia.

Illegal discharge and *illicit discharge* each means and refers to any discharge to the City’s municipal separate storm sewer system (“MS4”) that is not composed entirely of stormwater, except: (i) discharges pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) permit; (ii) discharges resulting from firefighting activities; and (iii) any discharges specifically authorized within Article V of this Chapter.

Illicit connection means either of the following: (i) any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the Program Authority; or (ii) any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records approved by the Program Authority.

Land disturbance or land disturbing activity means a man-made change to the land surface that potentially changes its runoff characteristics, or any such land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands in the City or adjacent jurisdictions, including, but not limited to, clearing, grading, excavating, transporting and filling of land, ~~except-provided~~ that the term shall not include the exempt activities set forth in Sec. 9-50 for purposes of administering Article III of this Chapter, and provided further that, for the purposes of administering Article II of this Chapter, the term shall not include :

- (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work that ~~are-disturb~~ less than five thousand (5,000) square feet;:-
- (2) Installation, maintenance or repair of any ~~other~~-underground public utility mains or lines, when such activity occurs on an existing hard surfaced road, street or sidewalk and the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;:-
- (3) Construction, installation, maintenance or repair of any type of individual utility service connections;:-
- (4) Septic tank lines or drainage fields unless included in an overall plan for land

disturbing activity relating to construction of a building to be served by a septic tank system;:-

- (5) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;:-
- (6) Disturbed land areas of less than five thousand (5,000) square feet in size;:-
- (7) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;:-
- (8) Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be ~~shaped and established~~ stabilized in accordance with the requirements of the Virginia Erosion and Sediment Control Handbook;:-

(9) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;

(10) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of §10.1-1163 of the Code of Virginia; and

(11) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Article 2 (§10.1-604 et seq.) of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.

Layout means a conceptual drawing containing sufficient information, as determined by the program administrator, to provide for the specified stormwater management facilities required at the time of approval.

Linear development means a land development that is linear in nature, such as (but not limited to): (i) the construction of electric and telephone utility lines and natural gas pipelines; (ii) the construction of railroad tracks, rights-of-way, bridges, communication facilities and related facilities; and (iii) highway construction projects.

Local erosion and sediment control program means an outline of the various methods employed by the City to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, including, without limitation, City

ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

Minor modification means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

Mitigation plan means a plan, a component of a stormwater management/BMP plan, erosion and sediment control plan, or an agreement in lieu of a plan that describes how encroachments into a stream buffer will be mitigated through runoff treatment, re-vegetation, the addition of extra buffer areas, or other appropriate measures.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Winchester and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

Nonpoint source pollution means pollution whose sources cannot be pin-pointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

Operator means the owner or operator of any facility or activity subject to regulation under this Ordinance

Owner means the owner of the freehold of land, or the owner of a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person in control of a property. As used herein, *owner* also refers to, in the appropriate context: (i) any person authorized to act as the agent for the owner, (ii) any person who submits an erosion and sediment control plan or stormwater management plan for approval, or requests issuance of a permit, when required, authorizing land disturbing activities or land development to commence, and (iii) any person responsible for complying with an approved erosion and sediment control plan, agreement in lieu of a plan, or an approved stormwater management plan.

Permit means any building permit, grading permit, VSMP Authority Permit, or other permit, including the approval of any site plan or subdivision plat, which is required to be issued by any board, commission, officer, employee or agency of the City as a prerequisite to any land development.

Permittee means (i) the person to whom a permit authorizing land disturbing activities is issued, (ii) the person who certifies that an approved erosion and sediment control plan will

be followed, ~~or~~ (iii) the person who certifies that an approved stormwater management plan will be followed, or (iv) the person to whom the VSMP Authority Permit is issued.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state, county, City, town or other political subdivision of this state, federal, state, or local governmental body, ~~any~~ interstate body, or any other legal entity.

Plan Approving Authority means the City Engineer of the City of Winchester, Virginia, who is responsible for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of land and for approving plans.

Pollutant refers to, without limitation, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances and accumulations; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues resulting from construction of a building or structure; noxious or offensive matter of any kind; and other, similar substances that cause or contribute to water pollution.

~~*Program Administrator* means the City Engineer for the City of Winchester, Virginia.~~

Program Authority means the department of Public Services and Engineering. Except for where the context clearly indicates otherwise, the term “program authority” includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter.

~~*Public waters* means and refers to the waters refers to the public waters and waterways of the United States and of the Commonwealth of Virginia.~~

Redevelopment for purposes of this Chapter means and refers to construction of buildings and structures as replacement(s) for existing improvements.

Regulations means the Virginia Stormwater Management Program (VSMP) Regulations, 9VAC25-870, as amended, unless otherwise specified.

Residential development means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control, and which is to contain three or more residential dwelling units.

Site means the land or water area where any facility or land disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land disturbing activity.

State means the Commonwealth of Virginia.

State Board or Board means the Virginia State Water Control Board.

State permit means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Virginia Stormwater Management Program (VSMP) Regulations.

State Water Control Law means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

State waters means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

Storm sewer system means the City's municipal system of roads, streets, catch basins, retention and detention basins, curbs, gutters, ditches, pipes, lakes, ponds, channels, storm drains and other facilities located within the City which are designed or used for collecting, storing or conveying stormwater, or through which stormwater is collected, stored or conveyed.

Stormwater means any surface flow, runoff and drainage consisting of water discharged across the land surface, or through conveyances, to one or more waterways, from any form of natural precipitation.

Stormwater management facility maintenance agreement means an agreement that binds the owner or other designated parties to maintain and inspect stormwater management facilities constructed in accordance with this Chapter, based on specific terms and conditions of the agreement.

Stormwater management plan means a document containing material that describes how existing runoff characteristics will be maintained within a land development project, that describes controls for the management of the rate of stormwater discharge, and that describes any best management practices provided for water quality protection. A stormwater management plan may include a narrative section, a map or site plan, pertinent calculations and specifications included with the plan.

Stormwater Pollution Prevention Plan or SWPPP means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

Stream buffer means an area of land at or near a tributary streambank and/or nontidal

wetland that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of state waters.

Subdivision means the division, including resubdivision, of any lot, tract or parcel of land into two (2) or more lots, tracts or parcels, for the purpose, whether immediate or future, of sale or building development.

Total maximum daily load or TMDL means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that load among the various sources of that pollutant in accordance with the requirements of the federal Clean Water Act. TMDLs include the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

Virginia Stormwater BMP Clearinghouse website means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

Virginia Stormwater Management Act means Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Virginia Stormwater Management Program or VSMP means a program approved by the Board after September 13, 2011 that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities. A VSMP shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, and evaluation consistent with the requirements of the Virginia Stormwater Management Act and associated regulations.

Virginia Stormwater Management Program Authority or VSMP Authority means an authority approved by the Virginia State Water Control Board after September 13, 2011 to operate a Virginia Stormwater Management Program.

Virginia Stormwater Management Program (VSMP) authority permit means an approval issued by the Administrator to initiate a land disturbing activity pursuant to the requirements of Article III of this Chapter, and which may only be issued after evidence of general permit coverage has been provided by the DEQ.

Watershed means a defined land area drained by a river, stream or drainage ways, or system of connecting rivers, streams, or drainage ways such that all surface water within the area flows through a single outlet.

Wetlands, non-tidal means wetlands other than tidal wetlands that are inundated or saturated

by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to section 404 of the Federal Clean Water Act.

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

SECTION 9-6. DESIGNATION OF PROGRAM AUTHORITY; POWERS AND DUTIES.

- (a) The City Council hereby designates the ~~department~~ Department of Public Services and Engineering as the program authority for the purposes of administering Articles II, III, and IV of this Chapter.
- (b) The program authority shall administer and enforce the provisions of this Chapter, acting by and through authorized City officials and employees.
- (c) The program authority shall establish reasonable regulations and interpretive guidelines for the administration of this Chapter. Such regulations and guidelines shall be consistent with this Chapter and all applicable Federal and Commonwealth of Virginia statutes and regulations (~~including, without limitation, the provisions of Va. Code §9.1-570 and §10.1-603.7, and they~~ shall be subject to the approval of City Council).
- (d) ~~Within one year of the date of adoption of this Chapter~~ The program authority shall assure-ensure that the erosion and sediment control program set forth in Article II is administered by a certified program administrator, a certified plan reviewer, and a certified project inspector. The program authority shall also ensure that the stormwater management program set forth in Article III is administered by a certified program administrator, certified plan reviewer, and a certified project inspector not later than June 30, 2014. Such positions may be filled by the same person.
- (e) The program authority shall take appropriate enforcement actions to achieve compliance with this Chapter, and shall maintain a record of enforcement actions for all active land disturbing activities and land developments.
- (f) The program authority is authorized to cooperate with any federal or state agency in connection with plans for erosion and sediment control or stormwater management. The program authority may also recommend to the City ~~manager~~ Manager any proposed agreement with such agency for such purposes, which agreement shall be executed, if at all, by the City ~~manager~~ Manager on behalf of the City.

SECTION 9-7. SAVING PROVISION.

The adoption of this Chapter shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, nor waive any right of the City under any provision in effect prior to the date of adoption of this Chapter, unless expressly provided for in this Chapter. Any erosion and sediment control plan, runoff control permit and, to the extent they pertain to stormwater management, any final site plan or plat, approved prior to the date of adoption of this Chapter shall remain in full force and effect, and all rights and remedies of the City in enforcing such plans, permits and plats are hereby preserved.

**SECTION 9-8. APPEALS FROM DECISIONS UNDER THIS CHAPTER;
HEARINGS ON APPEAL.**

- (a) Any person who is aggrieved by any action, inaction or decision of the program authority pursuant to this Chapter shall have the right of review of such action by the City Council. Any such appeal shall be filed in writing with the clerk of the City Council within ~~ten (10)~~thirty (30) days of the date of such action, inaction or decision.
- (b) An appeal received by the City Council pursuant to this section shall be referred to the planning commission for review and findings of fact. The planning commission shall review the appeal at its next regular meeting following the date the notice of appeal is received by the clerk of council, and shall report its findings to City Council. The City Council shall review the appeal within thirty (30) days after the date of the planning commission meeting at a regular or special meeting of the Council.
- (c) The City Council shall consider evidence presented by the owner, the program authority, and any other aggrieved person and such other persons as shall be deemed necessary by the Council for a complete review of the matter. The Council shall render its decision in writing and may affirm, reverse or modify the program authority's decision. The Council's decision shall constitute the final decision of the City on the matter(s) which are the subject of the appeal.
- (d) Any person aggrieved by a final decision of the City Council pursuant to this section shall have the right of review of such decision by the Circuit Court of the City. Any such appeal shall be filed in writing with the Circuit Court within thirty (30) days of the Council's final decision.
- (e) For the purposes of this section, "aggrieved person" is limited to the owner, a permittee, owners of adjacent and downstream property and any interested governmental agency or officer thereof.
- (f) Formal hearings conducted pursuant to this Chapter shall comply with all applicable provisions of §62.1-44.15:45, §62.1-44.15:46 and §62.1-44.26 of the Code of Virginia.

Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this Article, or in the interpretation of the

provisions of this Article, shall have the right to apply for and receive a review of such action by the City Council, as provided herein:

(a) An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this Article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.

(b) When reviewing the program authority's action, the City Council shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the City Council to be necessary for a complete review of the matter. The City Council may affirm, reverse or modify the program authority's action. The decision of the City Council shall be final, subject only to review by the Circuit Court as provided in Virginia Code § 10.1-603.13.

(c) For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down-stream property, and any interested governmental agency or officer thereof.

SECTION 9-9. COMPLIANCE WITH CHAPTER PREREQUISITE TO ISSUANCE OF PERMITS AUTHORIZING LAND-DEVELOPMENT ACTIVITIES PERFORMANCE GUARANTEE; SURETY.

~~A grading, building or other permit for~~ A permit for activities involving land disturbing activities pursuant to Section 9-20 and Section 9-50 of this Chapter may be issued by the program authority only as provided herein:

~~(a) The owner shall submit with his application for such permit a proposed erosion and sediment control plan and/or stormwater management plan, as may be required by this Chapter, for review and approval pursuant to this Article, or an approved erosion and sediment control plan and/or stormwater management plan and certification that the plan(s) will be followed. A permit shall not be issued until all such required plans have been approved and the required certification(s) are submitted.~~

~~(a)~~ (ba) Prior to issuing a any such permit, the ~~permit issuing department~~ program authority shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the program authority, to ensure that measures could be taken by the City at the applicant's expense, should he/~~she~~ fail, after proper notice, within the time specified to initiate or maintain appropriate corrective action which may be required of him/~~her~~ by the approved plan as a result of his land disturbing activity.

(eb) A bond or other surety shall not exceed the total of the estimated cost to initiate, maintain and repair all erosion and sediment control and/or stormwater management practices, facilities, structures, systems, and control measures identified ~~within-on a~~the approved plan(s), and to comply with all other terms and conditions of the plan(s). In addition:

- (1) The amount of the bond or other surety shall be based on unit prices for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25% of the estimated cost to initiate, maintain and repair all structures, systems, and measures identified within an approved plan, and to comply with all other terms and conditions of the plan.
- (2) The performance bond or other surety shall be provided from a date prior to the issuance of any permit until 60 days after the requirements of the approved stormwater management plan have been completed, as determined by the program authority.
- (3) If approved by the program authority, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in connection with a site plan, subdivision plat or other required approval.

(ec) If the program authority is required to take corrective action pursuant to this Article, then the City may collect from the owner the amount by which the reasonable cost of such corrective action exceeds the amount of the surety.

(ed) Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, or section thereof, in any land development project in accordance with the approved erosion sediment control plan or section thereof, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or terminated based upon the percentage of stabilization accomplished in the project or section thereof.

(e) Within sixty (60) days of the completion of the requirements of the approved stormwater management plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof, shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this Article shall be ensured by a maintenance agreement entered into by and between the owner and the program authority in accordance with Section 9-63.

SECTIONS 9-10 – 9-19. RESERVED.

ARTICLE II. EROSION AND SEDIMENT CONTROL

DIVISION 1. IN GENERAL

SECTION 9-20. PERMIT REQUIRED FOR LAND DISTURBING ACTIVITIES.

No person shall engage in any land disturbing activity within the City until he has acquired a permit from the Program Administrator.

SECTION 9-21. DETERMINATION OF LAND DISTURBING ACTIVITY.

The determination of whether an activity is a land disturbing activity for purposes of this Article shall be made as provided herein:

- (a) The program authority shall determine whether an activity is a land disturbing activity, including any claim by an owner that the activity is exempt from the requirements of this Article.
- (b) If a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, the program authority may either:
 - (1) Consider the off-site activity as being part of the land disturbing activity, and require an erosion and sediment control plan to be submitted and approved; or
 - (2) If the off-site activity is already covered by an erosion and sediment control plan approved by the City, require the owner to provide proof of the approval and to certify that the plan will be implemented in accordance with this Article.
- (c) If a property will be developed in phases, the determination of whether an activity constitutes a land disturbing activity shall be determined by considering the development of the property as a whole, regardless of the phasing of the development.
- (d) Land disturbing activity of less than 5,000 square feet on individual lots in a residential development shall not be exempt from this Article if the total land disturbing activity in the residential development is equal to or greater than 5,000 square feet.
- (e) Upon the determination by the program authority that an activity is a land disturbing activity the owner shall immediately comply with the requirements of this Article.

SECTION 9-22. DETERMINATION OF EROSION IMPACT AREA.

The determination of whether an erosion impact area exists on property shall be rendered as provided herein:

- (a) The program authority shall determine whether an erosion impact area exists on a property and the property and the owner thereof are subject to the requirements of this Article. The program authority shall make this determination after an investigation brought either on his own initiative or upon the complaint of any citizen.
- (b) Upon making a determination that an erosion impact area exists, the program authority shall immediately notify the owner of the property, in writing, of its determination. The notice shall be served by certified mail to the address of the owner based on the most recent tax records of the City, or by personal delivery. The written notice shall (i) instruct the owner to submit an erosion and sediment control plan for review and approval as provided in this Article, and (ii) state the date by which the plan must be submitted.
- (c) Upon receipt of the notice required by this section, the owner shall immediately submit to the program authority a conservation plan designed to prevent further erosion, and the owner shall in all other aspects comply with the requirements of the notice and of this Article. The owner shall not permit any portion of the land that is the subject of the notice to remain in a condition such that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.
- (d) For good cause shown, the program authority may grant to an owner an extension of time to comply with the requirements of this section and this Article.

SECTIONS 9-23 – 9-29. RESERVED.

DIVISION 2. EROSION AND SEDIMENT CONTROL PLAN FOR LAND DISTURBING ACTIVITIES

SECTION 9-30. APPLICABILITY.

This Article shall apply to any land disturbing activity. Each owner shall comply with the requirements of this Article, as provided herein:

- (1) Prior to engaging in any land disturbing activity, or allowing any land disturbing activity to occur, on his property;
- (2) At all times during any land disturbing activity until it is completed, including all times

- when the land disturbing activity is performed by a contractor engaged in construction work; and
- (3) When notified by the program authority that an erosion impact area exists on his land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation.

SECTION 9-31. RESPONSIBILITIES OF OWNER OF LAND WHEN WORK TO BE CONDUCTED BY CONTRACTOR.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

SECTION 9-32. CONFORMITY TO COMMONWEALTH OF VIRGINIA HANDBOOK.

Except as modified below, all plans and specifications submitted under this Article shall be in conformance with the standards, specifications and criteria of the Virginia Erosion and Sediment Control Handbook and those regulations promulgated by the Virginia ~~Soil and Water Conservation~~ State Water Control Board, including, without limitation, the criteria, techniques and methods set forth in ~~4VAC50-30-409~~ VAC25-840-40, as amended. ~~T, provided that~~ the following subsections ~~are hereby changed~~ of ~~VAC 50-30-409~~ VAC25-840-40 of the Virginia Erosion and Sediment Control Regulations shall not apply to land disturbing activities regulated pursuant to this article:

- (1) The provision found in Subsection 19b. (1) ~~is deleted.~~

SECTION 9-33. REVIEW AND INSPECTION FEE.

A ~~plan review and inspection~~ fee shall be submitted at the time of filing any erosion and sediment control plan or application for a permit pursuant to this article. This fee shall be an amount as set forth ~~within the most recent fee schedule approved by City Council~~ below:

<u>Site Plans:</u>	<u>\$300 + \$50 per disturbed acre</u>
<u>Subdivision Plans:</u>	<u>\$400 + \$50 per disturbed acre</u>
<u>Single Family Residences</u>	
<u>(With An Agreement in Lieu of a Plan):</u>	<u>\$50 per building unit</u>
<u>Land Disturbance not associated with a Site Plan, Subdivision Plan or Single Family Home:</u>	<u>\$200.-</u>

SECTION 9-34. EROSION AND SEDIMENT CONTROL PLAN.

Each owner subject to this Article shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

- (a) The owner shall submit a completed application on a form provided by the program authority, together with three (3) copies of an erosion and sediment control plan that satisfies the requirements of this section, and a certification stating that all requirements of the approved plan will be complied with.
- (b) The plan shall include specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this Article. As a minimum, the plan shall follow the format and conform to the approved standards and specifications for control techniques as set forth in the “Virginia Erosion and Sediment Control Handbook”, which by reference is adopted as a part of this Chapter. The plan shall be consistent with the criteria, techniques and methods as set forth in the Minimum Standards (~~9VAC25-840-40~~~~§ 4 VAC 50-30-40~~) of the Virginia Erosion and Sediment Control Regulations adopted by the Virginia ~~Soil and Water~~State Water Control Conservation Board. The plan shall identify the person holding a certificate of competence, as described in Virginia Code § ~~10.1-561~~62.1-44.15:58, who shall be in charge of and responsible for carrying out the land disturbing activity.
- (c) The program authority may require additional information as may be necessary for its complete review of the plan.
- (d) In lieu of paragraphs (a)-(c), above, if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at his option, choose to have a conservation plan approved by the Virginia ~~Department of Conservation and Recreation~~Department of Environmental Quality,
~~Division of Soil and Water Conservation.~~ The owner shall notify the program authority of such plan approval by such board.
- (e) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:
 - (1) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and;
 - (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subdivisions 1 and 2 of this subsection is

not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the City of Winchester erosion and sediment control program.

(f) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. ~~10.1-564~~62.1-44:56.

(Ord. No. 2007-21, 07-10-07)

SECTION 9-35. REVIEW AND APPROVAL OF EROSION AND SEDIMENT CONTROL PLAN.

Each erosion and sediment control plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- (a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations.
- (b) During its review of the plan, the program authority may correspond with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved.
- (c) Except as provided in paragraph (d), below, the program authority shall approve or disapprove a plan in writing within forty-five (45) days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. If the plan is disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. The decision shall be communicated to the applicant by mail or delivery.
- (d) If the program authority fails to act on the plan within 45 days from the date the complete application was received by it, then the plan shall be deemed approved.
- (e) If the owner is required to obtain approval of a site plan or subdivision plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this Article, and the program authority determined that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:
 - (1) To correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this Chapter or by accident, act of God, or other cause beyond the control of the owner, provided that the activity proposed shall be strictly limited to the correction of such condition;
 - (2) To clear and grub stumps and other activity directly related to the

- selective cutting of trees, as may be permitted by law;
- (3) To fill earth with spoils obtained from grading, excavation or other similar, lawful activities;
- (4) To construct temporary access roads, provided that the area disturbed shall be returned to substantially its previous condition, with no significant change in surface contours, within thirty (30) days of the completion of such temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to such temporary use, whichever period shall be shorter.
- (5) To establish burrow, fill, or waste areas, if permitted by the City's zoning ordinance.

SECTION 9-36. AGREEMENT IN LIEU OF A PLAN.

- (a) If land disturbing activity is for the purpose of establishing or modifying a single family detached dwelling, the program authority may allow an agreement in lieu of a plan for the construction of such dwelling, provided:
 - (1) The single family dwelling is located on an individual lot which is not part of a subdivision; or
 - (2) The single family dwelling is located within a residential development or subdivision, and the individual lots are being developed by different property owners; or
 - (3) The single family dwelling is located within a subdivision that no longer has an active erosion and sediment control plan; and
 - (4) The agreement in lieu of a plan identifies the person holding a certificate of competence, as described in Virginia Code ~~62.1-44.15:5810.1-561~~, who shall be in charge of and responsible for carrying out the land disturbing activity.
- (b) In determining whether to allow an agreement in lieu of a plan, the program authority shall include as part of its consideration the potential threat to water quality and to adjacent land resulting from the land disturbing activity. When an agreement in lieu of a plan is authorized and approved by the program authority, the program authority and the owner shall have all of the rights, responsibilities and remedies set forth in this Article as though such agreement in lieu of a plan was an erosion and sediment control plan.
- (c) At the discretion of the program authority a bond may be required in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to cover potential threats to water quality. (Ord. No. 2011-21, 10-11-11)

SECTION 9-37. AMENDMENT OF APPROVED PLAN.

The program authority may change an approved erosion and sediment control plan,

and/or require an owner to submit an amended plan, in the following circumstances:

- (1) An inspection reveals that the plan is inadequate to satisfy the requirements of this Article; or
- (2) The owner finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out and proposed amendments to the plan, consistent with the requirements of this Article are agreed to by the program authority and the owner; or
- (3) The land disturbing activity was not commenced during the one hundred eighty (180) day period following plan approval, or ceased for more than one hundred eighty (180) days, and the existing plan has been evaluated to determine whether it still satisfies the requirements of this Article and Commonwealth of Virginia erosion and sediment control criteria and to verify that all design factors are still valid, and it has been determined that the plan is inadequate. In such a case, the land disturbing activity shall not be resumed until a modified plan is submitted and approved as provided in this Article.

SECTION 9-38. DUTY TO COMPLY, MAINTAIN AND REPAIR.

Upon approval by the program authority of an erosion and sediment control plan, each owner shall:

- (1) Comply with the approved plan when performing, or allowing to be performed, any land disturbing activities, or activities to correct an erosion impact area;
- (2) Maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;
- (3) Comply with all requirements of this Article; and
- (4) Have a person holding a certificate of competence, as described in Virginia Code § ~~62.1-44.15:5810.1-561~~, in charge of and responsible for carrying out the land disturbing activity. This person shall be designated prior to commencement of land disturbing activity.

(Ord. No. 2007-21, 07-10-07)

SECTION 9-39. INSPECTION AND MONITORING.

- (a) As a condition of approval of an erosion and sediment control plan, the program authority may require the owner to monitor and report to the program authority as provided herein:
 - (1) Any monitoring conducted shall be for the purpose of ensuring compliance with the erosion and sediment control plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment.
 - (2) The condition requiring monitoring and reporting shall state: (i) the

method and frequency of such monitoring, and (ii) the format of the report and the frequency for submitting reports.

(b) The program authority shall inspect any land disturbing activity or erosion impact area as provided herein:

- (1) The program authority shall conduct periodic inspections of land disturbing activities and erosion impact areas to determine compliance with the approved erosion and sediment control plan, and to determine whether such approved plan and permit as implemented are adequate to satisfy the requirements of this Article.
- (2) Except as provided in paragraph (3), below, inspections shall be conducted (i) during or immediately following initial installation of erosion and sediment controls; (ii) at times indicated by Commonwealth of Virginia conservation standards; and (iii) upon completion of the land development project prior to the release of any surety. The inability of the program authority to conduct inspections within the time periods set forth within this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or to any official or employee thereof shall arise therefrom.
- (3) Notwithstanding paragraph (2), above, the program authority is authorized to establish an alternative inspection program which ensures compliance with an approved erosion and sediment control plan. Such alternative inspection program shall be: (i) approved by the Virginia ~~Soil and Water Conservation~~State Water Control Board prior to implementation; (ii) established in writing; (iii) based on a system of priorities which, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; (iv) documented by inspection records; and (v) maintained and available for public review in the department of Public Services and Engineering.
- (4) The program authority shall have the right to enter upon property subject to an erosion and sediment control plan for the purposes of conducting an inspection as provided in this section or an investigation pertaining to an erosion or sedimentation complaint. The owner shall be given notice of the inspection. Such notice may be either verbal or in writing.

SECTION 9-40. DETERMINATION OF NONCOMPLIANCE WITH PLAN.

Upon a determination by the program authority that an owner has failed to comply with an approved erosion and sediment control plan, the following procedures shall apply:

- (a) The program authority shall immediately serve upon the owner a written notice to comply. The notice shall (i) instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent erosion or sedimentation

problems; (ii) state specifically the measures needed to come into compliance with the approved plan; and (iii) state a reasonable time for compliance. The notice shall be served by certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities.

- (b) If the owner fails to take corrective measures stated in the notice to comply within the time specified in the notice, the permit-issuing department may revoke any permit it has issued related to the land disturbing activity and the owner shall be deemed to be in violation of this Article. Furthermore, he shall be deemed to be in violation of this Chapter and shall be subject to the penalties provided by the Chapter.
- (c) If the owner fails, within the time specified in the notice, to take the corrective measures for compliance stated in the notice, the program authority, upon finding that such action is reasonably necessary to protect the public health, safety and welfare, may take all corrective measures it deems necessary in order to protect the public health, safety and welfare, and shall be entitled to recover the expenses of such action from the owner.
- (d) Upon receipt of a sworn complaint of a violation of this Article or of an approved erosion and sediment control plan, from the program authority, the Program Administrator may, in conjunction with or subsequent to a notice of violation, issue an order requiring that all or part of the land disturbing activity permitted on the site be stopped until the specified corrective measures have been taken or, if land disturbing activity has commenced without an approved plan, requiring that all of the land disturbing activity be stopped until an approved plan and any required permits have been obtained.
 - (1) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands, sediment deposition in waters, or water quality problems within the watersheds of the Commonwealth, or where the land disturbing activity has commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.
 - (2) A stop-work order shall be served in the same manner as a notice to comply, and it shall remain in effect for seven (7) days from the date of service, pending application by the enforcing authority or alleged violator for appropriate relief to the Circuit Court.
 - (3) If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of a stop-work order, the City Engineer may issue an order to the owner requiring that all construction or other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by certified mail to the address

specified in the permit application.

- (4) The owner may appeal the issuance of any stop-work order to the Circuit Court.
- (5) Final decision of the Plan Approving Authority shall be subject to review by the Circuit Court of the City provided an appeal is filed within thirty (30) days from the date of the final written decision adversely affecting the rights, duties or privileges of the person engaging or proposing to engage in land disturbing activity.
- (6) Any person violating or failing, neglecting or refusing to obey an order issued by the City Engineer may be compelled in a proceeding instituted in the Circuit Court to obey the order and to comply therewith, by injunction, mandamus or other appropriate remedy.
- (7) Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
- (8) Nothing in this section shall prevent the Program Administrator from taking any other action authorized by this Chapter or by any other provision of law.

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

SECTION 9-41. CERTIFICATION OF PROGRAM PERSONNEL.

As required by Commonwealth of Virginia law, the City's erosion and sediment control program shall meet, within one (1) year following the adoption of this section, the following minimum standards for effectiveness:

- (1) An erosion and sedimentation control plan shall not be approved until it is reviewed by a certified plan reviewer;
- (2) Inspections of land disturbing activity shall be conducted by a certified inspector; and
- (3) The City's erosion control program shall contain a certified program administrator, a certified plan reviewer and a certified project inspector, who may be the same person.

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

SECTION 9-42. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.

- (a) Any person violating the provisions of this Article shall, upon conviction, be guilty of a Class 1 misdemeanor.
- (b) The following may apply to the Circuit Court for injunctive relief to enjoin a

- (1) The City.
 - (2) The owner of property that has sustained damage or that is in imminent danger of being damaged; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the provisions of this Article, and the program authority, that a violation of this Article has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated this Article nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to the owner's property.
- (c) In addition to any criminal penalties provided for a violation of this Chapter, any person who violates any provision of this Chapter may be liable to the City in a civil action for damages.
- (d) Each violation of any regulation or order of the Board, any provision of this Chapter, or any provision of ~~Title 10.1, Chapter 5, Article 4 of the Code of Virginia~~ the Virginia Erosion and Sediment Control Law and Regulations shall be subject to a civil penalty of one hundred dollars (\$100.00). Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same set of facts result in civil penalties which exceed a total of three thousand dollars (\$3,000.00), except that a series of violations arising from the commencement of land disturbing activity without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. An appropriate official or employee of the program authority, or a certified inspector for the City, may issue a summons for collection of the civil penalty and the action may be prosecuted by the City.
- (e) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the City against such person.
- (f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Program Administrator issued under this Chapter any condition of a permit issued under this Chapter or any provision of this Chapter, the Program Administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed \$2,000.00. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d) or (e) of this section.

- (g) Any civil penalties assessed by a court pursuant to this section shall be paid into the City treasury, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the Commonwealth of Virginia treasury.

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

SECTIONS 9-43 -9-49. RESERVED.

ARTICLE III. STORMWATER MANAGEMENT AND WATER QUALITY

DIVISION 1. IN GENERAL

SECTION 9-50. STORMWATER MANAGEMENT PLAN; APPLICABILITY VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) AUTHORITY PERMIT; APPLICABILITY; EXEMPT ACTIVITIES.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the program authority in accordance with the provisions of this Article. In addition, no grading, building or other permit shall be issued, nor any site plan approved, for any property unless a VSMP authority permit has been issued by the program authority in accordance with the provisions of this Article. Each owner shall comply with the requirements of this Article prior to commencing any land development or land-disturbing activity, or allowing any land development or land-disturbing activity to occur, on his property, ~~for residential, commercial, industrial or institutional use~~, and at all times thereafter.
- (b) No person may commence ~~development of any land~~ any land-disturbing activity until he has submitted ~~a stormwater management/best management plan (BMP) all plans, agreements and documents required by this section~~ to the City-program authority and has obtained the ~~City's program authority's approval of that all such plans, agreements and documents. No building permit, site plan approval or other permit for activities involving land development shall be issued by any City department or official, unless a stormwater management/BMP plan has been approved by the program authority consistent with the provisions of this division. No VSMP authority permit shall be issued unless:~~
- (1) A permit application on a form provided by the program authority has been submitted to the program authority, and the permit application has been reviewed and approved in accordance with the provisions of this Article. The applicant shall submit with his application for such permit certification by the owner that all land clearing, construction, land development and drainage will be performed according to the approved stormwater management plan or executed agreement

in lieu of a stormwater management plan, as applicable, and permit. No VSMP authority permit shall be issued unless and until the permit application and supporting documentation demonstrate, to the satisfaction of the program authority, that all land clearing, construction, disturbance, land development and drainage will be performed according to the approved permit;

- (2) An erosion and sediment control plan has been submitted and approved in accordance with the provisions of Article II of this Chapter, and a permit has been issued by the program authority for the land-disturbing activity in accordance with Section 9-20;
- (3) A stormwater management plan, or executed agreement in lieu of a stormwater management plan, as applicable, has been submitted to the program authority and reviewed and approved in accordance with all applicable requirements of this Article;
- (4) Evidence has been submitted to the program authority demonstrating that the applicant has applied for and obtained coverage under a general permit, including a completed general permit registration statement, if such statement is required, provided that neither a registration statement nor payment of DEQ's portion of the statewide permit fee established pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;
- (5) A performance guarantee or surety has been submitted to the program authority in accordance with Section 9-9;
- (6) All fees required by this Chapter have been paid to the City; and
- (7) If an operator intends to meet the water quality and/or quantity requirements set forth in Division 2 of this Article through the use of off-site compliance options as authorized under §62.1-44.15:35 of the Code of Virginia and 9VAC25-870-69 of the Virginia Administrative Code, then a letter of availability from the off-site provider must be provided to the program authority. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by §62.1-44.15:35 of the Code of Virginia.

(c) Notwithstanding any other provisions of this Chapter, the following activities shall not be considered a land-disturbing activity for the purposes of administering the requirements of this Article and shall be exempt from the requirements of this Article:

- (1) Permitted surface or deep mining operation and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
- (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in the regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially

- or naturally in accordance with the provisions of Chapter 11 (§10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of §10.1-1163 of the Code of Virginia;
- (3) Single-family residences separately built and disturbing less than one (1) acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
 - (4) Land disturbing activities that disturb less than one (1) acre of land area, except activities that are part of a larger common plan of development or sale that is one acre or greater in disturbance;
 - (5) Discharges to a sanitary sewer or a combined sewer system;
 - (6) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
 - (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
 - (8) Land-disturbing activities conducted in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with all applicable requirements of this Article is required within 30 days of commencing the land-disturbing activity.

(c) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:

- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
- (2) Tilling, planting or harvesting of agricultural, horticultural, or forest crops;
- (3) Construction, extension or replacement of a building or buildings on a site of 5,000 square feet or less, not including cases where development is to be done in phases and the total land disturbance for all phases is greater than 5,000 square feet;
- (4) Land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;
- (5) Land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and
- (6) Any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this Chapter.

~~(b) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:~~

- ~~(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;~~
- ~~(2) Tilling, planting or harvesting or agricultural, horticultural, or forest crops; and~~
- ~~(3) Single family dwelling units separately built and not part of a division of land, including additions or modifications to existing single family detached dwelling units, except if the land disturbance exceeds 5,000 square feet.~~

**SECTION 9-51. STORMWATER MANAGEMENT/~~BMP~~ PLAN;
REQUIREMENTS/CONTENTS.**

Except for land-disturbing activities considered exempt under Section 9-50(c), or activities for which an executed agreement in lieu of a stormwater management plan is authorized pursuant to the provisions of this Chapter, Each person subject to this Article shall submit to the program authority for review and approval a stormwater management/~~BMP~~ plan as provided herein:

(a) Together with the required stormwater management/~~BMP~~ plan, the owner of property proposed for development or redevelopment shall submit:

- (1) An application on a form provided by the program authority;
- (2) Any required application fee, as set forth within the most recent fee schedule approved by City Council.
- ~~(3) A certification stating that all land clearing, construction, land development and drainage will be done according to the approved plan;~~
- (4) Specifications for stormwater management and best management practices in order to satisfy the requirements of Division 2 of this Article. The program authority may require the owner to submit maps, calculations, detail drawings, reports, a listing of all major permit decisions and any other information as are determined by the program authority to be necessary to allow a complete review of the plan.

(b) For purposes of this section, major permit decisions include, but are not limited to, decisions pertaining to zoning map amendments, special use permits, grading permits, building and erosion and sediment control plans and any permit related to the land development required under Commonwealth of Virginia or ~~Federal~~ federal law.

(c) Each stormwater management plan submitted for approval shall contain, at a minimum, the following information:

- (1) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
- (2) A narrative that includes a description of current site conditions and final site

conditions;

(3) A map or maps of the site that depicts the topography of the site and includes:

(i) All contributing drainage areas;

(ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

(iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

(iv) Current land use including existing structures, roads, and locations of known utilities and easements;

(v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

(vi) The limits of clearing and grading, and the proposed drainage patterns on the site;

(vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

(viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

(4) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and postdevelopment drainage areas;

(5) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(6) Information on the proposed stormwater management facilities, including:

(i) The type of facilities;

(ii) Location, including geographic coordinates;

(iii) Acres treated; and

(iv) The surface waters or karst features, if present, into which the facility will discharge;

(7) Hydrologic and hydraulic computations, including runoff characteristics; and

(8) Documentation and calculations verifying compliance with the water quality and quantity technical requirements of Division 2 of this Article.

(d) The stormwater management plan required under this Article shall apply the stormwater management technical requirements set forth in Division 2 of this Article to the entire land disturbing activity, and shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

(e) If an operator intends to meet the water quality and/or quantity requirements set forth in Division 2 of this Article through the use of off-site compliance options as authorized under §62.1-44.15:35 of the Code of Virginia and 9VAC25-870-69 of the Virginia Administrative Code, then a letter of availability from the off-site provider must be provided to the program authority. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by §62.1-44.15:35 of the Code of Virginia.

(f) Elements of the stormwater management plans that include activities regulated under

Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

(g) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

(h) A stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners, in accordance with §62.1-44.15:28 of the Code of Virginia, as amended.

SECTION 9-52. REVIEW AND APPROVAL OF STORMWATER MANAGEMENT/BMP PLAN RESERVED.

~~Each stormwater management/BMP plan submitted pursuant to this Article shall be reviewed and approved as provided herein:~~

~~(a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable Federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified within the Virginia Stormwater Management (SWM) Handbook and/or the Virginia Stormwater Management Regulations set forth within 4 VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.~~
~~(b) The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 9-51 and all other requirements of this Article.~~

~~(c) During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.~~

~~(d) The program authority shall approve or disapprove a plan within forty five (45) days from the date a complete application was accepted for review. The decision of the program authority shall be based on the plan's compliance with this Article. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.~~

~~(e) Each stormwater management/BMP plan approved by the program authority shall be subject to the following:~~

~~(1) The owner shall comply with all applicable requirements of the approved plan, this~~

~~Article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;~~

- ~~(2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;~~
 - ~~(3) Land development shall be conducted only within the area specified in the approved plan;~~
 - ~~(4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (c)(2);~~
 - ~~(5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 9-63;~~
 - ~~(6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 9-67; and~~
 - ~~(7) The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.~~
- ~~(f) Nothing in this section shall require approval of a plan or part thereof that is determined by the program authority to pose a danger to the public health, safety, or general welfare or to deviate from sound engineering practices.~~

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.~~

SECTION 9-53. MONITORING AND REPORTING.

As a condition of approval of a stormwater management/BMP plan, the program authority may require the owner to monitor and report to the program authority as provided herein:

- (a) Any monitoring conducted shall be for the purpose of ensuring compliance with the stormwater management/BMP plan and to determine whether the plan provides effective stormwater management.
- (b) The condition(s) requiring monitoring and reporting shall state the method and frequency of such monitoring.
- (c) The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.
- (d) Pursuant to §62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to

VSMP authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance, provided that the disclosure requirements of §62.1-44.15:40 of the Code of Virginia shall be met by the program authority.

(f) As a condition of approval of a stormwater management plan, the program authority may require the owner to monitor and report to the program authority as follows:

Any monitoring conducted by the owner shall be for the purpose of ensuring compliance with the approved stormwater management plan and to determine whether the plan provides effective stormwater management.

The condition(s) requiring monitoring and reporting shall state the method and frequency of such monitoring.

The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.~~

SECTION 9-54. ISSUANCE OF PERMIT; SURETYRESERVED.

~~A grading, building or other permit for activities involving land development may be issued by a permit issuing department only as provided herein:~~

- ~~(a) The owner shall submit with his application for such permit an approved stormwater management/BMP plan and certification by the owner that all land clearing, construction, land development and drainage will be done according to the approved plan. A permit shall not be issued until such approved plan and certification are submitted.~~
- ~~(b) Prior to the issuance of any such permit, the owner shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the City attorney, to ensure that measures could be taken by the City or the program authority at the owner's expense should he fail, after proper notice as provided in section 9-68, to take timely corrective action specified in the notice. The performance bond or other surety shall be provided from a date prior to the issuance of any permit by the permit issuing department until sixty (60) days after the requirements of the approved stormwater management/BMP plan have been completed, as determined by the program authority.~~
- ~~(c) A performance bond or other surety pursuant to paragraph (b) shall not exceed the total of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan as a result of the land development. The amount of the bond or other surety shall be based on unit price for~~

~~new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty five (25) percent of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan.~~

~~(d) If the program authority is required to take corrective action pursuant to section 9-68 upon the failure of the owner to do so, the City may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.~~

~~(e) Within sixty (60) days of the completion of the requirements of the approved stormwater management/BMP plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this Article shall be assured by a maintenance agreement entered into by and between the owner and the program authority, which agreement shall be in a form approved by the City Attorney.~~

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

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.~~

SECTION 9-55. FEES.

Each owner seeking approval of a stormwater management/BMP plan shall pay a fee upon submittal of such plan and application for a VSMP authority permit, and shall pay a fee for ~~each inspection, in amounts as set forth in the most recent fee schedule approved by City Council~~ the modification or transfer of registrations statements from the general permit issued by the State Board, and for maintaining coverage under an approved VSMP authority permit, as provided below:

(a) Fees for issuance of a VSMP authority permit and associated general permit coverage shall be imposed in accordance with Table 1. Each Applicant shall be subject to a fee (“total fee to be paid by applicant” column) in accordance with the disturbed acreage of their site or sites as provided in Table 1.

Table 1: Fees for permit issuance

<u>Fee type</u>	<u>Total fee to be paid by Applicant</u>	<u>Department portion of “total fee to be paid by Applicant” (based on 28% of total fee paid*)</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)</u>	<u>\$290</u>	<u>\$81</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 1 acre and less than 5 acres for the purpose of constructing a single-family detached residential structure)</u>	<u>\$290</u>	<u>\$81</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 1 acre and less than 5 acres for purposes other than constructing a single-family detached residential structure)</u>	<u>\$2,700</u>	<u>\$756</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$3,400</u>	<u>\$952</u>

<u>Fee type</u>	<u>Total fee to be paid by Applicant</u>	<u>Department portion of “total fee to be paid by Applicant” (based on 28% of total fee paid*)</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing [Sites with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]</u>	<u>\$4,500</u>	<u>\$1,260</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$6,100</u>	<u>\$1,708</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$9,600</u>	<u>\$2,688</u>

* If the project is completely administered by the Department of Environmental Quality, such as may be the case for a state or federal project or projects covered by individual permits, the entire fee shall be paid to the Department of Environmental Quality. No portion of the fee shall be paid to the Department for any land-disturbing activity involving construction of single-family detached residential dwelling, where the land disturbance is equal to or greater than 1 acre and less than 5 acres.

~~Commonwealth of Virginia law reference--~~ Va. Code § 10.1-603.10.

(b) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the City, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in

Table 1.

Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities

<u>Type of Permit</u>	<u>Fee Amount</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)</u>	<u>\$20</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)</u>	<u>\$200</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$250</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$300</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$450</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$700</u>

(c) The following annual permit maintenance fee shall be imposed on all VSMP authority permits in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. Maintenance fees shall be paid annually to the City by the anniversary date of permit coverage. Such fees shall apply until the permit coverage is terminated. No permit will be reissued or automatically continued without payment of the required fee.

Table 3: Permit Maintenance Fees

<u>Type of Permit</u>	<u>Fee Amount</u>
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<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)</u>	<u>\$400</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$500</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$650</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$900</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$1,400</u>

(d) The fees set forth in Subsections (a) through (c) above, shall apply to:

- (1) All persons seeking a VSMP authority permit and associated coverage under the general permit.
- (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (3) Persons whose coverage under the general permit has been revoked shall apply to the Department of Environmental Quality for an Individual Permit for Discharges of Stormwater From Construction Activities.
- (4) Permit and permit coverage maintenance fees outlined under Section 9-55 (c) may apply to each general permit holder.

(e) No general permit application fees will be assessed to:

- (1) Permittees who request minor modifications to general permits as defined in Section 9-5 of this Ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional

review by the Administrator shall not be exempt pursuant to this Section.

(2) Permittees whose general permits are modified or amended at the initiative of the Department of Environmental Quality, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

(f) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The City shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

DIVISION 2. ~~PLAN REQUIREMENTS: WATER QUANTITY AND WATER QUALITY PROTECTION~~ REQUIREMENTS FOR WATER QUANTITY AND WATER QUALITY PROTECTION

SECTION 9-56. ~~STORMWATER MANAGEMENT FACILITIES AND CHANNELS; TECHNICAL REQUIREMENTS FOR THE DESIGN OF STORMWATER MANAGEMENT FACILITIES; GRANDFATHERED ACTIVITIES; EXCEPTIONS.~~

(a) The City of Winchester hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Virginia Stormwater Management Program (VSMP) Regulations, as amended, expressly to include 9VAC25-870-62 [applicability]; 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development projects]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this Article, except as expressly set forth in subsections (e) through (l) of this section. The City hereby adopts the technical criteria for grandfathered land-disturbing activities as set forth in Part II C of the Regulations, expressly to include 9VAC25-870-93 [definitions]; 9VAC25-870-94 [applicability]; 9VAC25-870-95 [general]; 9VAC25-870-96 [water quality]; 9VAC25-870-97 [stream channel erosion]; 9VAC25-870-98 [flooding]; and 9VAC25-870-99 [regional (watershed-wide) stormwater management plans].

(b) Stormwater management facilities and ~~modifications to~~ channels, and modifications thereto, required as part of a stormwater management ~~BMP~~ plan shall be designed, installed and constructed as provided herein:

- (1) Stormwater management facilities, best management practices, and modifications to channels shall be designed and constructed in compliance with applicable local, ~~Commonwealth of Virginia~~ state and ~~Federal~~ federal laws, regulations, and standards, including, but not limited to the Federal Clean Water Act; the Virginia Stormwater Management Act (VA Code §~~10.1-603.262.1-44.15:27~~ et seq.) and the ~~Virginia s~~Stormwater ~~management~~ Management Program (VSMP) ~~r~~Regulations promulgated by the ~~state Board of Conservation and Recreation~~ state board, set forth within ~~4 VAC 3-20-109~~9VAC25-870-10 et seq.; the National Flood Insurance Program; the Virginia BMP Clearinghouse website and the City of Winchester ~~Stormwater Management Design~~Public Services Standards Manual.
- (2) Stormwater management facilities and best management practices shall be designed and sited to capture, to the maximum extent practicable, the runoff from the entire land development project area and, in particular, areas of impervious cover within the development project area. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.

- (3) Hydrologic parameters shall reflect the ultimate buildout in the land development project area and shall be used in all engineering calculations.
- (4) Post-development runoff rate of flow shall be maintained, as nearly as practicable, as the pre-development runoff characteristics, ~~subject further to the requirements of §9-52.~~
- (5) The number, type, and siting of stormwater management facilities shall be designed so as to preserve natural channel characteristics and natural groundwater recharge on a site to the extent practical.

(ac) Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein:

- (1) To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff.
- (2) To protect downstream properties and receiving waterways from channel erosion, the two (2) year post-development peak rate and velocity of runoff from the land development shall not exceed the two (2) year pre-development peak rate and velocity of runoff.
- (3) If the land development is in a watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs (1) and (2) so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.
- (4) In addition to the requirements of paragraphs (1) and (2), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.

(d) Pre-development and post-development runoff rates determined for purposes of paragraph (c) shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.

(e) Any land-disturbing activity shall be considered grandfathered by the Administrator and shall be subject to the technical criteria of Part II C of the Regulations (9VAC25-870-93 et. seq.) provided:

- (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plan, preliminary or final site plan, or any document determined by the City to be equivalent thereto (i) was approved by the City prior to July 1, 2012, (ii) provided a layout as defined in Section 9-5 of this Chapter and 9VAC25-870-10 of the Regulations, (iii) will comply with the Part II C technical criteria of the Regulations, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorous leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

- (2) A state permit has not been issued prior to July 1, 2014; and
- (3) Land disturbance did not commence prior to July 1, 2014.
- (f) Locality, state, and federal projects shall be considered grandfathered by the City and shall be subject to the technical requirements of Part II C of the Regulations provided:
- (1) There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the Department of Conservation and Recreation has approved a stormwater management plan prior to July 1, 2012;
- (2) A state permit has not been issued prior to July 1, 2014; and
- (3) Land disturbance did not commence prior to July 1, 2014.
- (g) Land-disturbing activities grandfathered under subsections (e) and (f) of this section shall remain subject to the Part II C technical criteria of the Regulations for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the Board.
- (h) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be considered grandfathered and subject to the technical requirements of Part II C of the Regulations.
- (i) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
- (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse website.
- (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 of the Regulations have been considered and found not available.
- ~~(j) Other than requests for permission to develop within a required stream buffer, which requests shall be handled pursuant to §9-74, a~~ request for an exception ~~to the requirements of this Article pursuant to subsection (i) of this section~~ shall be made and reviewed as follows:
- ~~(a)~~ (a) A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the City attorney's office.

for its recommendation. The request shall address the factors listed in paragraph (e), belowabove.

~~(b2) After receiving a recommendation from the City attorney's office and considering a recommendation from the program authoritythe request, the City CouncilAdministrator shall grant or deny a request for an exception within 60 days from the date of the program authority's receipt of the request.~~

~~(c) A request for exception may be granted by the City Council, upon finding that:~~

- ~~(1) A stormwater management plan has been submitted to the program authority for review in accordance with this Article, and the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this Article, the use of non-structural measures, the use of a mitigation plan, or by other means;~~
- ~~(2) The exception requested is the minimum necessary to afford relief;~~
- ~~(3) Reasonable and appropriate conditions can be imposed to ensure that the purposes of this Article are satisfied; and~~
- ~~(4) The sole basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.~~

~~(k) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.~~

~~(l) The program authority may develop comprehensive stormwater management plans to be approved by DEQ that meet the water quality objectives, quantity objectives, or both of this Chapter in accordance with 9VAC25-870-92 of the Regulations.~~

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.~~

SECTION 9-57. NON-STRUCTURAL MEASURESSTORMWATER POLLUTION PREVENTION PLAN (SWPPP); REQUIREMENTS.

~~(a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content and address all of the requirements specified by Section 9VAC25-870-54 of the Virginia Administrative Code and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit.~~

~~(b) The SWPPP shall be amended by the owner whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.~~

~~(c) The SWPPP must be maintained by the owner at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Owners shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.~~

~~Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this Article, as provided herein:~~

~~(1) The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this Article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds~~

~~that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.~~

~~(2) Non-structural measures include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream buffer areas, wetland restoration, waste reuse and recycling, and development design that reduces the rate and volume of runoff.~~

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.~~

SECTION 9-58. CONTROL OF PEAK RATE AND VELOCITY OF RUNOFF POLLUTION PREVENTION PLAN FOR MINIMIZING DISCHARGES DURING CONSTRUCTION; REQUIREMENTS.

(a) A Pollution Prevention Plan, as required by 9VAC25-870-56 of the Virginia Stormwater Management Program (VSMP) Regulations, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants during construction. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

- ~~(a) Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein: (1) To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff~~
- ~~(2) To protect downstream properties and receiving waterways from channel erosion, the two (2) year post-development peak rate and velocity of runoff from the land development shall not e(3) If the land development is in a watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs (1) and (2) so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.~~
- ~~(4) In addition to the requirements of paragraphs (1) and (2), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.~~
- ~~(b) Pre-development and post-development runoff rates determined for purposes of paragraph (a) shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.~~
- ~~(c) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:~~
- ~~(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;~~
- ~~(2) Tilling, planting or harvesting or agricultural, horticultural, or forest crops;~~
- ~~(3) Construction, extension or replacement of a building or buildings on a site of 5,000 square feet or less, not including cases where development is to be done in phases and the total land disturbance for all phases is greater than 5,000 square feet;~~
- ~~(4) Land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;~~
- ~~(5) Land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and~~
- ~~(6) Any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this Chapter.~~

SECTION 9-59. BEST MANAGEMENT PRACTICES.

- (a) Each stormwater management/~~BMP~~ plan shall require that best management practices be provided in conjunction with or in addition to stormwater management facilities designed for water quantity treatment, as provided herein:
 - (1) Best management practices shall be designed and sited to capture runoff from the entire land development project area and, in particular, areas of impervious cover within the land development, to the maximum extent practicable.
 - (2) Best management practices shall be designed to remove the difference between post-development and pre-development total phosphorus loads in cases where post-development loads exceed pre-development loads.
 - (3) Calculation methods and expected removal ranges for various best management practices shall be included in the ~~design manual~~Public Services Standards Manual maintained by the program authority.
- ~~(b) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:~~
 - ~~(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;~~
 - ~~(2) Tilling, planting or harvesting or agricultural, horticultural, or forest crops; and~~
 - ~~(3) Single-family dwelling units separately built and not part of a division of land, including additions or modifications to existing single family detached dwelling units, except if the land disturbance exceeds 5,000 square feet.~~

- (b) Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this Article, as provided herein:
 - (1) The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this Article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.
 - (2) Non-structural measures include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream buffer areas, wetland restoration, waste reuse and recycling, and development design that reduces the rate and volume of runoff.

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.~~

SECTION 9-60. CONTRIBUTION TO REGIONAL STORMWATER MANAGEMENT PROGRAM.

- (a) Each stormwater management/~~BMP~~ plan shall require that the owner contribute to a regional stormwater management program, as provided herein:

- (1) If the land development is located within the watershed of a regional stormwater management program established by the ~~county~~ City which requires pro rata share contributions, the owner shall pay a pro rata share of the cost of the facility in accordance with any ordinance of the ~~county~~ City establishing the program.
- (2) An owner's payment pursuant to paragraph (1) shall relieve the owner of the requirements of ~~section~~ Section 17-3149-56(c), if the regional program is designed to control the peak rate and velocity of runoff, and/or the requirements of ~~section~~ Section 17-3159-59, if the regional program is designed to provide best management practices. An owner's payment pursuant to paragraph (1) shall not relieve an owner of his responsibility to comply with any other requirement of this Chapter, except as provided in this section.

~~Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.~~

SECTION 9-61. REVIEW OF STORMWATER MANAGEMENT PLAN; APPROVAL.

(a) Each stormwater management plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

- (1) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable ~~Federal~~ local, state, and federal and ~~Commonwealth of Virginia~~ laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified ~~within the Virginia Stormwater Management (SWM) Handbook and/or on the Virginia BMP Clearinghouse website, and/or the Virginia Stormwater Management Regulations set forth within 4VAC 3-20 et seq.,~~ the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.
- (2) During its review of the plan, the program authority may meet and correspond with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.
- ~~(3) The program authority shall approve or disapprove a plan within 45 days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. The decision shall be in writing and shall be communicated to the applicant by mail or delivery. If the plan is rejected or disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. If the program authority fails to act on a plan within the 45-day period, the plan shall be deemed approved.~~
- (4) Nothing in this Article or section shall require approval of a plan, or any portion thereof, that is determined by the program authority to pose a danger to the public

health, safety, or general welfare, or to deviate from sound engineering practices.

(b) The Administrator shall determine the completeness of a plan and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete. If a determination of completeness is not made within 15 calendar days of receipt, then the plan shall be deemed complete.

(c) The program authority shall approve or disapprove a plan within 60 days from the date a complete application was received, provided that for any plan that is deemed complete in accordance with paragraph (b) of this section, the program authority shall approve or disapprove the plan within 60 days from the date the plan was submitted to the program authority. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable local, state and federal laws and regulations. The decision shall be in writing and shall be communicated to the applicant by mail or delivery. If the plan is rejected or disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. If the program authority fails to act on a plan within the 60-day period, the plan shall be deemed approved. The Administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.

~~(e) Each stormwater management/BMP plan approved by the program authority shall be subject to the following:~~

~~(1) The owner shall comply with all applicable requirements of the approved plan, this Article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;~~

~~(2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;~~

~~(3) Land development shall be conducted only within the area specified in the approved plan;~~

~~(4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (e)(2);~~

~~(5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 9-63;~~

~~(6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 9-67; and~~

~~(7) The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.~~

SECTION 9-62. CONDITIONS OF APPROVAL.

(ea) Each stormwater management/BMP plan approved by the program authority shall be subject to the following conditions, at a minimum:

- (1) The owner shall comply with all applicable requirements of the approved plan, this Article, and the Virginia Stormwater Management Act (Virginia Code §62.1-44.15:27 et seq.) and Regulations, and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;
- (2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
- (3) Land development shall be conducted only within the area specified in the approved plan;
- (4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by ~~provision~~paragraph (ed)(2) of this section;
- (5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in sSection 9-63; and
- (6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections of the land development in accordance with Section 9-67 to determine the owner's compliance with the provisions of this Article. The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

~~Each stormwater management plan approved by the program authority shall be subject to the following:~~

- ~~(a) The owner shall comply with all applicable requirements of this Article, the Virginia Stormwater Management Act (Va. Code §§10.1-603.2 et seq), the Commonwealth of Virginia stormwater regulations set forth in 4 VAC 3-20-10 et seq, and the Virginia Stormwater Management Handbook.~~
- ~~(b) The owner shall certify in writing that all land clearing, construction, land development and drainage will be done according to the approved plan.~~
- ~~(c) Land development shall be conducted only within the area specified within the approved plan.~~
- ~~(d) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (b), above.~~

~~(e) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections of the land development to determine the owner's compliance with the provisions of this Article. The program authority may require, as a condition of approval of a stormwater management plan, that the owner enter into a right of entry agreement, or grant an easement, for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.~~

~~(3) The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting.~~

SECTION 9-63. DUTY TO COMPLY, MAINTAIN AND REPAIR; MAINTENANCE AGREEMENT.

(a) The owner shall maintain and repair all structural and nonstructural stormwater management measures required by the stormwater management plan, as follows:

(1) The owner shall be responsible for the operation and maintenance of such measures and shall pass such responsibility to any successor owner, unless such responsibility is lawfully transferred to the City or to another governmental entity.

(2) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other measures specified to manage the quality and quantity of runoff. ~~If an approved a~~ stormwater management plan includes the use of ~~requires~~ structural or nonstructural measures best management practices, the owner shall ~~execute~~ submit the executed stormwater management facilities maintenance agreement prior to the program authority granting final approval ~~for any site plan or other development for which a permit is required~~ of the stormwater management plan. The required stormwater management facilities maintenance agreement shall be in a form approved by the City Attorney. If an owner certifies that it ~~he~~ cannot exercise its rights under a purchase agreement until a site plan or other development plan receives final approval from the City, the program authority may grant its final approval without a signed ~~an executed and recorded~~ agreement, provided that the agreement is submitted to the Administrator for review and approval prior to the approval of the stormwater management plan, and is signed ~~executed and recorded~~ as provided herein prior to issuance of any certificate of occupancy for any building on the site ~~the development project.~~ The agreement shall be recorded in the office of the clerk of the Circuit Court for the City of Winchester and shall, at a minimum:

(i) Be stated to run with the land. ~~If an owner certifies that it cannot exercise its rights under a purchase agreement until a site plan or other development receives final approval from the City, the program authority may grant its final approval without a signed agreement, provided that the agreement is signed and recorded as provided herein prior to issuance of any certificate of occupancy for the development project.~~ The required stormwater management facilities maintenance agreement shall be in a form approved by the City Attorney and shall, at

~~a minimum:~~

- (ii) Provide for all necessary access to the property for the purposes of maintenance and regulatory inspections;
 - (iii) Provide for periodic inspections and the submission of inspection and maintenance reports to the Administrator;
 - (iv) Designate for the land development the owner, governmental agency, or other legally-established entity which shall be permanently responsible for maintenance of the structural or non- structural measures required by the plan;
 - (~~iv~~) Pass the responsibility for such maintenance to successors in title;
- ~~and~~
- (~~iii~~vi) Ensure the continued performance of the maintenance obligations required by the plan and by this Article; and
 - (vii) Be enforceable by all appropriate governmental parties.

SECTION 9-64. AMENDMENT OF APPROVED STORMWATER MANAGEMENT PLANS.

~~An approved stormwater management plan may be changed or amended only as provided herein:~~

- (a) The program authority may change an approved stormwater management/~~BMP~~ plan only as provided herein;.
- (~~b~~) The owner shall submit ~~additional data identified in section~~ ~~(plan requirements)~~ information as required by Section 9-51 in order to allow the program authority to determine whether any such change ~~will comply~~ complies with the requirements of this Article.
- (~~b~~c) The owner shall submit to the program authority a written request and justification for a change or amendment of an approved stormwater management plan, and shall provide such data as may be required by the program authority in order to determine whether the proposed change will comply with the requirements of this Article.
- (~~e~~d) The program authority shall conduct its review and shall make its decision with respect to the proposed change in accordance with the procedures for initial submission and approval of a stormwater management plan. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving of the request for an amendment. (~~d~~) ~~If the proposed change to the approved plan complies with the requirements of this Article, the program authority shall approve such proposed change in writing.~~
- (e) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. An owner shall make no changes to an approved plan without first complying with this section.
- (f) The Administrator may require that an approved stormwater management plan be

amended, within a time prescribed by the Administrator, to address any deficiencies noted during an inspection.

SECTION 9-65. ~~EXCEPTIONS RESERVED.~~

~~Other than requests for permission to develop within a required stream buffer, which requests shall be handled pursuant to §9-74, a request for an exception to the requirements of this Article shall be made and reviewed as follows:~~

~~(a) A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the City attorney's office. The request shall address the factors listed in paragraph (c), below:~~

~~(b) After receiving and considered a recommendation from the program authority, the City council shall grant or deny a request for an exception within 60 days from the date of the program authority's receipt of the request.~~

~~(c) A request for exception may be granted by the City Council, upon finding that:~~

~~(1) A stormwater management plan has been submitted to the program authority for review in accordance with this Article, and the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this Article, the use of non-structural measures, the use of a mitigation plan, or by other means;~~

~~(2) The exception requested is the minimum necessary to afford relief;~~

~~(3) Reasonable and appropriate conditions can be imposed to ensure that the purposes of this Article are satisfied; and~~

~~(4) The sole basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.~~

SECTION 9-66. DEDICATION OF FACILITIES TO THE PUBLIC.

The owner of a stormwater management facility required by this Article may offer for dedication any such facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

(a) Any such offer shall be made in writing and delivered to the office of the City attorney, with a copy to the program authority. The owner, at his sole expense, shall provide any documents or information requested by the program authority or the City Council. The program authority shall make a preliminary assessment as to whether the dedication of such facility is appropriate and will promote the public health, safety and general welfare. In making its assessment, the program authority shall inspect the facility in question and shall determine whether it has been properly maintained and is in good repair. The program authority shall estimate the annual cost of maintenance and repair of the facility, and of the remaining useful life of the facility. The program authority shall forward a report of its assessment to the City Council.

- (b) The City Council shall review the offer, taking into account the recommendations of the program authority and other City staff or officials, and may accept or refuse the offer of dedication.
- (c) If the City Council decides to accept the offer of dedication, the document dedicating the stormwater management facility shall be recorded in the office of the clerk of the Circuit Court for the City of Winchester.
- (d) If the dedication of a stormwater management facility is required by City ordinance as a condition of approval of a subdivision plat, then the applicable provision of the City's subdivision ordinance shall apply in lieu of this section.

SECTION 9-67. INSPECTIONS.

The program authority shall inspect any land subject to an approved stormwater management plan, as provided herein:

- (a) The program authority shall inspect the land disturbing activity during construction for:
 - (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan;
 - (3) Development, updating, and implementing of a pollution prevention plan; and
 - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purposes of obtaining information of conducting surveys or investigations necessary in the enforcement of the provisions of this Article.
- ~~(ac)~~ During the installation of stormwater management measures, or the conversion of erosion and sediment control measures into stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being installed as provided in the approved plan.
- ~~(bd)~~ Upon completion of the installation of stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being maintained as provided in the approved plan, or to investigate a complaint pertaining to the plan.
- ~~(ce)~~ ~~The inspections shall be conducted at least annually, measured from the date the installation or implementation of the stormwater management measures is deemed by the program authority to be complete.~~ The inability of the program authority to conduct inspections within the time periods set forth in this paragraph-section shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or any official or employee thereof shall arise therefrom.

(~~ef~~) The program authority shall be allowed, after giving notice to the owner, occupier or operator of the land development, to conduct any inspection required by this section. The notice may be either verbal or in writing. Notice shall not be required if the program authority and the owner have entered into a right of entry agreement, or if the owner has granted to the program authority an easement for purposes of inspection and maintenance.

(g) Notwithstanding any other provision of this section or Article, post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the City's inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in the stormwater management facilities maintenance agreement executed in accordance with Section 9-63, measured from the date the installation or implementation of the stormwater management measures is deemed by the program authority to be complete.

SECTION 9-68. DETERMINATION OF NONCOMPLIANCE WITH PLAN; PROCEDURE.

(a) Upon a determination by the program authority that an owner has failed to comply with an approved VSMP authority permit or stormwater management plan, or any conditions thereof, the following enforcement provisions and procedures shall apply:

(1) The program authority shall serve upon the owner, permittee, or person responsible for implementing the permit a written notice to comply. The notice shall be served by certified mail, to the owner's address of record with the City assessor's office, or by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities. The notice shall:

- (i) Instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent or abate drainage, erosion, or water pollution problems;
- (ii) Specify the measures required to comply with the approved plan or permit, or any conditions thereof;
- (iii) Specify the time within which such required measures must be completed; and
- (iv) Include copies of inspection reports or other such documentation demonstrating non-compliance with the approved plan or permit, or any conditions thereof.

(2) If a permittee fails to comply with a notice issued in accordance with paragraph (a)(1) of this section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are

obtained, and specified corrective measures have been completed. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by the Administrator or any duly authorized agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Section 9-69.

(3) If the owner fails to take corrective measures stated in the notice to comply, within the time specified in the notice, then the City may revoke any building permit or other permit for activities involving the land development, and the owner shall be deemed to be in violation of this Article.

(34) If the program authority determines, upon completion of a maintenance inspection, that maintenance or repair of the measures has been neglected, or that any stormwater management facility is a danger to public health or safety, it may perform the work necessary to assure that such measures or facilities are not a danger to public health or safety, and shall be entitled to recover the costs of such work from the owner. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument pursuant to Section 9-9 and/or Section 9-63 of this Chapter, the Administrator may enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(5) In addition to any other remedy provided by this ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the Public Services Standards Manual, as applicable.

SECTION 9-69. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.

Enforcement of this Article shall be as follows:

(a) Any person who violates any provision of this Article shall be guilty of a

misdemeanor and shall be subject to a fine not exceeding one thousand dollars (\$1,000.00), or up to 30 days imprisonment for each violation, or both.

Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully and negligently violates any provision of this Article, any order of the Administrator, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

(b) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Circuit Court by the City to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. The City may apply to the Circuit Court to enjoin a violation or threatened violation of the provisions of this Article, without the necessity of showing that an adequate remedy at law exists.

(c) Without limiting the remedies that may be obtained pursuant to this section, the City may bring a civil action against any person for violation of any provision of this Article, or of any term or condition of a permit, plan, or maintenance agreement. The action may seek the imposition of a civil penalty of not more than two thousand dollars (\$2,000.00) against the person for each violation. Each day of violation of each requirement shall constitute a separate offense. The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. In imposing a civil penalty pursuant to this paragraph, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance. Violations for which a penalty may be imposed under this paragraph shall include but not be limited to the following:

- (1) No state permit registration;
- (2) No SWPPP;
- (3) Incomplete SWPPP;
- (4) SWPPP not available for review;
- (5) Failure to install stormwater BMPs;
- (6) No approved erosion and sediment control plan;
- (7) Stormwater BMPs improperly installed or maintained;
- (8) Operational deficiencies of stormwater BMPs;
- (9) Failure to conduct required inspections or maintenance;
- (10) Incomplete, improper, or missed inspections; and
- (11) Discharges not authorized or not in compliance with the requirements of Section 9VAC25-880-70 of the general permit coverage issued for the land-disturbing activity.

Any civil penalties assessed by a court as a result of a summons issued by the City shall be paid into the treasury of the City to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

(d) With the consent of any person who has violated or failed, neglected or refused to

obey, or comply with any permit, obligation or a plan or agreement, or any provision of this Article, the program authority may provide, in an order issued by the program authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified above in paragraph (c). Such civil charges shall be in lieu of any civil penalty which could be imposed under paragraph (c).

~~SECTION 9-70. REVIEW OF CERTAIN PROGRAM AUTHORITY ACTIONS.~~

~~Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this Article, or in the interpretation of the provisions of this Article, shall have the right to apply for and receive a review of such action by the City Council, as provided herein:~~

~~(a) An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this Article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.~~

~~(b) When reviewing the program authority's action, the City Council shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the City Council to be necessary for a complete review of the matter. The City Council may affirm, reverse or modify the program authority's action. The decision of the City Council shall be final, subject only to review by the Circuit Court as provided in Virginia Code § 10.1-603.13.~~

~~(c) For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down stream property, and any interested governmental agency or officer thereof.~~

SECTIONS 9-~~71-70~~ - 9-79. RESERVED.

ARTICLE IV. STREAM BUFFERS

SECTION 9-80. DUTY TO RETAIN OR ESTABLISH STREAM BUFFER.

(a) Except as otherwise provided in this Article, any land adjacent to the following listed waters, and/or nontidal wetlands adjacent to these streams, shall provide

buffers for the purposes of retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff:

- (1) Abrams Creek
 - (2) Town Run
 - (3) Hogue Run
 - (4) Buffalo Lick Run
 - (5) Redbud Run
- (b) A required stream buffer shall be no less than thirty-five (35) feet wide on each side of the stream, which buffer shall be measured horizontally from the top of the stream bank.
- (c) Existing stream buffers shall be retained, except as allowed in §9-83(d).
- (d) Each required stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.
- (e) Within a required stream buffer, no indigenous vegetation shall be disturbed or removed, except as follows:
- (1) Activities pertaining to the management of the stream buffer, identified in §9-81 of this Article;
 - (2) Development activities authorized in a stream buffer, identified in §9-83;
 - (3) Activities authorized in §9-82;
 - (4) Tilling, planting or harvesting of agricultural or horticultural crops in home gardens.
- (f) With respect to developments that are required to have an approved site plan, and involving land containing existing and/or required stream buffers, contour lines shall be shown at two-foot intervals. In any case where any proposed development

(Ord. No. 2007-14, 5-8-07)

SECTION 9-81. MANAGEMENT OF A STREAM BUFFER.

Each stream buffer required to be established or maintained pursuant to this Article shall be managed as provided herein:

- (a) The target vegetative cover in a stream buffer area shall be an indigenous riparian forest with ground cover, shrub and tree canopy layers.
- (b) Within twenty-five (25) feet of the top of the stream bank and on land classified as nontidal wetland:
 - (1) Indigenous riparian vegetation shall be preserved, or, where it does not exist, it shall be restored or allowed to evolve by natural succession;

- (2) Dead, diseased, and dying trees may be removed;
 - (3) Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;
 - (4) Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion;
 - (5) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and to minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below; and
 - (6) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (c) Beyond twenty-five (25) feet from the top of the stream bank to the limits of the required buffer:
- (1) Dead, diseased and dying trees may be removed;
 - (2) Trees 6 inches in diameter or greater, measured 48 inches from the ground, shall be preserved;
 - (3) Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
 - (4) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below.
 - (5) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (d) Where an existing structure (i.e. building, street, road, bridge, etc.) is located within the buffer, vegetation, not including the ground cover, can be removed within 15 feet of the structure. Removal of additional vegetation can be allowed if required by State or Federal requirements or if necessary for the health, safety or welfare of the City's citizens and approved by the City Engineer.

SECTION 9-82. DEVELOPMENT EXEMPT FROM STREAM BUFFER REQUIREMENTS.

The following types of development shall not be required to retain, establish or manage a stream buffer, provided that the requirements of this section are satisfied:

- (a) The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code §§~~10.1-560~~62.1-44.15:51 et seq.) or an erosion and sediment control plan approved by

the Virginia ~~Soil and Water Conservation~~State Water Control Board.

- (b) The construction, installation and maintenance by public agencies of water, sewer, electric and gas lines, including lines constructed by private entities for dedication to public agencies, provided that:
 - (1) To the extent practical, the location of such lines shall be outside required stream buffer areas;
 - (2) No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and
 - (3) Construction, installation and maintenance of such lines shall comply with applicable federal, state and local requirements and permits and be conducted in a manner that protects water quality.

SECTION 9-83. DEVELOPMENT AUTHORIZED IN A STREAM BUFFER.

If otherwise authorized by applicable regulations of the City's zoning ordinance, the following land development activities shall be allowed in a stream buffer area, provided that the requirements of this section are satisfied and performance standards established by the program authority are met:

- (a) A building or structure which existed on the date of adoption of this Chapter may continue at such location. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of such building or structure except as authorized by the City's zoning ordinance.
- (b) On-site or regional stormwater management facilities, and temporary erosion and sediment control measures, provided that:
 - (1) To the extent practical the location of such facilities shall be outside the stream buffer;
 - (2) No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility;
 - (3) The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and
 - (4) Facilities located within a floodplain adhere to floodplain regulations and are designed and located, to the extent practical, to maintain their water quantity and/or water quality control value during flood conditions.
- (c) Water dependent facilities, passive recreation access (such as unpaved pathways and trails), historic preservation, and archaeological activities, provided that all applicable federal, state, and local permits are obtained.
- (d) Development in a stream buffer, where authorized by the program authority in the circumstances described below, may be allowed if a mitigation plan is submitted to and approved by the program authority pursuant to §9-84:

- (1) On a lot which was of record prior to the date of adoption of this Chapter, if:
 - (i) Establishment or preservation of the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or
 - (ii) The proposed development consists of redevelopment not exceeding the current level of encroachment resulting from existing improvements, or
 - (iii) The proposed development is for construction of an accessory building or structure (including, without limitation, an accessory apartment) permitted by the City's zoning ordinance.
- (2) On a lot on which development within the stream buffer will consist of an ecological/wetland restoration project;
- (3) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a driveway or roadway, and the program authority determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary for the owner to have a reasonable use of the lot;
- (4) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a paved pathway or trail not exceeding five (5) feet in width;
- (5) On a lot which was of record prior to the date of adoption of this Chapter, on which development within the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the program authority determines that the stream buffer would prohibit the practicable development of such facilities or systems.
- (6) On a lot on which the development in the stream buffer will consist of the construction and maintenance of the Green Circle Trail System.

(Ord. No. 2007-14, 5-8-07)

SECTION 9-84. MITIGATION PLAN REQUIRED.

Each owner who seeks to develop in a stream buffer pursuant to §9-83(d) shall submit to the program authority for review and approval a mitigation plan as provided herein:

- (a) The owner shall submit a mitigation plan that satisfies the applicable requirements of this section; the required fee, as set forth within the most recent fee schedule approved by City Council; and a certification stating that all requirements of the approved plan will be complied with.
- (b) The mitigation plan shall be reviewed by the program authority to determine whether it complies with the requirements of this section and all other

requirements of this Article. The program authority shall approve or disapprove a mitigation plan within 30 days of the date that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

(c) Each mitigation plan shall:

- (1) Identify the impacts of proposed development on water quality and lands within the stream buffer;
- (2) Identify the alternatives to development in the stream buffer that have been explored by the applicant;
- (3) Ensure that, where development does take place within a stream buffer, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer;
- (4) Demonstrate and assure that development will be conducted using best management practices;
- (5) Specify mitigation which will address water quality and stream buffer impacts; and
- (6) Contain other information requested by the program authority.

(d) Each mitigation plan shall be evaluated by the program authority based on the following criteria:

- (1) Whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;
- (2) Whether the development in the stream buffer is the minimum necessary and is to be conducted in a manner that will be least disruptive to the natural function of the stream buffer; and
- (3) Whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions.

SECTION 9-85. INSPECTIONS

The program administrator shall inspect any land subject to establishing a vegetated stream buffer to insure that the buffers are installed as per the criteria outlined in Article IV.

SECTIONS 9-86 - 9-89. RESERVED.

ARTICLE V. STORM SEWER DISCHARGES

SECTION 9-90. FINDINGS AND DETERMINATIONS.

- (a) Pollutants in stormwater from many sources are largely uncontrolled and have an adverse impact upon the quality of receiving waters. Major sources of stormwater that cause water quality impacts include construction sites, illicit connections, illegal discharges and industrial activities.
- (b) Amendments to the Federal Clean Water Act (CWA) in 1987 required the United States Environmental Protection Agency to establish National Pollutant Discharge Elimination System (NPDES) requirements for municipal separate storm sewer (MS4) systems. NPDES regulations require the City to control through ordinance, permit, contract or other available means (collectively, the City's "stormwater management program") the contribution of pollutants into waters of the United States.
- (c) This Article is adopted as an integral part of the City's stormwater management program.

SECTION 9-91. DISCHARGES TO THE CITY'S STORM SEWER SYSTEM.

- (a) It shall be unlawful and a violation of this Article to:
 - (1) Throw, drain, or otherwise discharge into the City's storm sewer system any pollutants or waters containing pollutants other than stormwater;
 - (2) Connect, or cause or allow to be connected, any sanitary sewer to the storm sewer system, any such connections owned or authorized by the City prior to April 11, 2006;
 - (3) Cause or allow any illicit connection to the City's storm sewer system; or
 - (4) Violate any condition or provision of this Article, or any permit or approval granted to allow any stormwater discharges to the City's storm sewer system.
- (b) Subject to the provisions of subsection (c) of this section, the following activities shall not be considered illicit discharges:
 - (1) Water line flushing;
 - (2) Landscape irrigation;
 - (3) Diverting stream flows or rising groundwater, or infiltration of uncontaminated groundwater;
 - (4) Public safety activities, including, but not limited to, law enforcement and fire fighting;
 - (5) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;
 - (6) Lawn watering;

- (7) Individual car washing on residential properties;
 - (8) De-chlorinated swimming pool discharges (less than 1 PPM chlorine);
 - (9) Street washing;
 - (10) Any activity authorized by a valid National Pollutant Discharge Elimination System (NPDES) permit, waiver or discharge order, a Virginia Pollutant Discharge Elimination System (VPDES) permit, waiver or discharge order, or a Virginia Pollution Abatement (VPA) permit;
 - (11) Any activity by a governmental entity in accordance with Federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems; and
 - (12) Any activity by the City, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system.
 - (13) Discharges specified in writing by the director as being necessary to protect public health and safety.
 - (14) Dye testing, following notification to the City engineer.
- (c) If any of the activities listed in subsection (b), above, of this section are found to be sources of pollutants to public waters, the Program Authority (as defined in §9-5 of this Chapter) shall so notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this Article.

SECTION 9-92. WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, or such a person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity or the watercourse.

SECTION 9-93. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of such compliance may be required in a form acceptable to the Program Authority prior to allowing discharges to the City's storm sewer system.

SECTION 9-94. INSPECTIONS AND MONITORING.

- (a) The Program Authority shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance. The Program Authority shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this Article, including the prohibition of illicit discharges to the storm sewer system. The Program Authority may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this Article.
- (b) The Program Authority shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.

SECTION 9-95. ENFORCEMENT, PENALTIES, REMEDIES.

- (a) A willful violation of the provisions of this Article shall constitute a Class 1 misdemeanor. Each day that a continuing violation of this Article is maintained or permitted to remain shall constitute a separate offense.

- (b) Any person who commits any act prohibited by this Article shall be liable to the City for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.
- (c) Any person who commits any act prohibited by this Article shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the City for the purpose of abating, preventing or mitigating environmental pollution.
- (d) The City may bring legal action to enjoin the continuing violation of this Article. The existence of any other remedy, at law or in equity, shall be no defense to any such action.
- (e) The Program Authority shall have authority to order that any activity found to be in violation of this Article be stopped or conducted in such a manner as to avoid the discharge of sewage, industrial wastes or other wastes into the storm sewer system.
- (f) Any discharge caused or permitted to exist in violation of any provisions of this Article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from the Program Authority, if the responsible person fails to abate or obviate such nuisance, then the City may do so and charge and collect the cost thereof from the responsible person, in any manner provided by law (including, without limitation, any manner provided by law for the collection of state or local taxes).
- (g) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law.
- (h) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

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CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: April 15, 2014 **CUT OFF DATE:** _____

RESOLUTION **ORDINANCE** xx **PUBLIC HEARING** xx

ITEM TITLE: Consideration of Implementing a Garbage and Refuse Collection Fee

STAFF RECOMMENDATION: See attached.

PUBLIC NOTICE AND HEARING: Will be required.

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

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> <i>B</i> </u>	_____	<u> 4/8/14 </u>
2. City Attorney	<u> <i>W</i> </u>	_____	<u> 4/9/2014 </u>
3. City Manager	<u> <i>DT</i> </u>	_____	<u> 4-9-14 </u>
4. Clerk of Council	<u> <i>DT</i> </u>	_____	<u> 4-9-14 </u>
Initiating Department Director's Signature:	<u> <i>[Signature]</i> </u>		<u> 4/7/14 </u> Date



APPROVED AS TO FORM:
 [Signature] 4/9/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Perry Eisenach, Public Services Director
Date: April 15, 2014 (Council Work Session)
Re: Consideration of Implementing a Garbage Collection Fee

THE ISSUE: City Council consideration of implementing a garbage collection fee.

RELATIONSHIP TO STRATEGIC PLAN: **Goal 2:** Develop a High Performing Organization, and **Goal 4:** Create a More Livable City for All.

BACKGROUND: As part of the proposed FY15 budget process, City Council has discussed the option of implementing a garbage collection fee. Such a fee would provide additional revenues to the General Fund that would be used in support of achieving the goals established in the City's Strategic Plan.

BUDGET IMPACT: Implementing a flat monthly fee for garbage collection would generate the following approximate amount of revenue over a one year period:

Monthly Fee	Total Annual Revenue
\$ 5.00	\$ 558,000.00
\$ 10.00	\$ 1,116,000.00
\$ 13.44	\$ 1,500,000.00 (Full Cost Recovery)

As discussed previously, implementing a \$5.00 monthly fee on October 1, 2014, would generate approximately \$420,000 during FY15.

OPTIONS: If Council chooses to implement a garbage collection fee, there are two primary options available:

Option A – Flat Monthly Fee Added to Water & Sewer Bill

Option B – Sell Annual Decals or Individual Bag Stickers

Advantages and disadvantages for each option are provided on the attachment.

RECOMMENDATION: If Council chooses to implement a garbage collection fee, the Public Services staff recommends that Council select Option A – a flat monthly fee added to the water and sewer bill.

The attached proposed ordinance would implement a \$5.00 monthly fee effective October 1, 2014 that would be added to the water and sewer bill. This fee would be assessed to every individual residential unit (house, apartment, etc.) and business that receives garbage collection service from the City. This would include the businesses and residential units in the primary and secondary district.

OPTIONS FOR CITY COUNCIL:

- Option A: Flat monthly fee added to the water & sewer bill.
- Option B: Sell annual decals and individual bag stickers.
- Option C: Do not implement a fee for garbage and refuse collection.

City of Winchester
Options for Charging Fees for Garbage Collection
April 2014

Option	Advantages	Disadvantages
<p style="text-align: center;">Option A</p> <p style="text-align: center;">Flat Monthly Fee on Water/Sewer Bill</p>	<ul style="list-style-type: none"> • Easiest to administer. • Most convenient for residents. • Most likely would result in less illegal dumping or over-weight containers. 	<ul style="list-style-type: none"> • Residents that only generate a small amount of waste pay the same as those that generate a larger amount.
<p style="text-align: center;">Option B</p> <p style="text-align: center;">Sell Stickers or Decals</p>	<ul style="list-style-type: none"> • Allows residents to pay for the amount of service they receive. The more waste they generate, the more they pay. 	<ul style="list-style-type: none"> • More difficult to administer. • Inconvenient for residents to have to purchase decals or stickers. • More illegal dumping and over-weight containers.

Garbage Collection Fees Charged by Other Localities:

City of Harrisonburg: Residential: \$25/month
 Recycling Only: \$15/month

City of Charlottesville: 13-gallon bag stickers: \$1.05/each
 32-gallon bag stickers: \$2.10/each
 Annual decals (in lieu of stickers): \$94.50/year for 32 gallon container - \$283.50/year for 96 gallon container

City of Fredericksburg: Residential: \$17.25/month (No recycling charge)

Town of Front Royal: Residential: \$12/month for 32 gallon container and \$13.75/month for 96 gallon container

Town of Woodstock: Residential: \$8/month

AN ORDINANCE TO AMEND CHAPTER 11 OF THE WINCHESTER CITY CODE BY ADDING A NEW SECTION, 11-24.1, THAT ESTABLISHES A FEE FOR GARBAGE AND REFUSE COLLECTION

WHEREAS, the City of Winchester provides garbage and refuse collection service to most residents within the City; and

WHEREAS, City Council has determined that it is necessary to charge a fee to help pay for the cost of providing this service which is necessary for the health and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED that Section 11-24.1 is hereby added to the Winchester City Code to read as follows:

SECTION 11-24.1. GARBAGE AND REFUSE COLLECTION FEE.

- (a) The City shall charge all customers that receive garbage and refuse collection service from the City a monthly fee of \$5.00.
- (b) The fee shall be charged separately to every applicable residential unit (house, apartment, duplex unit, etc.) or business.
- (c) The bill for such fees shall be combined with the water and sewer bill for the property in which the same billing cycle and due date shall apply.
- (d) Fees that are not paid by the date due shall be assessed a one-time penalty of ten (10) percent.
- (e) Partial payments received shall be applied proportionately to water, sewer, and garbage collection service based on the ratio of the cost of each service divided by the cost of the total bill.
- (f) The fee shall not be assessed only during periods when the water service for the property is disconnected at the request of the property owner.

THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE OCTOBER 1, 2014.

Ordinance No. _____

ADOPTED by the Common Council of the City of Winchester on the ____ day of _____, 2014.

Witness my hand and the seal of the City of Winchester, Virginia.

Deputy Clerk of the Common Council

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: April 22, 2014 **CUT OFF DATE:**

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

ITEM TITLE: Authorize Supplemental Appropriations for the FY 2014 budget

STAFF RECOMMENDATION: Approve as recommended; send to public hearing

PUBLIC NOTICE AND HEARING: June 10, 2014

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA:
See attached contract

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. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	_____	_____	_____
6. City Manager	<i>[Signature]</i>	_____	<u>4-16-14</u>
7. Clerk of Council	<i>[Signature]</i>	_____	<u>4-16-14</u>

Initiating Department Director's Signature: *[Signature]* 4-15-14
Finance Director Date



CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Mary Blowe, Finance Director
Date: April 22, 2014
Re: Ordinance to authorize the additional appropriation of funds for necessary expenditures for Fiscal Year 2014

THE ISSUE: The FY 2014 budget needs to be amended to account for additional revenues and proposed expenditures.

RELATIONSHIP TO STRATEGIC PLAN: These budget amendments help to create a more livable City for all, particularly objective 1, to upgrade City school facilities and also develop a high performing organization with the use of grant funds.

BACKGROUND: City Staff is requesting the following amendments to the FY 2014 budget:

- 1. General Fund** to increase by **\$209,960** for the following items: \$17,100 increase to the Information Technology department from \$8,550 grant proceeds and \$8,550 reserves to supply the Emergency Operations Center (EOC) with computer equipment; \$86,771 increase for the Fire Department from state grant funds for computers and Training Officer salary; and \$106,089 from reserves including \$24,878 for Airport operating and \$81,211 for Airport capital projects.
- 2. School Funds** – see attached School Board Resolutions dated March 3, 2014, March 31, 2014 and April 14, 2014.

BUDGET IMPACT: The City's budget will increase to allow for the expenditure of grant funds and bond proceeds.

OPTIONS: Adopt ordinance as presented or amend the ordinance.

RECOMMENDATIONS: Staff recommends the adoption of this ordinance.

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
MARCH 3, 2014**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2013-2014:

SCHOOL OPERATING FUND

PROJECT GRADUATION INCREASE OF \$4,800. These reimbursable state funds will target students who have not achieved a verified credit in English, Writing, Reading, and/or Algebra.

DONATION FROM WINCHESTER MEDICAL CENTER FOR \$11,250. These funds will be used to offset the cost of the Health Science Teacher at Handley High School.

DONATION FROM MR. AND MRS. GERALD SMITH FOR \$50,000. This donation will be used to fund the teacher salary for the Porterfield Endowment Chair at Handley High School.

INCREASED STATE FUNDING FOR THE REGIONAL PROGRAMS OF \$97,800. These funds will be used to purchase marching band uniforms for Daniel Morgan Middle School (\$35,800) and Handley High School (\$37,000). Also it will fund the VSBA study (\$5,000) and the Superintendent search (\$20,000).

INCREASED STATE FUNDING FOR THE CAREER SWITCHER NEW TEACHER MENTOR PROGRAM OF \$1,000. These funds were used to award a \$1,000 to a new teacher enrolled in the Career Switcher Program.

INCREASED STATE FUNDING AWARD BONUS FOR NATIONAL BOARD CERTIFICATIONS OF \$30,000. These funds will be awarded to National Board Certified teachers. WPS currently has ten teachers with National Board certifications: eight continuing awards of \$2,500 each and two initial awards of \$5,000.

DONATION FROM THE ADAMS FAMILY FOUNDATION OF \$13,500. These funds will be used mainly in our early childhood literacy initiatives, with the majority of the funding going to Quarles Elementary (QES) and Va. Avenue Charlotte DeHart Elementary Schools (VACDES). These funds were distributed as follows: QES \$5,000, VACDES \$5,000, Frederick Douglass Elementary \$1,000 and John Kerr Elementary \$1,000. \$1,500 was also distributed to Daniel Morgan Middle School for tutoring programs.

DONATION FROM THE UNITED WAY THROUGH THE WINCHESTER EDUCATION FOUNDATION OF \$10,000. The majority of the funding will be used to purchase equipment for the health science classroom. Remainder of the funds will be spent on consumable goods for those students to earn CPR.

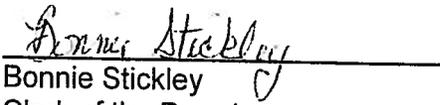
**BUDGET AMENDMENTS
MARCH 3, 2014**

INCREASED STATE FUNDING AWARD BONUS FOR STEM TEACHER RECRUITMENT AND RETENTION INCENTIVE AWARDS OF \$10,000. Successful teachers participating in the pilot program will be eligible to receive a \$5,000 initial incentive award after the completion of the first year of teaching with a satisfactory performance evaluation and a contract for the following year in our division. WPS had two teachers that are tentatively eligible for this award in June

DONATIONS FOR THE HOMELESS OF \$1,629. Selma employees donated \$1,629 for the homeless for Thanksgiving and Christmas to purchase meals and gifts.



Erica Truban
Chairman



Bonnie Stickley
Clerk of the Board

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
MARCH 31, 2014**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2013-2014:

SCHOOL OPERATING FUND

ADDITIONAL STATE FUNDING OF \$129,235 DUE TO INCREASED ADM (Average Daily Membership). The budgeted ADM for FY 2014 was 4,060 and it is estimated to be 4,116 at March 31, 2014 (see attachment). Revenues from the state for FY 2014 are based on the average daily membership from September 2013 through March 31, 2014. The State also decreased the estimated sales tax by \$115,910. These reimbursable state funds will be used for:

DESCRIPTION	AMOUNT
Transfer to textbook fund	\$129,235
TOTAL	\$129,325

State funded in FY 2014 \$369,329 for textbook funds. \$197,776 is the state share and \$171,553 is the local share. These textbook funds will be carried forward in FY 2015 for purchase of textbooks.

WORKER'S COMPENSATION DIVIDENDS OF \$36,888. These funds will be used to increase funding in the payroll accounts.

SURPLUS FUNDS AT YEAR-END. Any remaining surplus funds for fiscal year 2014 will be transferred to the Capital Improvement Fund (CIP) and Textbook fund.

FOOD SERVICES FUND

Fund balance transfer of \$90,750. These funds will be used to purchase the following equipment and will also help to offset food purchase cost and labor costs.

School	Description
QES	POS computer for another breakfast tray line
	Steamer
	2 door reach-in Refrigerator
	2 door reach-in Freezer
HHS	New steam table tray line
FDES	Upgraded Manager's computer to be compatible with new Software
	New Milk Cooler
All Schools	Upgraded all school POS computers on the tray lines to all touch screen
	Computers. This was needed to make them faster and more compatible to our current software and networking.

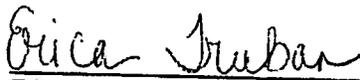
The current fund balance for the food services fund totals \$607,762.

ADDITIONAL STATE FUNDING OF \$90. These reimbursable state funds will be used for salaries.

BUDGET AMENDMENTS
MARCH 31, 2014

SCHOLARSHIP FUNDS

INTERNAL TRANSFER OF FUNDS FROM CHECKING TO THE INVESTMENT POOLED SCHOLARSHIP FUNDS OF \$13,465. These funds were received from a trust fund set-up by Della Stine and held by BB&T for scholarships for students attending Dowell J. Howard from Frederick County, Clarke County, and Winchester. These funds were distributed to each locality by BB&T since this regional program no longer exists. They will be used to provide Scholarships to Handley High School Students in the future.



Erica Truban
Chairman



Bonnie Stickley
Clerk of the Board

Finance\RS\03.31.2014 budget amendments

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
APRIL 14, 2014**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2013-2014:

SCHOOL CONSTRUCTION FUND

BOND PROCEEDS AND ACCUMULATED INTEREST OF \$20,006,700. The bond proceeds of \$20,000,000 for John Kerr Elementary School was received by the City of Winchester on October 30, 2013. Accumulated estimated interest to-date is \$6,700. City Finance department transferred these funds to the School Construction fund on April 10, 2014.

Erica Truban
Chairman

Bonnie Stickley
Clerk of the Board

Finance\RS\04.14.2014 budget amendments

COMMON COUNCIL



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
540-667-1815
TDD 540-722-0782
www.ci.winchester.va.us

AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2014

WHEREAS, Council approves the following additional funds for the purposes herein specified for the fiscal year ending June 30, 2014:

GENERAL FUND

REVENUE

State	40,771
Federal	8,550
Fire Program Reserves	46,000
Fund Balance/Supplemental Appropriation	<u>114,639</u>
TOTAL GENERAL FUND REVENUE	209,960

EXPENDITURES

General Government	17,100
Public Safety	86,771
Community Development	<u>106,089</u>
TOTAL GENERAL FUND EXPENDITURES	209,960

SCHOOL OPERATING FUND

REVENUE

Local	123,267
State	<u>272,835</u>
TOTAL SCHOOL OPERATING REVENUE	396,102

EXPENDITURES

Instruction	215,979
Administration, Attendance & Health	35,000
Transportation	2,000
Operations	13,888
Debt & Fund Transfers	<u>129,235</u>
TOTAL SCHOOL OPERATING EXPENDITURES	396,102

SCHOOL FOOD SERVICES FUND

REVENUE

Federal	90
Fund Balance	<u>90,750</u>
TOTAL SCHOOL FOOD SERVICES REVENUE	90,840

EXPENDITURES

Food Services	<u>90,840</u>
TOTAL SCHOOL FOOD SERVICES EXPENDITURES	90,840

SCHOOL TEXTBOOK FUND

REVENUE

Transfers	<u>129,235</u>
TOTAL SCHOOL TEXTBOOK REVENUE	129,235

EXPENDITURES

Instruction	<u>129,235</u>
TOTAL SCHOOL TEXTBOOK EXPENDITURES	129,235

SCHOOL CONSTRUCTION FUND

REVENUE

Local	6,700
Transfers	<u>20,000,000</u>
TOTAL SCHOOL CONSTRUCTION REVENUE	20,006,700

EXPENDITURES

Facilities	<u>20,006,700</u>
TOTAL SCHOOL CONSTRUCTION EXPENDITURES	20,006,700

SCHOOL SCHOLARSHIP FUNDS

REVENUE

Local	13,465
Transfers	<u>13,465</u>
TOTAL SCHOOL SCHOLARSHIP REVENUE	26,930

EXPENDITURES

Transfer out	13,465
Other	<u>13,465</u>
TOTAL SCHOOL SCHOLARSHIP EXPENDITURES	26,930

WHEREAS, there is available in the general fund an unencumbered and unappropriated sum sufficient to meet such appropriations, and

WHEREAS, all appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully obligated or encumbered, and

WHEREAS, all ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

NOW THEREFORE BE IT ORDAINED, by the Common Council of the City of Winchester that the additional appropriations specified herein are hereby appropriated for the purposes specified for the fiscal year ending June 30, 2014.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 04/22/2014 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE X PUBLIC HEARING ___

ITEM TITLE: Application for Real Estate Tax Exemption for Property Owned by the Society for the Prevention of Cruelty to Animals (SPCA)

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	<u>JS</u>	_____	<u>4/16/14</u>
2. Treasurer _____	<u>Pth</u>	_____	<u>4/16/14</u>
3. _____	_____	_____	_____
4. City Attorney	_____	_____	_____
5. City Manager	<u>DPH</u>	_____	<u>4.16.14</u>
6. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature: <u>Debra Bell</u>			<u>04/16/14</u> Date

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Ann T. Burkholder, Commissioner of the Revenue
Date: 04/16/2014 *ATB*
Re: Application for Real Estate Tax Exemption by SPCA of Winchester, Frederick and Clarke Counties

THE ISSUE: The Society for the Prevention of Cruelty to Animals (SPCA) of Winchester, Frederick and Clarke Counties has submitted to the Commissioner of the Revenue an application for real estate tax exemption by designation on property at 111 Featherbed Lane and 1944 Abrams Creek Drive. In order to be eligible for exemption, both the ownership and use of the property must meet certain state and local criteria.

This organization already enjoys real estate tax exemption on the adjoining parcel, 115 Featherbed Lane, which has been exemption by designation since purchase by the SPCA in 2004

RELATIONSHIP TO STRATEGIC PLAN: As the SPCA provides core services which the City would otherwise have to provide, this relates to Goal 2: Create a high-performing City organization and to Goal 4: Create a more livable City for all.

BACKGROUND: Pursuant to Code of the City of Winchester §27-32, any organization seeking an exemption by designation shall file an application with the Commissioner of the Revenue by November 1 preceding the year for which property tax exemption is sought. Following review and approval by various offices and departments, the City Manager shall present an ordinance proposal for exemption, together with estimated revenue impact and other pertinent information, to the City Council for consideration as part of the annual budget.

It is the determination of the Commissioner of the Revenue that the SPCA has complied with all application requirements and meets all state and local qualifications for exemption as a charitable organization.

In May of 2013, the SPCA purchased the parcel under consideration, known as 111 Featherbed Lane (Building 1) and 1944 Abrams Creek Drive (Building 2).

BUDGET IMPACT: Building 1 is commonly known as the former Impressions Plus site and will be used solely and exclusively by the SPCA in furtherance of its mission. This portion of the property is eligible for exemption. Current assessed value: \$889,700. Annual taxes at 2013 rate of \$0.95/\$100 = \$8,452.15.

Building 2 is under lease to another entity at a rate which can be considered market value. Although the lessee is a not-for-profit entity, the lease itself is a profitable transaction, and thus this portion of the property is not currently eligible for exemption. Current assessed value: \$822,700

OPTIONS: City Council has the option to approve or deny this request.

RECOMMENDATION: Pursuant to Code of the City of Winchester §27-32 et seq, the Commissioner of the Revenue and City Manager request that City Council approve this request.

**AN ORDINANCE TO APPROVE THE APPLICATION
OF THE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS OF
WINCHESTER, FREDERICK AND CLARKE COUNTIES
FOR TAX EXEMPT STATUS BY DESIGNATION
PURSUANT TO CHAPTER 27 DIVISION 5 OF CODE OF THE CITY OF
WINCHESTER**

WHEREAS, The Society for the Prevention of Cruelty to Animals (SPCA) of Winchester, Frederick and Clarke Counties is a charitable not-for-profit organization which provides core services to the City; and

WHEREAS, The SPCA has previously been granted tax exemption for property owned at 115 Featherbed Lane and used directly for its mission; and

WHEREAS, The SPCA has properly submitted a request for tax exemption by designation pursuant to Chapter 27 Division 5 of Code of the City of Winchester for property recently purchased at 111 Featherbed Lane and 1944 Abrams Creek Drive; and

WHEREAS, in accordance with codified requirements, the Office of the Commissioner of Revenue, the Office of the Treasurer and City Attorney have reviewed the request and based upon this review, the Manager has submitted a recommendation to Common Council of approval of said request for those portions of the property owned by the SPCA and used directly in furtherance of its mission; and

WHEREAS, proper Notice and a Public Hearing have been held as required by Code of the City of Winchester §27-32(b),

NOW therefore be it ordained that the request for tax exempt status of the SPCA is hereby granted. In accordance with §27-36 of Code of the City of Winchester, this property shall be subject to a triennial review of exemptions.

Ann T. Burkholder, Commissioner of the Revenue
15 North Cameron Street
Winchester, VA 22601
Email: commrevenue@winchesterva.gov

Telephone: (540) 667-1815
FAX: (540) 667-8937
TDD: (540) 722-0782
Website: www.winchesterva.gov

To: Jeff Barbour, Treasurer
Tony Williams, City Attorney
Dale Iman, City Manager

From: Ann T. Burkholder

Date: January 02, 2014

**SUBJECT: Application for Real Estate Tax Exemption by SPCA
of Winchester, Frederick and Clarke Counties**

The Society for the Prevention of Cruelty to Animals (SPCA) of Winchester, Frederick and Clarke Counties has submitted to the Commissioner of the Revenue an application for real estate tax exemption by designation on property at 111 Featherbed Lane and 1944 Abrams Creek Drive. In order to be eligible for exemption, both the ownership and use of the property must meet certain state and local criteria.

This organization already enjoys real estate tax exemption on the adjoining parcel, 115 Featherbed Lane, which has been exemption by designation since purchase by the SPCA in 2004.

Eligibility for Exemption - Organization

It is the determination of the Commissioner of the Revenue that the SPCA has complied with all application requirements and meets all state and local qualifications for exemption as a charitable organization.

Eligibility for Exemption – Real Property

In May of 2013, the SPCA purchased the parcel under consideration, known as 111 Featherbed Lane (Building 1) and 1944 Abrams Creek Drive (Building 2).

Building 1 is commonly known as the former Impressions Plus site and will be used solely and exclusively by the SPCA in furtherance of its mission. This portion of the property is eligible for exemption. Current assessed value: \$889,700. Annual taxes at 2013 rate of \$0.95/\$100 = \$8,452.15.

Building 2 is under lease to another entity at a rate which can be considered market value. Although the lessee is a not-for-profit entity, the lease itself is a profitable transaction, and thus this portion of the property is not currently eligible for exemption. Current assessed value: \$822,700.

Procedure for Application for Exemption by Designation

Pursuant to Code of the City of Winchester §27-32, any organization seeking an exemption by designation shall file an application with the Commissioner of the Revenue by November 1 preceding the year for which property tax exemption is sought. Following review and approval by various offices and departments, the City Manager shall present an ordinance proposal for exemption, together with estimated revenue impact and other pertinent information, to the City Council for consideration as part of the annual budget

Conclusion

It is the conclusion of the Commissioner of the Revenue that the City Manager present to the Common Council, as part of the annual budget process, consideration of real estate tax exemption on the eligible portion of the parcel owned by the SPCA at 111 Featherbed Lane.

Review Required:

Commissioner of the Revenue: *Andrew T. Bell*

Date: 01/02/2014

Treasurer: *John L. Blum*

Date: 1/3/2014 Comments Attached (Y/N): _____

City Attorney: *[Signature]*

Date: 02/07/2014 Comments Attached (Y/N): *CONCUR BASED ON INFO. PRESENTED*



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
Email: commrevenue@ci.winchester.va.us

Telephone: (540) 667-1815
FAX: (540) 667-5298
TDD: (540) 722-0782
Website: www.winchesterva.gov

APPLICATION FOR REAL ESTATE TAX EXEMPTION BY QUALIFYING CLASSIFICATION OR DESIGNATION

For any answers that require more space, please include attachments

Tax Parcel ID#: 14812 Acreage: 1.799ac

Property Owner: SPCA of Winchester, Frederick and Clarke Counties

Name of Organization (if different from Property Owner): _____

Mailing Address Street: 115 Featherbed Lane

Mailing Address City, State, Zip: Winchester, VA 22601

Property Address: 111 Featherbed Lane (Bldg 1) & 1944 Abrams Creek Drive (Bldg 2)

Legal Description of Property: 1.799 acres of land with improvements of two buildings

1. Indicate the type of exemption desired: Classification _____ Designation X
Exemptions by classification shall be strictly construed in accordance with Article X, Section 6(f) of the Constitution of Virginia.
2. By what specific section of the Constitution and the Code of Virginia do you claim this exemption?
Chap 36 Code of the Code of Virginia 58.1
3. Is the property ownership chartered or incorporated under the laws of the Commonwealth of Virginia?
Yes X No _____ (If yes, attach a copy of the charter)
4. For what purpose is the ownership chartered, incorporated or otherwise in existence?
"...to organize a Society for the Prevention of Cruelty to Animals within the Corporate limits of the City of Winchester, Virginia with all such powers as are now, and may hereafter be conferred upon such Corporation by Law" as set forth in the original Certificate of Incorporation dated February 11, 1907

To be a financially sound city providing top quality municipal services while focusing on the customer and engaging our community

5. For what purpose is the property being used? Please be specific and include use of acreage, if applicable. If there are several types of use, indicate such usages by areas of the building, floor locations and land allocations.

Acreage/Portion	Description of Use	Beginning Date
<u>approx 1/2</u>	<u>Bldg 1 - Animal Adoption Center per submitted</u>	<u></u>
<u></u>	<u>plans to include 1) areas for housing animals,</u>	<u></u>
<u></u>	<u>2) areas providing interaction of animals and potential</u>	<u></u>
<u></u>	<u>adopters, and</u>	<u></u>
<u></u>	<u>3) offices for the adoptions process and</u>	<u>7/15/2013</u>

6. Does any other individual, organization, association or corporation occupy or use any part of the premises? Yes X No

If yes, give details: (How often, what part of the building or property, name of organization)
Bldg 2 (Known as 1944 Abrams Creek Drive) is a warehouse leased to another IRS approved
not-for-profit organization under IRC Section 501(c)(3) - Habitat for Humanity- for their Restore
function.

Based upon the City Assessor's records and the appraisal done for financing the purchase, the
valuation of Bldg 1 and Bldg 2 are approximately equal.

7. Is any income, be it earnest money or in kind services, received from the use of any portion of the property by other individuals or groups, whether considered as rent or reimbursement for necessary expenses for services incurred? Yes X No

If yes, please give details:
The Restore building used by Habitat for Humanity is leased from the SPCA.
The SPCA Adoption Center will not be used by other organizations

8. Does your ownership group have an exemption under U. S. Internal Revenue code so that gifts to your group are deductible by the donor? Yes X No

- (a) If yes, give date of Internal Revenue ruling: March 7, 1986
- (b) Give Internal Revenue Identification number: 54-6053158

9. REQUIRED DOCUMENTATION

- (a) Attach to this application your most recent financial statement, including, where applicable, IRS Forms 900; 990; 990EZ; 990T; reflecting income and expenditures for the most current twelve (12) month reporting period, which statement will become a part of this application. The attached financial statement is for the period from July 1, 2012 to June 30, 2013. (See Cover letter.)
- (b) Attach a copy of the organization's Constitution, By-Laws, Articles of Incorporation, and/or other related documents.
- (c) Attach a list reflecting the names of all trustees or corporate/organization officers, the date appointed or elected, and the court in which they qualified or identify the instrument in which they were officially appointed.
- (d) If investments, such as stock or bonds, are reflected on the financial statement, attach a list of all such investments, including name of stock, date received and value.
- (e) If applying for exemption by designation, please attach a check or money order made payable to the 'Commissioner of the Revenue' in the amount of \$350.00 for the applicable deposit for publication as required under Section 27-32 of the City Code.

10. FILING DEADLINE AND EFFECTIVE DATE OF EXEMPTION

- (a) For exemption by classification, the applicant may file at any time. The Commissioner of the Revenue shall determine effective date of exemption based upon dates of qualifying ownership and usage.
- (b) For exemption by designation, the applicant must submit a completed application with all supporting documentation on or before November 1. Applications, if fully approved, shall then take effect July 1 of the following year.

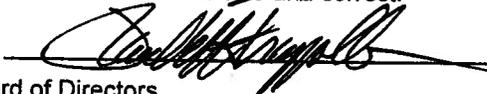
For additional information, please refer to Code of the City of Winchester §§27-31 - 27-37, available on the City's website. The office of the Commissioner of the Revenue will gladly provide assistance with the application process.

Application completed by: William Nordman

Title: Accountant Date Submitted: _____

Contact person: Paul Frappollo Telephone Number: 540-662-8616

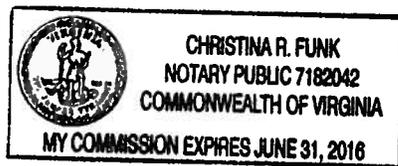
I, Paul Frappollo, an appointed or elected Trustee/Officer for the above named organization, certify under penalty of law that this application and all attachments hereto have been examined by me and all information is true and correct.

Signature of Trustee/Officer: 
Title: President of the Board of Directors Date: _____

Subscribed and sworn to before me this 31st day of October 2013

Notary Public: Christina R Funk

My commission expires: June 31, 2016



CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 4/22/14 (Work Session), CUT OFF DATE: 4/16/14
5/13/14 (First Reading) 6/10/14 (Second Reading/Public Hearing)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

TA-14-118 AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 6, 7, 8, 9, 10, 13, 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, PERMITTED USES, AND USES REQUIRING A CONDITIONAL USE PERMIT FOR ALTERNATIVE FINANCIAL INSTITUTIONS (Proposal establishes definitions for several short term lending operations and establishes the uses as permissible with a conditional use permit in several commercial districts.)

STAFF RECOMMENDATION:

Approval.

PUBLIC NOTICE AND HEARING:

Public hearing required at second reading on 6/10/14.

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously recommended approval.

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	<u>[Signature]</u>	_____	<u>4/15/14</u>
2. Commissioner of the Revenue	<u>ATB [Signature]</u>	_____	<u>4/15/14</u>
2. City Attorney	_____	_____	_____
3. City Manager	<u>[Signature]</u>	_____	<u>4-16-14</u>
4. Clerk of Council	<u>[Signature]</u>	_____	<u>4-16-14</u>

Initiating Department Director's Signature: [Signature] 4/15/2014
(Zoning and Inspections)



CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections *AMG*
Date: April 22, 2014
Re: Zoning Text Amendment (TA-14-118) – Alternative Financial Institutions

THE ISSUE:

The proposed Zoning Ordinance text amendment will modify the existing Zoning Ordinance language pertaining to *Short-term loan establishments* and replace the term with *Alternative Financial Institutions* by establishing several uses that will be included within the broader *Alternative Financial Institution* use. The existing provisions that require a conditional use permit for *short-term loan establishments* will be kept for *alternative financial institutions*.

RELATIONSHIP TO STRATEGIC PLAN:

This text amendment correlates to the 2018 Goal #4 of "Create a More Livable City For All" by providing for adequate review and discretion of potential loan establishments of a short term nature.

BACKGROUND:

In April 2010, City Council adopted a zoning text amendment that established provisions for *Short-Term Loan Establishments* within the Zoning Ordinance. As a result of this text amendment, several commercial districts (B-2, B-1, and CM-1) permitted *Short-Term Loan Establishments* with a conditional use permit provided that no such use is located within 500-feet of a similar establishment or residentially-zoned property.

Not long after this amendment was adopted by Council, the General Assembly adopted the *Motor Vehicle Title Loan Act*, which changed some of the operational standards for some of these types of lenders. For example, the act changed the length of time for motor vehicle title loans to no less than 120 days and no more than 12 months. This time frame falls outside the 31-day period that is provided for in the current Zoning Ordinance definition (1-2-86.2), thereby making our ordinance out of date and unenforceable. This amendment aims to bring the Zoning Ordinance back into conformity with the original desires of City Council. (Full staff report attached.)

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Adopt the Zoning Ordinance Text Amendment
- Decline to adopt the Zoning Ordinance Text Amendment

RECOMMENDATIONS:

The Planning Commission recommended approved unanimously.

TA-14-118 AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 6, 7, 8, 9, 10, 13, 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, PERMITTED USES, AND USES REQUIRING A CONDITIONAL USE PERMIT FOR ALTERNATIVE FINANCIAL INSTITUTIONS

REQUEST DESCRIPTION

This publicly sponsored text amendment was initiated by the Planning Commission at its March 18, 2014 meeting. The proposed amendment involves establishing definitions regarding several types of alternative financial institutions (AFI), modifying the existing provisions pertaining to short-term loan establishments and permitting AFI's with a conditional use permit in several districts provided the proposed use meets a separation requirement from similar uses and residential districts.

STAFF COMMENTS

In April 2010, City Council adopted a zoning text amendment that established provisions for *Short-Term Loan Establishments* within the Zoning Ordinance:

1-2-86.2 **SHORT-TERM LOAN ESTABLISHMENT:** a business engaged in providing short-term loans of money of an original term of less than 31 days, with or without security given by the borrower or with or without a co-maker, guarantor, endorser or surety, to members of the general public as an element of its operation and which is not a bank or a savings and loan association. Short-term loan establishments shall include businesses offering what is, or is marketed as, payday loans, signature loans, title (to vehicles, boats or other personal property, but not real estate) loans, cash advances, check-cashing loans, small loans and other similar loans; but, does not include pawnshops.

As a result of this text amendment, several commercial districts (B-2, B-1, and CM-1) permitted *Short-Term Loan Establishments* with a conditional use permit provided that no such use is located within 500-feet of a similar establishment or residentially-zoned property.

Not long after this amendment was adopted by Council, the General Assembly adopted the *Motor Vehicle Title Loan Act*, which changed some of the operational standards for some of these types of lenders. For example, the act changed the length of time for motor vehicle title loans to no less than 120 days and no more than 12 months. This time frame falls outside the 31-day period that is provided for in the current Zoning Ordinance definition (1-2-86.2), thereby making our ordinance out of date and unenforceable.

The proposed text amendment will establish several definitions for *Alternative Financial Institutions*, *Check Cashing Establishments*, *Incidental Check Cashing Establishments*, *Motor Vehicle Title Lender*, and *Payday Lender*, along with eliminating the current definition of *Short-Term Loan Establishment*. The term *Alternative Financial Institutions* will encompass each of the various types of lending establishments listed above, with the exception of *Incidental Check Cashing Establishments*. Most of these definitions are set up to reflect the definitions established in the Code of Virginia, to enable our local ordinance to be flexible and reflect any future changes to their definitions at the state level.

This text amendment will also modify the existing by-right and conditional use provisions that presently refer to *Short-term Loan Establishments* and change the language to AFI's.

At their April 15, 2014 meeting, the Planning Commission forwarded **TA-14-118** identified as "Draft 2 – 4/15/14" with a favorable recommendation because the amendment aligns our local Ordinance with revised language in the Code of Virginia.

ORDINANCE AMENDING AND REENACT ARTICLES 1, 6, 7, 8, 9, 10, 13, 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, PERMITTED USES, AND USES REQUIRING A CONDITIONAL USE PERMIT FOR ALTERNATIVE FINANCIAL INSTITUTIONS

TA-14-118

WHEREAS, the City of Winchester is entrusted by the Commonwealth with protecting the public health, safety, and welfare within the community through the application of such tools as the Zoning Ordinance; and,

WHEREAS, the Zoning Ordinance is further designated with the responsibility of promoting the objectives of the Comprehensive Plan and overall sustainability of the community; and,

WHEREAS; Winchester Common Council previously identified an interest in establishing a conditional use requirement for uses that pertain to short-term loans and other high-rate lenders due to disproportionate negative impacts on low-income and elderly populations.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Winchester hereby amends and re-adopts the following Zoning Ordinance provisions:

AN ORDINANCE TO AMEND AND REENACT ARTICLES 1, 6, 7, 8, 9, 10, 13, 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS, PERMITTED USES, AND USES REQUIRING A CONDITIONAL USE PERMIT FOR ALTERNATIVE FINANCIAL INSTITUTIONS

TA-14-118

Draft 2 – 4/15/14

*Ed. Note: The following text represents excerpts of the Zoning Ordinance that are 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.*

- 1-2-7.1** **ALTERNATIVE FINANCIAL INSTITUTION: Any check cashing establishment, motor vehicle title lender, or payday lender, as defined in this Chapter.**
- 1-2-18.1** **CHECK CASHING ESTABLISHMENTS: Any person or establishment engaged in the business of cashing checks, drafts or money orders for compensation, and registered with the State Corporation Commission pursuant to Code of Virginia, § 6.2-2100 et. seq. This shall not include Incidental Check Cashing Services, as defined.**
- 1-2-18.2** **CHECK CASHING SERVICES, INCIDENTAL: Cashing of checks, drafts or money orders for compensation, other than “check cashing establishments.” This use shall be permitted by-right with a permitted use, provided that such use (i) is secondary and accessory to a permitted use, (ii) is located internal to the primary structure occupied by the permitted use(s), and (iii) is operated by the primary user.**
- 1-2-67.1** **MOTOR VEHICLE TITLE LENDER: Any establishment engaged in the business of lending money secured by a non-purchase interest in a motor vehicle, and registered with the State Corporation Commission pursuant Code of Virginia § 6.2-2200 et. seq.**
- 1-2-67.12** MUSEUM OR ART GALLERY: An organized and permanent nonprofit institution, open to the public, which is essentially educational or aesthetic in purpose, with professional staff, and which is devoted to the procurement, care, study, and display of objects of lasting interest or value. (05/12/98, TA-98-01, Ord. No. 013-98)
- 1-2-73.2** **PAYDAY LENDER: Any establishment, other than a bank, credit union, or savings and loan, engaged in the business of making short-maturity loans on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual at a depository institution, or (iii) any form of assignment of income payable to an individual, other than loans based on income tax refunds, and required to be registered with the State Corporation Commission pursuant to Code of Virginia § 6.2-1800 et seq.**

1-2-73.23 PET DAYCARE CENTER: An establishment that provides daily care, supervision, and grooming of up to fifty (50) animals at any one time; and, which does not provide for overnight accommodation of animals, as would otherwise be associated with a *kennel* or *animal shelter*. (8/12/08, Case TA-08-04, Ord. No. 2008-33)

~~1-2-86.2~~ ~~SHORT TERM LOAN ESTABLISHMENT: a business engaged in providing short-term loans of money of an original term of less than 31 days, with or without security given by the borrower or with or without a co-maker, guarantor, endorser or surety, to members of the general public as an element of its operation and which is not a bank or a savings and loan association. Short term loan establishments shall include businesses offering what is, or is marketed as, payday loans, signature loans, title (to vehicles, boats or other personal property, but not real estate) loans, cash advances, check-cashing loans, small loans and other similar loans; but, does not include pawnshops. (4/3/10, Case TA-10-21, Ord. No. 2010-06)~~

**ARTICLE 6
RESIDENTIAL OFFICE DISTRICT - RO-1**

SECTION 6-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

6-2-3 Banks and financial institutions, not including alternative financial institutions ~~short term loan establishment~~, as defined in Article 1. (11/18/86, Ord. No. 018-86; 4/13/10, Case TA-10-21, Ord. No. 2010-06)

**ARTICLE 7
RESIDENTIAL BUSINESS DISTRICT - RB-1**

SECTION 7-1. USE REGULATIONS.

7-1-7 Branch Banks and financial institutions, not including alternative financial institutions ~~short term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

**ARTICLE 8
HIGHWAY COMMERCIAL DISTRICT - B-2**

SECTION 8-1. USE REGULATIONS.

8-1-9 Banks and financial institutions, not including alterntive financial institutions ~~short term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

SECTION 8-2. USES REQUIRING A CONDITIONAL USE PERMIT

- 8-2-22 ~~Alternative financial institutions Short-term loan establishment~~, provided that no such use is located within 500 feet of any other ~~short-term loan establishment~~ alternative financial institution or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

**ARTICLE 9
CENTRAL BUSINESS DISTRICT - B-1**

SECTION 9-1. USE REGULATIONS.

- 9-1-7 Banks and financial institutions, not including alternative financial institutions ~~short-term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)
- 9-2-21 Alternative financial institutions ~~Short-term loan establishment~~, provided that no such use is located within 500 feet of any other ~~short-term loan establishment~~ alternative financial institutions or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

**ARTICLE 10
COMMERCIAL INDUSTRIAL DISTRICT - CM-1**

SECTION 10-1. USE REGULATIONS.

- 10-1-3 Banks and financial institutions, not including alternative financial institutions ~~short-term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

SECTION 10-2. USES REQUIRING A CONDITIONAL USE PERMIT.

- 10-2-13 Alternative financial institutions ~~Short-term loan establishment~~, provided that no such use is located within 500 feet of any other ~~short-term loan establishment~~ alternative financial institution or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

**ARTICLE 13
PLANNED DEVELOPMENT**

SECTION 13-2. PLANNED COMMERCIAL DISTRICT – PC

- 13-2-3.2 Banks and financial institutions, not including alternative financial institutions ~~short-term loan establishment~~, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

ARTICLE 15.1
MEDICAL CENTER DISTRICT – MC

SECTION 15.1-2. USES PERMITTED BY CONDITIONAL USE PERMIT.

- 15.1-2-2 Personal service and retail establishments (including banks and branch banks; but not including alternative financial institutions ~~short-term loan establishments~~, as defined in Article 1) serving the District when located within freestanding structures not physically connected to the main hospital structure. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 6/10/14 (2nd Reading/Pub. Hearing), **CUT OFF DATE:** 6/4/14

RESOLUTION ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

TA-14-33 AN ORDINANCE TO AMEND ARTICLES 1 AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF MEDICAL CARE FACILITY AND PERMITTED USE IN THE PLANNED COMMERCIAL (PC) DISTRICT *(Proposal establishes definition and establishes Medical Care Facilities as a by-right use in the Planned Commercial district.)*

STAFF RECOMMENDATION:

Approval.

PUBLIC NOTICE AND HEARING:

Public hearing required at second reading on 6/10/14.

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously recommended approval.

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	<u> <i>JS</i> </u>	<u> </u>	<u> 6/4/14 </u>
2. Commissioner of the Revenue	<u> <i>AD</i> </u>	<u> </u>	<u> 6/4/14 </u>
2. City Attorney	<u> <i>W</i> </u>	<u> </u>	<u> 6/5/14 </u>
3. City Manager	<u> </u>	<u> </u>	<u> </u>
4. Clerk of Council	<u> </u>	<u> </u>	<u> </u>

Initiating Department Director's Signature: *Ch. M. Dick* 6/4/14
 (Zoning and Inspections)



APPROVED AS TO FORM:

 [Signature] 6/5/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections *AM L*
Date: June 10, 2014
Re: Zoning Text Amendment (TA-14-120) – Medical Care Facility

THE ISSUE:

The proposed Zoning Ordinance text amendment will modify the existing Zoning Ordinance language pertaining to *Medical Care Facilities* by creating a use as well as allowing the use as a permitted by-right use in the Planned Commercial (PC) district.

RELATIONSHIP TO STRATEGIC PLAN:

This text amendment correlates to the 2018 Goal #1 of "Grow the Economy" as well as Goal #4 of "Create a More Livable City For All" by providing additional opportunities for medical based businesses within the City of Winchester.

BACKGROUND:

This request is a privately sponsored text amendment pertaining to the definition and proposed use of *Medical Care Facility* within Articles 1 and 13 of the Zoning Ordinance.

The current Zoning Ordinance provisions for the Planned Commercial (PC) district allow for *Professional Offices*, which include doctor's offices and related accessory and incidental uses. However, moderately more involved medical uses including outpatient surgical centers were determined to not be a permitted use within the PC district. As a result the applicant desired to submit a privately sponsored zoning text amendment application to modify the Zoning Ordinance to define and allow for such uses within the PC district. Presently, the only areas that are zoned Planned Commercial are properties in the 400 and 600 blocks of Jubal Early Drive, west of Valley Avenue.

June 10, 2014 – Update:

Following the May 20th work session, staff worked with the applicant to develop mutually agreeable language that would better define and limit the types of uses that would be included within the *Medical Care Facility* definition. Specifically, the following language was included "*This use shall exclude institutions primarily for mental patients, epileptics, alcoholics, or drug addicts, including but not limited to Special Care Hospitals and Behavioral Health clinics.*" (Full staff report attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Adopt the Zoning Ordinance Text Amendment
- Decline to adopt the Zoning Ordinance Text Amendment

RECOMMENDATIONS:

The Planning Commission recommended approved unanimously.

City Council
June 10, 2014

TA-14-120 AN ORDINANCE TO AMEND ARTICLES 1 AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF MEDICAL CARE FACILITY AND PERMITTED USE IN THE PLANNED COMMERCIAL (PC) DISTRICT

REQUEST DESCRIPTION

This request is a privately sponsored text amendment pertaining to the definition and proposed use of *Medical Care Facility* within Articles 1 and 13 of the Zoning Ordinance.

STAFF COMMENTS

The current Zoning Ordinance provisions for the Planned Commercial (PC) district allow for *Professional Offices*, which include doctor's offices and related accessory and incidental uses. However, moderately more involved medical uses including outpatient surgical centers were determined to not be a permitted use within the PC district. As a result the applicant desired to submit a privately sponsored zoning text amendment application to modify the Zoning Ordinance to define and allow for such uses within the PC district. Presently, the only areas that are zoned Planned Commercial are properties in the 400 and 600 blocks of Jubal Early Drive, west of Valley Avenue.

The applicant submitted a matrix detailing how several other localities in Virginia define and treat comparable medical care uses. Many other jurisdictions have an intermediate definition that falls between professional offices/medical offices and hospital uses, which staff believes is the general area that the applicant is proposing to define and allow for use in the instant case. Presently, outpatient surgical uses are permitted by-right within the Health Services (HS) and Medical Center (MC) districts, but are not permitted in other commercial districts where *Professional Offices* are permitted (such as PC, B-2, B-1, and CM-1 districts). The proposed definition of *Medical Care Facility* provided by the applicant, closely mirrors similar definitions for Loudoun County, Fairfax County, and the City of Alexandria.

This type of medical care use is not intended to be utilized for emergency care, but rather for scheduled outpatient procedures. Ambulances would not be regularly visiting the facility, but only on an as needed basis if there is an emergency during one of the procedures.

The Director of Zoning and Inspections and the Planning Director have reviewed the application and believe that the proposal presents good planning practice and could be considered a potential by-right use within the PC district. The Zoning Ordinance would be positively served by adding the proposed definition and use provisions by providing for clearer definitions pertaining to medical uses.

June 10, 2014 Update:

During the Council work session on May 20, 2014, some questions were raised as to whether or not the initially proposed definition is overly broad and may allow for unintended medical type uses, including drug and alcohol rehabilitation and others. Staff advised that there are separately defined uses for some of these other types of medical care such as *Special Care Hospitals* and *Behavioral Health Clinics*. It was agreed that some additional clarifying language should be explored to add to the definition to ensure that unintended and otherwise defined uses are not included within the definition of *Medical Care Facilities*.

Staff worked with the applicant following the work session to develop mutually agreeable language that addresses Council's concerns about the definition being overly broad, while still preserving the intent of the applicant.

RECOMMENDATION

At their April 15, 2014 meeting, the Planning Commission unanimously forwarded **TA-14-120** with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for clearer standards for potential medical uses, as well as providing for expanded opportunities for medical services within the City.



LITTLEJOHN ENGINEERING ASSOCIATES

February 28, 2014

Mr. Aaron Gridale, Director of Zoning & Inspections
City of Winchester, Planning & Zoning Department
Rouss City Hall
15 North Cameron Street, Suite 318
Winchester, VA 22601

RE: Text Amendment Request

Dear Mr. Gridale,

Please consider the attached package as a formal submittal for a Zoning Ordinance Text Amendment. From a recent zoning determination request, it is our understanding that the current zoning ordinance does not allow for outpatient surgical hospitals or ambulatory surgery centers within the Planned Commercial (PC) District.

Winchester and the immediate surrounding community have long been served by Valley Health (VH), and more specifically Winchester Medical Center (WMC). The overwhelming issue that has impacted physicians and patients alike is that the community has no alternative for medical care. Like any other business or industry, choice to consumers (or patients and physicians), or competition can and should drive a market to offer the highest quality product or service, at the lowest possible cost.

Previously, VH and WMC operated an ambulatory surgery center (WASC), which physicians utilized for appropriate outpatient surgical procedures. Even though WASC was still owned and run by VH, by running as an ASC, it offered lower cost to its patients. Furthermore, ASC's generally run more efficiently than hospitals by specializing in these certain procedures; all while still offering the same high quality outcomes. In 2013, VH and WMC elected to convert WASC to a department of the hospital, effectively wiping out choice to patients and physicians, and raising costs and inefficiencies to all those concerned.

The proposed Winchester Surgery Center addresses the needs of the community with a highly efficient, lower-cost alternative that will serve both patients and the medical community.

These market conditions and other data indicate there is a need for outpatient surgical hospitals or ambulatory surgery centers in Winchester, VA. However as previously stated, under the current zoning ordinance, in a PC zone, the use of property for outpatient surgical hospitals or ambulatory surgery centers is not addressed. The amendment will allow the operation of such businesses in the City of Winchester

Please review and let me know if you need any additional information.

Sincerely,

LITTLEJOHN ENGINEERING ASSOCIATES

Jack Parker, PE

1935 21ST AVENUE SOUTH, NASHVILLE, TENNESSEE 37212
T 615.385.4144 F 615.385.4020

Nashville | Chattanooga | Decatur | Huntsville | Knoxville | Orlando | Phoenix | Tri-Cities

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Engineering
Planning
Landscape Architecture
Land Surveying
Environmental Services
Health and Safety
Economic Development

	Medical Office	Outpatient	Hospital
City of Winchester	PROFESSIONAL OFFICE: The office, studio, or professional room of a doctor, architect, artist, musician, lawyer, or similar professional person, except in any funeral home, or any establishment where goods are offered for sale.	N/A	HOSPITAL, GENERAL: An institution rendering medical, surgical, obstetrical, or convalescent care, including nursing homes, homes for the aged, and sanatoriums, but in all cases excluding institutions primarily for mental or feeble-minded patients, epileptics, alcoholics, or drug addicts. (Certain nursing homes and homes for the aged may be "home occupation" if they comply with the definitions herein.)
Loudoun County	Office, Medical: Any room, studio, clinic, suite or building wherein individuals licensed in the State practice medicine, osteopathy, dentistry, chiropractic, podiatry, physical therapy, psychiatry, clinical psychology, or other health-related professions on an out-patient basis. A medical office shall not be deemed to include a hospital, veterinary service or animal hospital.	Medical Care Facility, Outpatient Only: Any institution, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more non-related mentally or physically sick or injured persons; or for the care of two or more non-related persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, or physically disabled, including but not limited to intermediate care facility, mental retardation facility, outpatient surgery centers, chiropractic, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation and trauma units, and other related institutions and facilities offering treatment on an outpatient basis, whether operated for profit or nonprofit and whether privately owned or operated by a local government unit (this term shall not include a physician's or medical office).	Hospital: Any licensed and Commonwealth of Virginia accredited health care institution with an organized medical and professional staff and with inpatient beds available around-the-clock whose primary function is to provide inpatient medical, nursing, and other health-related services to patients for both surgical and nonsurgical conditions and that usually provides some outpatient services, particularly emergency care.
Fairfax County	OFFICE: Any room, studio, clinic, suite or building wherein the primary use is the conduct of a business such as accounting, correspondence, research, editing, administration or analysis; or the conduct of a business by salesmen, sales representatives or manufacturer's representatives; or the conduct of a business by professionals such as engineers, architects, land surveyors, artists, musicians, lawyers, accountants, real estate brokers, insurance agents, certified massage therapists in accordance with Chapter 28.1 of The Code, dentists or physicians, urban planners and landscape architects.	MEDICAL CARE FACILITY: Any institution, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two (2) or more non-related mentally or physically sick or injured persons, or for the care of two (2) or more non-related persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, physically disabled, or crippled; including but not limited to general hospitals, sanatorium, sanitarium, assisted living facility, nursing home, intermediate care facility, extended care facility, mental hospital, intellectual disability care facility, medical schools and other related institutions and facilities, whether operated for profit or nonprofit, and whether privately owned or operated by a local government unit. This term shall not include a physician's office, first aid station for emergency medical or surgical treatment, medical laboratory, CONGREGATE LIVING FACILITY, GROUP RESIDENTIAL FACILITY, or INDEPENDENT LIVING FACILITY.	HOSPITAL: Any institution receiving in-patients and rendering medical, surgical or obstetrical care, to include general hospitals and specialized institutions in which care is oriented to cardiac, eye, ear, nose, throat, pediatric, orthopedic, skin and cancer and obstetric cases.

Chesterfield County	No definition, but some office uses referred to as "offices: dental, general, medical, property management, temporary real estate." Other uses also listed include medical or dental laboratories as an accessory use and "hospitals and other medical facilities."	Clinic: An establishment where patients who are not lodged overnight are admitted for examination or treatment by physicians, dentists or veterinarians.	Hospital: An institution providing primary health services and medical or surgical care to persons, primarily in-patients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities such as laboratories, out-patient facilities or training facilities.
Hanover County	No definition, but permitted uses include "Medical office" and "Offices, business, governmental, medical, or professional"	Clinic: An establishment where human patients who are not lodged overnight are admitted for examination or treatment by physicians or dentists.	Hospital: A building or group of buildings, having room facilities for overnight patients, used for providing services for the in-patient medical or surgical care of sick or injured humans, and which may include related facilities, central service facilities, and staff offices; provided, however, that such related facility must be incidental and subordinate to the main use and must be an integral part of the hospital operation.
City of Manassas	Professional office means any office for the practice of a profession, including, but not limited to, architecture, engineering, law, medicine, psychology, theology, real estate and accounting.	N/A	Hospital means an institution, licensed by the State of Virginia, that renders two or more of the following services: medical and surgical services with associated bed space, obstetrical or convalescent care, or urgent care services, including facilities such as, nursing homes, convalescent, rehabilitation and sanitariums.
City of Alexandria	Medical Office: The use of space by individuals licensed in the Commonwealth of Virginia to practice medicine, osteopathy, dentistry, chiropractic, podiatry, psychiatry, clinical psychology or other health-related professions on an outpatient basis. The professional services provided in the medical office space is for the occupant's own patients and not for patients of unrelated outside practitioners.	Medical Care Facility: Any installation, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more non-related mentally or physically sick or injured persons, or for the care of two or more non-related persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, or physically disabled; including but not limited to intermediate care facility, extended care facility, mental hospital, mental retardation facility, medical school, outpatient surgery centers, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation and trauma units, substance abuse outpatient or day programs, and other related institutions and facilities, whether operated for profit or nonprofit, and whether privately owned or operated by a local government unit. This term shall not include a physician's or medical office, first aid station for emergency medical treatment, housing for the elderly, medical laboratory, hospital, nursing home or a facility which has as its primary purpose residential accommodation. Nothing in this definition is intended to interfere with or restrict the use of a dwelling unit by a family as that term is defined in this article, wherever such use is allowed in the zones.	Hospital: A health care institution with an organized medical and professional staff and with inpatient beds available on a 24 hour basis, which has as its primary function to provide inpatient medical, nursing, and other health-related services to patients for both surgical and nonsurgical conditions, and which usually provides some outpatient services, particularly emergency care.

AN ORDINANCE TO AMEND ARTICLES 1 AND 13 OF THE WINCHESTER ZONING ORDINANCE
PERTAINING TO THE DEFINITION OF MEDICAL CARE FACILITY AND PERMITTED USE IN THE
PLANNED COMMERCIAL (PC) DISTRICT

TA-14-120

Draft 3 – 6/2/14

Ed. Note: The following text represents excerpts of the Zoning Ordinance that are 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 1

DEFINITIONS

SECTION 1-2 DEFINITIONS

1-2-7.2 **Medical Care Facility: A structure or building or portion thereof used to provide facilities and services, on an outpatient basis (fewer than 24 hours), for the treatment, prevention and diagnosis of human disease, pain, injury, deformity or physical condition, whether medical or surgical, including but not limited to outpatient surgery centers, chiropractic, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation and trauma units, and other related institutions and facilities. This use shall exclude institutions primarily for mental patients, epileptics, alcoholics, or drug addicts, including but not limited to Special Care Hospitals and Behavioral Health clinics.**

ARTICLE 13

PLANNED DEVELOPMENT

SECTION 13-2. PLANNED COMMERCIAL DISTRICT – PC

13-2-3.17 **Medical Care Facility**

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 04/22/2014 CUT OFF DATE: ____

RESOLUTION __ ORDINANCE X PUBLIC HEARING __

ITEM TITLE: Ordinances to Increase Motor Vehicle License Fee and Excise Tax Rates for Meals, Transient Lodging and Cigarette Tax Stamps

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	<u>B</u>	_____	<u>4-16-14</u>
2. Treasurer	_____	_____	_____
3. _____	_____	_____	_____
4. City Attorney	<u>AW</u>	_____	<u>4/24/14</u>
5. City Manager	<u>DI</u>	_____	<u>4-17-14</u>
6. Clerk of Council	<u>DI</u>	_____	<u>4-17-14</u>
Initiating Department Director's Signature: <u>Chen T. Beaman</u>			<u>04/16/14</u> Date



APPROVED AS TO FORM:

 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Ann T. Burkholder, Commissioner of the Revenue *ATB*
Date: 04/16/2014
Re: Ordinances to Increase Motor Vehicle License Fee and Excise Tax Rates for Meals, Transient Lodging and Cigarettes

THE ISSUE: In order to fund the proposed fiscal 2015 budget, the City will need additional revenue.

RELATIONSHIP TO STRATEGIC PLAN: The additional revenue will fund City services in furtherance of the each of the goals identified in the Strategic Plan.

BACKGROUND: Throughout the budget process City staff prepared several options for Council review. Councilors expressed a preference for smaller increases in several tax rates rather than an increase in the real estate tax rate. Increases included in the following ordinances are:

Type	Current Rate/Fee	Proposed Rate/Fee
Motor Vehicle License Fee	\$24.00	\$25.00
Meals Tax Rate	5.00%	6.00%
Motel (Transient Lodging) Tax Rate	5.00%	6.00%
Cigarette Tax per pack	\$0.25	\$0.35

BUDGET IMPACT: Refer to budget planning documents.

OPTIONS: While City Council has the option to approve, alter or deny any of these requests, each has budget implications.

RECOMMENDATION: The City Manager recommends that City Council approve each ordinance.

AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 14-17 AND 14-18 OF THE CODE OF THE CITY OF WINCHESTER REGARDING VEHICLE LICENSE FEES

WHEREAS; City Staff and the Common Council have studied several budget options to best meet the needs and goals of the citizens of Winchester; and

WHEREAS; the Common Council is committed to the mission, goals and projects specified in the City's Strategic Plan; and

WHEREAS; the preferred budget plan necessitates certain tax increases.

NOW THEREFORE BE IT RESOLVED, that Section 14-17 and 14-18 are hereby amended and re-adopted as follows:

SECTION 14-17. MOTOR VEHICLE LICENSES.

(a) Definitions.

For the purposes of this section, the following terms shall have the following meanings:

Situs a vehicle, as described herein, shall have situs in the City of Winchester if it is normally garaged, stored or parked within the City. If it cannot be determined where the vehicle is normally garaged, stored or parked, the situs shall be the domicile of its owner. In the event the owner of the vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the vehicle in his domicile.

Vehicle any motor vehicle, as defined by Virginia Code §46.2-100, as such section may be amended from time to time.

(b) The application for the license and for each annual renewal shall be made to the Commissioner by mail or in person, on forms provided by the Commissioner, and shall contain the same information as that appearing on the state automobile registration card.

(c) The license fee on vehicles shall be as follows:

1. Motor vehicles, including automobiles, less than 10,000 pounds: For Personal Property Tax Years prior to and including 2013: \$24.00; for Personal Property Tax Years commencing with 2014: \$25.00.
2. Motor vehicles 10,000 pounds or more: \$36.00
3. Two or three wheel motor vehicles: \$12.00
4. Motor homes. Greater than 10,000 pounds; and buses used exclusively for transportation to and from religious school or church or other place of worship, for the purpose of divine worship, greater than 10,000 pounds: \$30.00

5. Antique motor vehicles registered, licensed, and used as such pursuant to Section 46.2-730 of the Code of Virginia, 1950, as amended: \$10.00

(d) Any license not purchased by the dates specified herein shall be increased by \$5.00 (enabling increase amount)

(e) Every vehicle displaying valid dealers' number plates shall be exempt from this license fee.

(f) Any person who fails to comply with this section shall be guilty of a Class 4 misdemeanor and each day's failure to do so shall be a separate offense.

(g) Violation of this ordinance may, at the discretion of the officer, be processed in the same manner as provided in Sections 14-54, 14-55, and 14-56 of this Code, but such violation may not be, regardless of how they are initiated or processed, discharged by payment of a fine, alone, except upon presentation of satisfactory evidence that the required license has been obtained. When processed as provided in said Section 14-54, 14-55, and 14-56, the prepayment amount for such violations shall be Twenty-Five Dollars (\$25.00).

(Ord. No. 044-88, 11-15-88; Ord. No. 022-92, 11-10-92; Ord. No. 041-93, 11-09-93; Ord. No. 003-96, 04-09-96; Ord. No. 024-2000, 11-16-00; Ord. No. 013-2001, 04-10-2001; Ord. No. 2007-24, 07-10-07; Ord. No. 2011-21, 10-11-11)

State Law References--Code of Virginia, §§46.2-694, 46.2-752, 46.2-755.

SECTION 14-18. PRORATION OF VEHICLE LICENSE. REPEALED.

~~If the owner of a motor vehicle subject to licensure under section 14-17 disposes of the vehicle during the twelve month period of a city license or tag issued for the vehicle, he may present proof of such disposition of such vehicle to the Commissioner. Upon the request of the owner, and upon presentation of such proof, the Commissioner shall credit to the person the remaining time of the life of the license on a monthly prorated basis against the license fee for any new city license or tag applied for by such owner at the time he presents proof of disposition of a prior licensed vehicle. (Ord. No. 044-88, 11-15-88; Ord. No. 022-92, 11-10-92; Ord. No. 003-96, 04-09-96; Ord. No. 2007-24, 07-10-07; Ord. No. 2011-21, 10-11-11)~~

AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-72 OF THE CODE OF THE CITY OF WINCHESTER REGARDING MEALS TAX LEVY AND RATE

WHEREAS; City Staff and the Common Council have studied several budget options to best meet the needs and goals of the citizens of Winchester; and

WHEREAS; the Common Council is committed to the mission, goals and projects specified in the City's Strategic Plan; and

WHEREAS; the preferred budget plan necessitates certain tax increases.

NOW THEREFORE BE IT RESOLVED, that Section 27-72 is hereby amended and re-adopted as follows:

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 ~~five percent (5%)~~ six percent (6%) of the amount paid for the meal, whether consumed on the premises or not, ~~with. There shall be no tax if the total amount paid is less than fifty cents (\$0.50); on larger amounts, the tax shall be computed at a straight~~ five percent (5%), one-half cent (\$0.005) or more being treated as one cent (\$0.01).

The effective date of this change shall be July 1, 2014.

AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-91 OF THE CODE OF THE CITY OF WINCHESTER REGARDING TRANSIENT LODGING TAX LEVY AND RATE

WHEREAS; City Staff and the Common Council have studied several budget options to best meet the needs and goals of the citizens of Winchester; and

WHEREAS; the Common Council is committed to the mission, goals and projects specified in the City's Strategic Plan; and

WHEREAS; the preferred budget plan necessitates certain tax increases.

NOW THEREFORE BE IT RESOLVED, that Section 27-91 is hereby amended and re-adopted as follows:

SECTION 27-91. LEVY AND RATE.

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby imposed and levied on each and every transient a tax equivalent to ~~five percent (5%)~~ six percent (6%) of the total amount paid for room rental by or for such transient to any motel, with one-half cent (\$0.005) or more of tax being treated as one cent (\$0.01).

(Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 014-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 014-2004, 4-28-04)

(Note: The effective date of this ordinance shall be July 1, ~~2004~~2014.)

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

AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-171 OF THE CODE OF THE CITY OF WINCHESTER REGARDING LEVY OF CIGARETTE TAXES

WHEREAS; City Staff and the Common Council have studied several budget options to best meet the needs and goals of the citizens of Winchester; and

WHEREAS; the Common Council is committed to the mission, goals and projects specified in the City's Strategic Plan; and

WHEREAS; the preferred budget plan necessitates certain tax increases.

NOW THEREFORE BE IT RESOLVED, that Section 27-171 is hereby amended and re-adopted as follows:

SECTION 27-171. LEVIED; AMOUNT; TAX ADDITIONAL TO OTHER TAXES.

- (a) In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the City upon every person who sells or uses cigarettes within the City, from and after the effective date of the ordinance from which this section is derived, an excise tax equivalent to ~~twenty-five cents (\$0.25)~~ thirty-five cents (\$0.35) per each package containing twenty five (25) or fewer cigarettes. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the City shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five (5) or fewer cigarettes.
- (b) The tax levied and imposed by this article shall be in addition to all other taxes of every kind levied and imposed by any other ordinance or law.
- (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92; Ord. No. 2010-17, 4-13-10)

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: May 13, 2014 CUT OFF DATE:

RESOLUTION ORDINANCE X PUBLIC HEARING
 Public Hearing and second reading Tuesday June 10, 2014

ITEM TITLE:
 Budget Presentation for FY 2015

STAFF RECOMMENDATION:
 Final Proposed FY 2015 budget

PUBLIC NOTICE AND HEARING:
 N/A

ADVISORY BOARD RECOMMENDATION:
 N/A

FUNDING DATA:
 As presented

INSURANCE:
 No liability assumed.

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 Director _____	<i>JB</i>	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	<i>5/8/2014</i>
6. City Manager	<i>[Signature]</i>	_____	<i>5-6-13</i>
7. Clerk of Council	<i>[Signature]</i>	_____	<i>5-6-13</i>
Initiating Department Director's Signature: <i>[Signature]</i>	_____	_____	<i>5-6-13</i> Date

Dale Iman, City Manager



APPROVED AS TO FORM:

[Signature] *5/8/2014*
 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Dale Iman, City Manager
Date: May 13, 2014
Re: Proposed budget presentation

THE ISSUE: Council has reviewed budget data for the past several months to decide on revenues and expenditures.

RELATIONSHIP TO STRATEGIC PLAN: We address all of the current goals of 1. Grow the Economy 2. Create a more livable City for all 3. Develop a high performing organization 4. Continue revitalization of Historic Old Town.

BACKGROUND: During the worksession of April 22, 2014 City Council reviewed budget options presented by the City Manager. Council held a discussion and staff took questions from Councilors. As a result, the Council Option was selected to move forward with one change, the deletion of the legal CEMS review in the amount of \$20,000

BUDGET IMPACT: The attached presentation outlines the spending plan for the general fund and a summary of all funds at the end.

OPTIONS: If changes are made, they must be done at this meeting and pushed forward to Second reading and adoption June 10, 2014. The proposed ordinances to effect the tax increases are running concurrently with the budget document as well.

RECOMMENDATIONS: Staff recommends to move forward with the following presentation and adopt the FY 2015 budget following the public hearing scheduled for Tuesday June 10th, 2014.

COMMON COUNCIL



Rouss City Hall
 15 North Cameron Street
 Winchester, VA 22601
 540-667-1815
 TDD 540-722-0782
www.ci.winchester.va.us

AN ORDINANCE TO AUTHORIZE THE APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2015

WHEREAS, Council approves the following funds for the purposes herein specified for the fiscal year ending June 30, 2015:

FY 2015 CITY OF WINCHESTER REVENUE & EXPENDITURE BUDGETS ALL FUNDS

General Fund Revenues		General Fund Expenditures	
Local Sources	70,416,900	General Government Administration	5,625,545
State	5,920,100	Judicial Administration	3,179,600
Federal	358,000	Public Safety	19,073,296
Other Financing Sources	5,372,000	Public Works	3,587,900
		Health & Welfare	891,065
Total GF Revenues	82,067,000	Education	27,820,518
		Parks, Recreation, Cultural	3,276,654
		Community Development	1,789,872
		Transfers	6,473,100
		Debt	10,349,450
		Total GF Expenditures	82,067,000
Social Services Fund Revenues		Social Services Fund Expenditures	
State	2,976,084	Health & Welfare	7,231,000
Federal	1,926,916		
Other Financing Sources	2,328,000		
Total Social Services Revenue	7,231,000	Total Social Services Expenditures	7,231,000

Highway Maintenance Fund	
Revenues	
Local	6,600
State	3,852,800
Other Financing Sources	1,466,600
Total Highway Maint Revenue	<u>5,326,000</u>

Highway Maintenance Fund	
Expenditures	
Public Works	5,326,000
Total Highway Maint Expenditures	<u>5,326,000</u>

Transit Fund	
Revenues	
Local Sources	100,000
State	175,000
Federal	717,000
Other Financing Sources	283,000
Total Transit Revenue	<u>1,275,000</u>

Transit Fund	
Expenditures	
Public Works	1,275,000
Total Transit Expenditures	<u>1,275,000</u>

Emergency Medical Services Fund	
Revenues	
Local	964,000
Other Financing Sources	54,000
Total EMS Revenue	<u>1,018,000</u>

Emergency Medical Services Fund	
Expenditures	
Public Safety	1,018,000
Total EMS Expenditures	<u>1,018,000</u>

Win-Fred Co Convention & Visitors Bureau	
Revenues	
Local	140,500
Other Financing Sources	131,500
Total WFCVB Revenue	<u>272,000</u>

Win-Fred Co Convention & Visitors Bureau	
Expenditures	
Community Development	272,000
Total WFCVB Expenditures	<u>272,000</u>

Law Library Fund	
Revenues	
Local	50,000
Total Law Library Revenue	<u>50,000</u>

Law Library Fund	
Expenditures	
Judicial Administration	50,000
Total Law Library Expenditures	<u>50,000</u>

Winchester Parking Authority Revenues		Winchester Parking Authority Expenditures	
Local	1,146,000	Public Safety	57,670
Other Financing Sources	981,000	Public Works	1,490,705
		Debt	578,625
Total WPA Revenue	<u>2,127,000</u>	Total WPA Expenditures	<u>2,127,000</u>
City Capital Improvement Fund Revenues		City Capital Improvement Fund Expenditures	
Local	2,500,000	Public Safety	5,000,000
State	8,289,200	Public Works	12,600,000
Federal	920,000	Parks, Recreation, Cultural	1,455,000
Other Financing Sources	7,345,800		
Total CIP Revenue	<u>19,055,000</u>	Total CIP Expenditures	<u>19,055,000</u>
Utilities Operating Fund Revenues		Utilities Operating Fund Expenditures	
Local	20,430,000	Public Works	8,548,014
Federal	290,000	Transfers	1,600,000
		Debt	10,571,986
Total Utilities Revenue	<u>20,720,000</u>	Total Utilities Expenditures	<u>20,720,000</u>
Utilities Capital Improvement Fund Revenues		Utilities Capital Improvement Fund Expenditures	
Local	250,000	Public Works	425,000
Other Financing Sources	175,000		
Total Utilities CIP Revenue	<u>425,000</u>	Total Utilities CIP Expenditures	<u>425,000</u>
Employee Benefits Fund Revenues		Employee Benefits Fund Expenditures	
Local	460,000	General Government Administration	673,000
Other Financing Sources	213,000		
Total Employee Ben Revenue	<u>673,000</u>	Total Employee Ben Expenditures	<u>673,000</u>

Equipment Operating Fund Revenues		Equipment Operating Fund Expenditures	
Local	1,460,000	General Government Administration	1,460,000
Total Equipment Revenue	1,460,000	Total Equipment Expenditures	1,460,000
Other Post-Employment Benefits Fund Revenues		Other Post-Employment Benefits Fund Expenditures	
Local	459,000	General Government Administration	459,000
Total OPEB Revenue	459,000	Total OPEB Expenditures	459,000
NW Regional Jail Authority Capital Fund Revenues		NW Regional Jail Authority Capital Fund Expenditures	
Local	1,064,000	Debt	1,064,000
Total NWRJA Revenue	1,064,000	Total NWRJA Expenditures	1,064,000
Fred-Winc Service Authority Fund Revenues		Fred-Winc Service Authority Fund Expenditures	
Local	4,379,000	Public Works	4,379,000
Total FWSA Revenue	4,379,000	Total FWSA Expenditures	4,379,000
Northwestern Regional Juvenile Detention Revenues		Northwestern Regional Juvenile Detention Expenditures	
Local	1,863,980	Public Safety	2,707,000
State	765,182		
Federal	18,000		
Other Financing Sources	59,838		
Total NRJDC Revenue	2,707,000	Total NRJDC Expenditures	2,707,000
City Revenue Budget	150,308,000	City Expenditures Budget	150,308,000

School Food Services Fund Revenues	
Local Sources	713,500
State	36,950
Federal	1,295,111
Total Food Services Revenue	2,045,561

School Food Services Fund Expenditures	
Food Services	2,044,561
Operations & Maintenance	1,000
Total Food Services Expenditures	2,045,561

School Operating Fund Revenues	
Local Sources	473,634
State	21,452,730
Other Financing Sources	27,699,102
Total School Operating Revenue	49,625,466

School Operating Fund Expenditures	
Technology	2,561,344
Instruction	37,224,597
Attendance & Health	2,388,866
Pupil Transportation	2,084,473
Operations & Maintenance	5,362,186
Facilities	4,000
Total School Operating Expenditures	49,625,466

Federal Grants Fund Revenues	
Federal	2,188,991
Total Federal Grants Revenue	2,188,991

Federal Grants Fund Expenditures	
Technology	72,837
Instruction	2,113,074
Pupil Transportation	3,080
Total Federal Grants Expenditures	2,188,991

Textbook Fund Revenues	
Other Financing Sources	100,000
Total Textbook Revenue	100,000

Textbook Fund Expenditures	
Instruction	100,000
Total Textbook Expenditures	100,000

School Fundraising Fund Revenues	
Local Sources	58,000
Other Financing Sources	342,000
Total Fundraising Revenue	400,000

School Fundraising Fund Expenditures	
Facilities	400,000
Total Fundraising Expenditures	400,000

School Capital Improvements Fund Revenues		School Capital Improvements Fund Expenditures	
Other Financing Sources	268,600	Facilities	268,600
Total Capital Improv Revenue	268,600	Total Capital Improv Expenditures	268,600
School Insurance Fund Revenues		School Insurance Fund Expenditures	
Local Sources	4,294,200	Other Non-instructional Operations	2,072,200
Other Financing Sources	450,000	Transfers	2,672,000
Total Insurance Revenue	4,744,200	Total Insurance Expenditures	4,744,200
School Scholarship Fund Revenues		School Scholarship Fund Expenditures	
Local Sources	91,450	Other Non-instructional Operations	98,450
Other Financing Sources	7,000		
Total Scholarship Revenue	98,450	Total Scholarship Expenditures	98,450
Schools Revenue Budgets	59,471,268	Schools Expenditures Budget	59,471,268
Total City & Schools Revenue	209,779,268	Total City & Schools Expenditures	209,779,268
Less transfers between funds	(38,517,402)	Less transfers between funds	(38,517,402)
Total Revenue Budget	171,261,866	Total Expenditure Budget	171,261,866

WHEREAS, there is available in the general fund an unencumbered and unappropriated sum sufficient to meet such appropriations, and

WHEREAS, all appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully obligated or encumbered, and

WHEREAS, all ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

NOW THEREFORE BE IT ORDAINED, by the Common Council of the City of Winchester that the funds specified herein are hereby appropriated for the purposes specified for the fiscal year ending June 30, 2015.

Ordinance No. 2014-__

ADOPTED by the Common Council of the City of Winchester on the 10th of June, 2014.

Witness my hand and the seal of the City of Winchester, Virginia.

*Kari J. Van Diest
Deputy Clerk of the Common Council*

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 5/27/14 (work session), **CUT OFF DATE:** 5/21/14
6/10/14 (regular mtg)

RESOLUTION ORDINANCE PUBLIC HEARING

ITEM TITLE:

CU-14-230 Request of Greenway Engineering on behalf of the Winchester SPCA for a conditional use permit for animal shelter use at 111 Featherbed Lane (Map Number 252-01-31A) zoned Commercial Industrial (CM-1) District.

STAFF RECOMMENDATION:

Approval with conditions

PUBLIC NOTICE AND HEARING:

Public hearing for 6/10/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval

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	<u>[Signature]</u>	_____	<u>5/21/14</u>
2. City Attorney	<u>[Signature]</u>	_____	<u>5/21/2014</u>
3. City Manager	<u>[Signature]</u>	_____	<u>5/21/14</u>
4. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: [Signature] 5/21/14
 (Zoning and Inspections)



APPROVED AS TO FORM:

[Signature]
 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections
Date: May 27, 2014
Re: CU-14-230 – SPCA Animal Shelter – 111 Featherbed Lane

THE ISSUE:

The SPCA is requesting to establish an animal shelter at the old Impressions Plus building at 111 Featherbed Lane.

RELATIONSHIP TO STRATEGIC PLAN:

N/A

BACKGROUND:

The SPCA recently purchased the subject property, which is immediately adjacent to their existing facility at 115 Featherbed Lane. The organization intends to expand their services and divide up the incoming pet drop-off to be at their existing facility at 115 Featherbed Lane, and to reorganize the internal building footprint of 111 Featherbed Lane for the out-going pets for the adoption center. (Full staff report attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Approve the conditional use permit
- Approve the conditional use permit with conditions
- Deny the conditional use permit

RECOMMENDATIONS:

The Planning Commission recommended approved unanimously.



GREENWAY ENGINEERING, INC.

151 Windy Hill Lane
Winchester, Virginia 22602

Founded in 1971

April 7, 2014

City of Winchester
Rouss City Hall
15 North Cameron Street
Winchester, Virginia 22601



Attn: Tim Youmans, Planning Director
Re: Winchester SPCA, 111 Featherbed Lane

Dear Mr. Youmans:

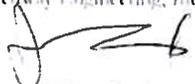
Greenway Engineering Inc. is pleased to present the Conditional Use Permit Application and letter of compliance in accordance with the City of Winchester Zoning Ordinance Section 18-2. The SPCA is a non-for profit organization located at 115 Featherbed Lane in Winchester. SPCA had recently purchased the adjacent property at 111 Featherbed Lane to expand their services and divide up the incoming pet drop-off to be at the current 115 Featherbed Lane property and reorganize the internal building footprint of the 111 Featherbed Lane building for the out-going pets for the adoption center. The 111 Featherbed Lane parcel is identified as TM #252-01-51, is zoned CM-1, and consist of 1.79 acres. The property currently has two existing buildings on the property, the building to the southern end (back) of the parcel is currently being utilized by Habitat Restore while the building to the north fronting on Featherbed Lane is currently vacant (Old Impressions Plus Building) which is the building in subject pertaining to this Conditional Use Permit Request.

The SPCA is requesting approval from the City of Winchester for a Conditional Use Permit to utilize the Northern Building on the property as an adoption center. The back building use will remain the same as well as the existing features of the property. The CUP request is due to the increasing need for additional space, storage, as well as to expand their services to accommodate the public. This expansion of service to the 111 Featherbed Lane will take the place of the additional space they were hoping to create with a new facility back in 2011 when they applied for CUP #12-360 which is null and voided due to non-activity. Attached are the following:

- Existing Site Conditions Exhibit
- Existing Building Proposed Footprint Uses Exhibit
- Existing Building Elevations (from Original Architectural plans Prepared by David Gause MA)
- \$500.00 Application Fee Check

Please contact me should you have any questions or comments regarding this submittal.

Sincerely,
Greenway Engineering, Inc.


Jeremy Tweedie, Senior Project Manager

CU-14-230

Engineers Surveyors Planners Environmental Scientists
Telephone 540.662.4185 FAX 540.722.9328
www.greenwayeng.com

File #20140527

CU-14-230 Request of Greenway Engineering on behalf of the Winchester SPCA for a conditional use permit for animal shelter use at 111 Featherbed Lane (*Map Number 252-01-31A*) zoned Commercial Industrial (CM-1) District.

REQUEST DESCRIPTION

The request is for a conditional use permit to allow for redevelopment of the former Impressions Plus site for use as an animal shelter.

AREA DESCRIPTION

The site and all surrounding lots on the south side of Featherbed Lane are zoned CM-1. Land to the east, west and south contain animal shelter, office, retail and automotive service uses. The north side of Featherbed Lane has CM-1 zoning across from the subject property and B-2 zoning to the northeast. A large portion of the subject site closest to Featherbed Lane is within the Abrams Creek Floodplain.



STAFF COMMENTS

The *Animal Shelter* use was established as a conditional use in the CM-1 district in 2000, allowing for more than the 25-animal restriction that is otherwise applicable to *Kennels*. Such facilities are required to be no closer than 500 feet from any residential district. The closest residential district is along Glaze Avenue to the northwest, approximately 850 feet away.

The SPCA recently purchased the subject property, which is immediately adjacent to their existing facility at 115 Featherbed Lane. The organization intends to expand their services and divide up the incoming pet drop-off to be at their existing facility at 115 Featherbed Lane, and to reorganize the internal building footprint of 111 Featherbed Lane for the out-going pets for the adoption center. There is a second building on the rear of the subject parcel which is currently in use by Habitat for Humanity as their Re-Store.

In 2012, City Council approved a conditional use permit for the SPCA to expand their current footprint at 115 Featherbed Lane, including the demolition of existing structures, constructing a new 7,500sf building, and an expanded parking area. However, this approval was never acted upon and as a result the CUP expired in September 2013.

Staff is unaware of any issues that surrounding properties and businesses have had with the current operation. Presently, there are not any proposed site improvements, and therefore a site plan will not be required with the Planning Department. The structure is located within the floodway and 100-year floodplain. Building elevation information and any required flood-proofing of the structure will be reviewed during the review of the building permit for the interior renovation.

RECOMMENDATION

At their May 20, 2014 meeting, the Planning Commission unanimously forwarded **CU-14-230** with a favorable recommendation because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommendation is subject to general conformance with the proposed building interior layout dated April 1, 2014.

111 Featherbed Lane
Existing Site Conditions

FEATHERBED LN

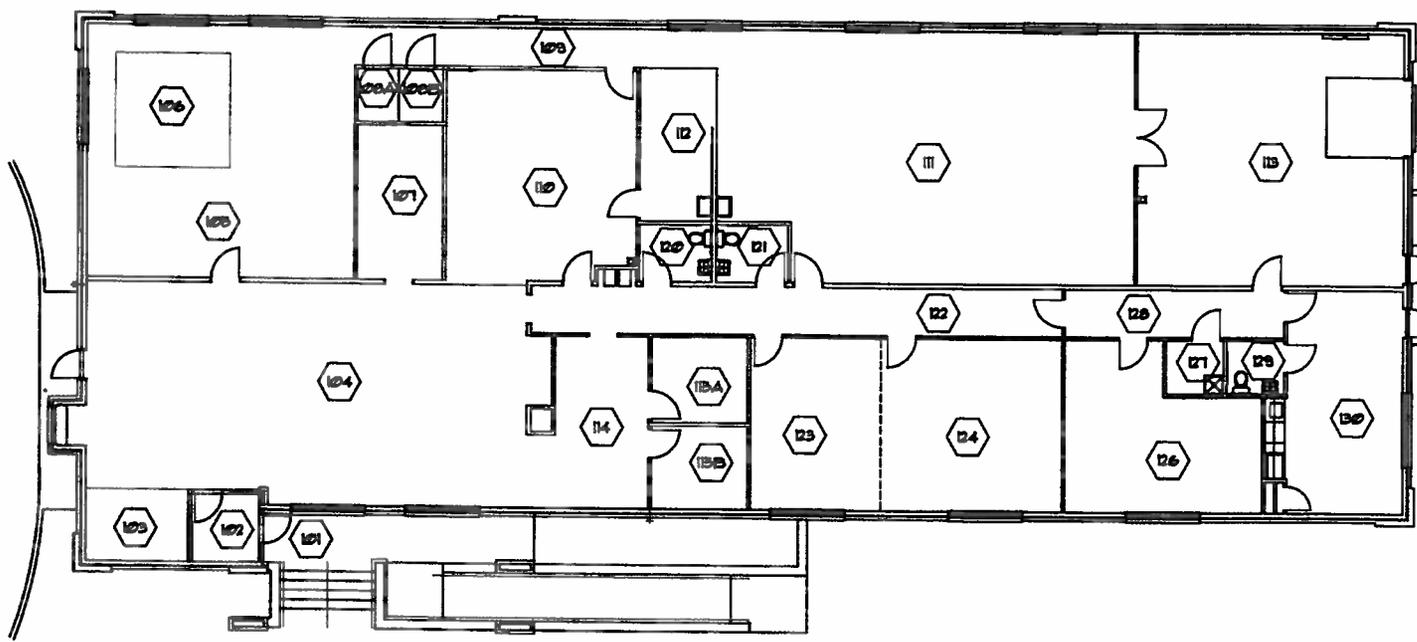


ABRAMS CREEK DR

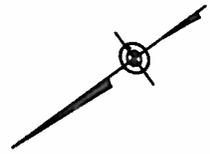


111 FEATHERBED LANE		
EXISTING SITE CONDITIONS		
FREDERICK DOUGLASS VOTING WARD		
CITY OF WINCHESTER, VIRGINIA		
DATE: 2014-04-07	PROJECT ID: 2702S	DESIGNED BY: DWE
SCALE: 1 inch = 100 feet		





- ROOM (#)**
- 101 Entrance
 - 102 Vestibule
 - 103 Nook
 - 104 GreatRoom
 - 105 Cat Display
 - 106 Cat Area
 - 107 File Copy Room
 - 108A Cat Visitation
 - 108B Cat Visitation
 - 109 Corridor
 - 110 Clinic
 - 111 Dog Room
 - 112 Grooming
 - 113 Warehouse
 - 114 Pet Meeting Room
 - 115A Visiting Room
 - 115B Visiting Room
 - 120 Men's
 - 121 Womens
 - 122 Corridor
 - 123 Small Conference
 - 124 Large Conference
 - 125 Closet
 - 126 Office
 - 127 Janitors Closet
 - 128 Corridor
 - 129 Toilet
 - 130 Break Room



DATE: April 1, 2014

SCALE: NTS

DESIGNED BY: JNT

FILE NO.: 2207S

SHEET OF 1

CUP

SPCA

EXISTING BUILDING PROPOSED FLOOR PLAN

CITY OF WINCHESTER, VIRGINIA



GREENWAY
ENGINEERING

GREENWAY ENGINEERING INC.
151 WINDY HILL LANE
WINCHESTER, VIRGINIA 22602
T: (540) 662-4185
www.GreenwayEng.com

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 5/27/14 (work session),
6/10/14 (regular mtg)

CUT OFF DATE: 5/21/14

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING X

ITEM TITLE:

CU-14-212 Request of Braveger Enterprises, LLC for a conditional use permit for conversion of ground floor nonresidential use to residential use at 910 South Braddock Street (Map Number 212-01-H-6) zoned Central Business (B-1) District.

STAFF RECOMMENDATION:

Approval with conditions

PUBLIC NOTICE AND HEARING:

Public hearing for 6/10/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval with conditions

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. Zoning & Inspections	AMB		5/21/14
2. City Attorney	[Signature]		5/21/2014
3. City Manager	[Signature]		5/22/14
4. Clerk of Council			

Initiating Department Director's Signature:
(Planning Dept)

[Signature] 5/21/14



APPROVED AS TO FORM:

[Signature] 5/21/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Will Moore, Planner
Date: May 21, 2014
Re: **CU-14-212** Request of Braveger Enterprises, LLC for a conditional use permit for conversion of ground floor nonresidential use to residential use at 910 South Braddock Street (*Map Number 212-01-H-6*) zoned Central Business (B-1) District.

THE ISSUE:

Conversion of ground floor space most recently occupied as a barber shop (vacant since 2009) to multifamily residential use.

RELATIONSHIP TO STRATEGIC PLAN:

N/A

BACKGROUND:

See attached staff report

BUDGET IMPACT:

N/A

OPTIONS:

- Approve with conditions as recommended by Planning Commission
- Approve with modified conditions
- Deny

RECOMMENDATIONS:

Planning Commission recommended approval with conditions.

CU-14-212 Request of Braveger Enterprises, LLC for a conditional use permit for conversion of ground floor nonresidential use to residential use at 910 South Braddock Street (*Map Number 212-01-H-6*) zoned Central Business (B-1) District.

REQUEST DESCRIPTION

The request is for Conditional Use Permit (CUP) approval under Section 9-2-16 of the Zoning Ordinance pertaining to conversion of nonresidential ground floor area to residential use.

AREA DESCRIPTION

The property is located in the triangular area bordered by South Braddock St, Gerrard St, and Valley Ave. All properties within the triangle are zoned B-1; uses include fast food restaurant, offices, and the Triangle Diner property. Properties further to the north and south are also zoned B-1 and contain a variety of commercial uses. To the west is the EIP-zoned Handley High School property. Properties to the east are zoned HR-1 and contain residential uses.



STAFF COMMENTS

The CUP request for conversion of a former ground floor barber shop to residential use is outlined in a letter from Michael Lessin dated April 4, 2014. This request applies to the northern ground floor space in the building. The building contains three existing apartments; two upstairs and one in the southern ground floor space. The applicant believes that the subject unit was originally a residential space based on the existing floor plan and amenities (inc. a full bath with tub, 2 rooms with closets that were possibly bedrooms, and a full kitchen). Additionally, City assessment records indicate that the building was known to have four dwelling units at one time. Staff met with the applicant onsite and concurs that the use was likely residential previously.

The door and window openings are more typical of a residential building than of a commercial storefront. The interior layout is such that the bedrooms are oriented toward the rear of the building, away from the street. The unit shares a rear porch with the other ground floor unit, which then provides access to a fenced rear yard shared by all four units.

The property does not provide for any off-street parking spaces onsite; however, the use as a two-bedroom dwelling would have the same or lower parking requirement associated with it than a commercial use in the space. The Planning Director has determined that this segment of South Braddock St does not represent a major commercial street and would suggest that City Council could find the ground-floor residence to be as suitable as nonresidential reuse.

RECOMMENDATION

For a conditional use permit to be approved, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood.

At its May 20, 2014 meeting, the Planning Commission forwarded **CU-14-212** to City Council recommending approval per Sections 9-2-16 of the Zoning Ordinance because the proposal, as submitted, will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The approval is based upon City Council finding that the proposed ground-floor residential unit is as suitable or preferable to other permitted uses on the ground floor and is subject to conformity with the submitted floor plan depicting a two-bedroom dwelling.

CU-14-212

.....
BRAVAGER ENTERPRISES, LLC
21800 Towncenter Plaza #266A-802, Sterling, VA 20164
Phone 703-661-6100 | Fax 703-722-8689



MEMORANDUM

TO: City of Winchester, City Planning
FROM: Michael Lessin, Managing Director, Bravager
DATE: April 4, 2014
SUBJECT: Change of Use – Commercial to Residential
912/910 S Braddock St (Tax Map 212-I-H-6)

We are the 100% owner of a building located at **912 S Braddock St (Tax Map 212-I-H-6)**. The building is listed as a 4 dwelling unit in the tax records of the City and is located across from Handley High School. The two-story brick building was built in 1946 and consists of Units 1, 2, 3, 4. Three of the four units are currently residential rental apartments. The building contains two doors adjacent to the sidewalk along S Braddock Street. One door is labeled 910 S Braddock, and directly serves Unit 1 (currently a commercial space). The other door is labeled 912 S Braddock and serves a shared hallway serving for the three residential rental apartments -- Unit 2 on the ground level, and then a staircase leading to Unit 3 and Unit 4. *We believe Unit 1 is most appropriately changed back to residential use.*



Unit 1 (910 S Braddock St) has been used for a number of years as a rented commercial space, most recently housing a barber shop with 2 barber chairs, and was in this use when we purchased the building in November 2009. This is the unit we wish to change back to residential use and offer it as a rental apartment. In preparation for this application, it was inspected by the City of Winchester on April 2 and meets the requirements for residential housing. We believe the Unit was originally a residential space, as it already contains a full bathroom with a building original tub, 2 rooms configured as bedrooms each with closets, and a full kitchen with original 1950's kitchen

cabinets. We do not propose to make any structural changes to the unit in connection with a change of use back to residential.

The rest of the building, consisting of Units 2, 3, 4, has been in use as rental apartments for over 50 years to our knowledge. Unit 2 is a 1 bedroom unit on the ground floor, Unit 3 is a 1 bedroom on the second floor, Unit 4 is a 2 bedroom unit on the second floor.

Parking: Change of use from commercial to residential for Unit 1 will result in less use of on-street parking, as the building contains no off-street parking.

Exterior Appearance: No changes proposed. The building had a barber shop sign when it was in that use. The sign was removed when the barber shop vacated.

Current Status: Vacant and being prepared for residential occupancy. We have experienced high demand for rental apartments for the rest of our building and anticipate high rental demand for this unit.

Thank you for considering our application.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Lessin', written over a white rectangular background.

**Michael Lessin
Managing Director**

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 6/10/14 (regular mtg) CUT OFF DATE: 6/4/14

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING X

ITEM TITLE:

CU-14-267 Request of Eugene F. Dearing, III for a conditional use permit for extended stay lodging at 126 North Braddock Street (Map Number 173-01-F-5) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay .

STAFF RECOMMENDATION:

Approval with modified conditions

PUBLIC NOTICE AND HEARING:

Public hearing for 6/10/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval with conditions

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. Zoning & Inspections	AMG		6/4/14
2. City Attorney	[Signature]		6/5/2014
3. City Manager			
4. Clerk of Council			

Initiating Department Director's Signature:
(Planning Dept)

[Handwritten Signature]

6/4/14



APPROVED AS TO FORM:

[Signature] 6/5/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: June 3, 2014

Re: **CU-14-267** Request of Eugene F. Dearing, III for a conditional use permit for extended stay lodging at 126 North Braddock Street (*Map Number 173-01-F-5*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

THE ISSUE:

Conversion of ground floor office space and two second floor apartments to extended stay lodging.

RELATIONSHIP TO STRATEGIC PLAN:

Vision 2028, Principle 3: Vibrant Downtown; #6: Increased occupancy with more people living in the Historic Old Town

Vision 2028, Principle 5: Great Neighborhoods with a Range of Housing Choices; #2: Choice of housing opportunities - different life style and price points

Goal 3: Continue Revitalization of Historic Old Town; Objective 5: Increase the number of residents living in Downtown

BACKGROUND:

See attached staff report (updated following 5/27/14 Council work session)

BUDGET IMPACT:

N/A

OPTIONS:

1. Approve with conditions as recommended by Planning Commission
2. Approve with modified conditions calling for 4 parking spaces
3. Table request
4. Deny

RECOMMENDATIONS:

Recommend approval with modified conditions (#2 above).

City Council Meeting
June 10, 2014

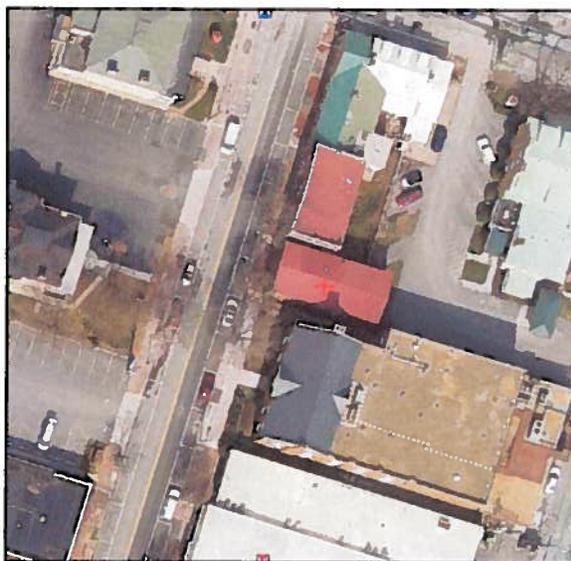
CU-14-267 Request of Eugene F. Dearing, III for a conditional use permit for extended stay lodging at 126 North Braddock Street (*Map Number 173-01-F-5*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

REQUEST DESCRIPTION

The request is for Conditional Use Permit (CUP) approval under Section 9-2-19 of the Zoning Ordinance pertaining to extended stay lodging. The ground floor office spaces and the two second-floor apartments in the two-story structure are proposed for conversion to extended stay lodging.

AREA DESCRIPTION

The property and all adjoining properties along both sides of N. Braddock Street are zoned B-1 with Historic Winchester (HW) overlay District. The site is also located in the Winchester National Historic District and restoration of the circa 1952 structure would likely be eligible for State and Federal Tax Credits. The subject stretch of N. Braddock Street has structures primarily associated with commercial use, including numerous offices and some retail. The site falls within the 100% parking exempt district, although the applicant proposes to lease spaces in the Braddock Street Auto Park or in a private surface lot across the street.



STAFF COMMENTS

The CUP request for conversion of the ground-floor office space and upper level apartments to extended stay lodging use is outlined in a letter from Mr. Dearing of EFD Investments, LLC to the City dated March 4, 2014. The structure has an exterior appearance that lends itself to either commercial or residential use. It already contains two apartments on the upper level of the building. The residentially-scaled door and window openings are typical of a multifamily structure rather than a retail storefront. The building currently has a single recessed doorway directly oriented to N. Braddock Street providing access to all spaces within the building.

There is very little distance between the front of the structure and the public street. The applicant should consider some planter boxes to place out along the front of the building to create some separation between the windows of the front "family room" space and the public sidewalk. One single-bedroom unit is proposed toward the front of the first floor. It does not have a bedroom facing toward the street. A two-bedroom unit is proposed toward the rear of the first floor accessed by a hallway connecting to the front door of the building.

In his letter, the applicant notes the commitment to provide weekly maid service and owner maintenance to ensure that the property is taken care of in a way consistent with the intent of an extended stay lodging facility. Because this is an Extended Stay Lodging proposal (as opposed to a ground-floor residential conversion), there is no provision for the Planning Director to make a determination whether or not the segment of N. Braddock Street represents a major commercial street, thus potentially restricting the ground-floor residential conversion. If proposed as multifamily instead of Extended Stay Lodging, the two ground floor units would not meet the average minimum floor area requirements for neither the one-bedroom unit nor the two-bedroom unit.

Section 1-2-35.1 of the Zoning Ordinance defines 'EXTENDED STAY LODGING' as: *One (1) or more buildings containing individual sleeping rooms, designed for and used primarily by business travelers for more than thirty (30) consecutive days, with garage or parking space conveniently located to each unit. Cooking facilities are provided for each unit. Units are not intended to be primary residences.*

RECOMMENDATION

For a conditional use permit to be approved, a finding must be made that the proposal will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood.

At its May 20, 2014 meeting, the Planning Commission forwarded **CU-14-267** to City Council recommending approval per Sections 9-2-19 of the Zoning Ordinance because the proposal, as submitted, will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The approval is subject to:

1. Weekly maid service provided for all four (4) units to ensure consistency with definition of the units as accommodations serving business travelers, not primary residences; and,
2. Leasing of at least 2 parking spaces in the Braddock Street AutoPark or other nearby parking lot to ensure compliance with the requirement for garage or parking space conveniently located to each Extended Stay Lodging unit.

At the May 27, 2014 work session, on a 7-2 vote, Council recommended tabling **CU-14-267** in the hopes that Mr. Dearing would consider providing more off-street parking for occupants. On May 29th, Mr. Lawton Saunders submitted a letter in which he describes the management of similar facilities that he has in Old Town and provided evidence of having leased 4 parking spaces at Braddock St AutoPark.

If leasing of 4 spaces addresses Council's concerns, then a favorable motion could read:

MOVE for approval per Sections 9-2-19 of the Zoning Ordinance because the proposal, **as revised**, will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The approval is subject to:

1. Weekly maid service provided for all four (4) units to ensure consistency with definition of the units as accommodations serving business travelers, not primary residences; and,
2. Leasing of at least 4 parking spaces in the Braddock Street AutoPark or other nearby parking lot to ensure compliance with the requirement for garage or parking space conveniently located to each Extended Stay Lodging unit.

March 4, 2014

City of Winchester
Planning Commission

Planning Commission Members:

EFD Investments, LLC has a contract to purchase 126 North Loudoun Street. The building currently has two apartments upstairs and the downstairs was last used as an office and is currently vacant. The site is zoned B-1.

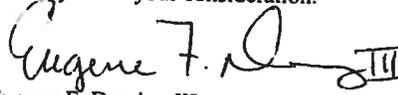
This request is for consideration of extended stay lodging, as defined by 1-2-35.1 of the City of Winchester Zoning Ordinance. The two apartments would remain upstairs and the ground floor would be converted to two apartments. As defined these units will be fully furnished units which will be primarily rented to business travelers who are relocating to the area or are in the area for short term assignments.

This use is listed as a conditional use in the B-1 District. We are not requesting any additional variances. Although this location is parking exempt, we propose to lease space in the Braddock Street Parking Garage for use of the tenants to satisfy the requirement that extended stay units have nearby parking available.

The building is in the Historic District and no changes are proposed to the building footprint or exterior. Since this project is eligible for Federal and State Tax Credits, the final design will have to be approved by these agencies.

We believe that this is an appropriate use for the building. Business travelers typically like the fact that they can walk to the Loudoun Mall area to take advantage of the many restaurants and shops. We believe that this project furthers the goal of having people live and shop in the downtown area. We see no negative impact. These units are designed for single adults. Traffic impact will be minimal since in most cases there would be only one or two trips a day resulting from each unit. These units provide for weekly maid service and owner property maintenance which will insure that the property is well taken care of. The completed project will result in an increased real estate tax base as well as generate revenue through the patronization of local shops and restaurants.

Thank you for your consideration.


Eugene F. Dearing III
EFD Investments, LLC

CU-14-267

Lawton Saunders
PO Box 651
Winchester, VA 22604

May 23, 2014

City of Winchester
Common Council Members
15 North Cameron Street
Winchester, VA 22601

Dear Members of Council:

My name is Lawton Saunders and I am the project manager for the renovation at 126 North Braddock for Dearing Enterprises. I am writing to address some concerns expressed about the request for a conditional use permit for extended stay lodging at that location and to explain how they will be managed.

My company owns and or manages over 40 of the extended stay suites in the downtown area. These units are designed for business travelers and people relocating to the area. We typically rent to major businesses in the Winchester area for relocation or temporary assignments, the hospital for travel nurses and doctors, and individuals who have sold houses and are waiting on a more permanent arrangement. These units are completely furnished and include all utilities. They also include weekly housekeeping which benefits the traveler and the owner since we get to inspect apartment on a regular basis. Mr. Dearing's will provide this as well.

Most of our units are one bedroom but we have a few two bedroom units and they are always in demand. The second bedroom is used as a home office or a guest room. The reason for these people being here is either a temporary assignment or a relocation which means that the traveler is alone while the family waits on the sale of a house or for school to be out to join in a permanent arrangement. This means that there are never any school age children residing in these units.

We have found that travelers like the idea of staying in the downtown area where they can take advantage of the mall and the variety of restaurants available. We do very little advertising and almost all of our business is repeat and from referrals from past guests. With limited space in the downtown area to build a large extended stay facility, these smaller buildings fill that void.

We have several sites in the downtown area that are a mix of business and extended stay suites where parking is shared. Typically, because the people renting these apartments are here strictly for work, they are gone from early morning until evening and do not use parking during the day. Mr. Dearing is going to lease 4 spaces, one for each apartment, in the nearby Braddock Street Parking Garage.

In summary, these executive suite apartments bring people downtown where they shop and eat adding to the tax base and require no added city services.

Sincerely,

Lawton Saunders, Project Manager

Winchester Parking Authority
(540) 722-7578

May 29 2014 10:37 am Trans#74671

TRANSACTION RECORD

Card Number : *****4801
Expiry Date : **/**
Card Entry : KEYED
Account : MASTERCARD
Trans Type : PURCHASE
Amount : \$180.00

Auth # : 04369J
Sequence # : 1198
Reference # : 414914401786
Trace # : 0529MWBAG7UCK
Merchant ID : 829999675160
Terminal # : 0011
Date : 05/29/14
Time : 10:39:27

APPROVED - THANK YOU

[Handwritten Signature]
Cardholder Signature

Print

*BA New Pavers
4 spaces*

WINCHESTER PARKING AUTHORITY
2 South Cameron Street
Winchester, Virginia 22601
Phone: (540) 665-0355

Spaces 54376
346-349

DATE 5-29, 20 14

RECEIVED FROM E.F.D. Investment

One Hundred Eighty DOLLARS \$ 180

FOR #s 346, 347, 348, & 349 June + CC Deposits

THANK YOU!

Cash Check
M.C. Acc

By *[Signature]*

Winchester Parking Authority
BRADDOCK, LOUDOUN, COURT SQUARE or
GEORGE WASHINGTON AUTOPARK

Monthly Parking Agreement

Applicant herewith applies for month-to-month rental in the amount of \$ 140⁰⁰ at Braddock St. Autopark, commencing June 1st, 2014. This application automatically becomes a contract between the Applicant and the Winchester Parking Authority (the "Authority") upon the Authority's acceptance of the first monthly rental payment. Applicant agrees to abide by the rules stated herein and as subsequently amended by written notice posted in Autoparks and/or on Applicant's vehicle.

Applicant: EFD Investments, LLC Employer: _____

Address: 15. S. Kent St. Email: _____

1st License Plate #: _____ 2nd License Plate #: _____

Control Card #: _____ Day Phone #: _____

Control Card Fee: _____ (Replacement card, if needed, is a non-refundable \$20 fee)

Rents are payable monthly, in advance, on the first (1st) day of the month and are subject to change upon public notice published in *The Winchester Star*. A \$ _____ late fee will be assessed on rents received after the 7th day of the month. Rents may be paid at the Autopark booth drop box or may be mailed to:

George Washington Autopark
128 North Cameron Street
Winchester, VA 22601

Regulations

Violation of any of the following regulations or amendments thereof, shall, at the option of the Authority, terminate this agreement. (See "Regulations", 7/18/89, updated 4/3/09, updated 12/9/11, updated 6/11/12, updated 10/19/12)

1. **Place of Parking:** Applicants assigned parking space is 346-349, on the 3 level. **Parking in any other space is not allowed. If you park in the hourly parking spaces, your card will be deactivated. You will have to push lost ticket button on paystation, pay fee to exit facility and bring your receipt of payment to the main office to reactivate your card (lost ticket fee to exit facility is non-refundable).**
2. **Parking Hours:** Applicant may use the above space for parking the designated vehicle during the posted operational hours of that Autopark. **NOTE: CERTAIN POSTED HOLIDAYS, EVENTS, AND THE APPLE BLOSSOM FESTIVAL DO NOT APPLY.**
3. **Liability of Authority:** The Authority will not be responsible for damage to Applicant's vehicle not caused by the Authority. The Authority assumes no responsibility for theft and, therefore, suggests that all parked vehicles be locked.
4. **Accidents on Premises:** Parkers involved in accidents on the premises shall report them promptly to the WPA office and to the police.
5. **Control Cards:** A \$ _____ deposit is required on 1st card issued. This is refundable on cancellation of space in good standing and on the return of the card in good condition. *Allowing another vehicle to enter or exit the Autopark with your control card is a breach of contract.*

Applicant's Signature: _____

156 Date: _____

0-2014-21

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 05/27/2014 **CUT OFF DATE:** _____

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

ITEM TITLE: Clarification in City Code Regarding Reimbursement for Unused or Damaged Cigarette Tax Stamps

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>JD</i>		5/12/14
2. Treasurer	<i>Pth</i>		5/12/2014
3. _____			
4. _____			
5. City Attorney	<i>[Signature]</i>		5/14/2014
6. City Manager	<i>[Signature]</i>		5-15-14
7. Clerk of Council	<i>[Signature]</i>		5-15-14
Initiating Department Director's Signature: <i>[Signature]</i>			05/12/14 Date



APPROVED AS TO FORM:

[Signature] 5/14/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Ann T. Burkholder, Commissioner of the Revenue

Date: May 12, 2014

Re: Clarification in City Code Regarding Reimbursement for Unused or Damaged Cigarette Tax Stamps

THE ISSUE: The wording in City Code regarding reimbursement for returned cigarette tax stamps makes it unclear as to whether the statutory requirements regarding refunds for erroneously assessed taxes are applicable.

RELATIONSHIP TO STRATEGIC PLAN: Resolution of this matter best relates to Goal 2: Create a high-performing City organization.

BACKGROUND: The City sells cigarette tax stamps to distributors in rolls of 15,000 stamps, so this is a tax collected up front from the distributor rather than a trust tax collected at point-of-sale to the end consumer. City Code §27-176 contains the provisions for refunds for unused or damaged stamps upon return of the stamps along with an affidavit to the Commissioner. Refunds are to be made within twenty (20) days of the request. Such refunds do not arise as a result of any erroneous assessment.

While it appears that the intent in adopting this code section was not to trigger the statutory requirements of City Code §27-8, regarding Council authorization for refunds exceeding \$2,500 as a result of erroneously assessed taxes, the use of the word "refund" generates ambiguity. Moreover, it is then impossible for the Commissioner to comply with both the timely requirement of §27-176 and City procedures for timely review, notification and action regarding Council agenda items.

RECOMMENDATION: Upon discussion of the matter with other City parties, it is the recommendation of the Commissioner of the Revenue that City Code be clarified by substituting the term "reimbursement" for the existing use of "refund" in §27-176.

AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-176 OF THE WINCHESTER CITY CODE REGARDING REFUND FOR UNUSED OR DAMAGED CIGARETTE STAMPS

WHEREAS; the Code of the City of Winchester §27-176 provides for a refund for damaged or unused cigarette tax stamps upon presenting the stamps and an affidavit to the Commissioner; and,

WHEREAS; the Code of the City of Winchester §27-176 further specifies that payment for such refunds shall be made within twenty (20) days; and,

WHEREAS; the Code of the City of Winchester §27-8, pursuant to Code of Virginia §58.1-3981, requires City Council authorization for any refunds greater than \$2,500 as a result of erroneously assessed taxes ; and,

WHEREAS; it does not appear that the intent in adopting §27-176 was to trigger the statutory requirements of §58.1-3981, but the use of term “refund” generates confusion; and,

WHEREAS; it is the desire of all City parties to maintain clarity in our City Code to ensure compliance and maintain good relationships with our taxpayers.

NOW THEREFORE BE IT RESOLVED, that Section 27-176 is hereby amended and re-adopted as follows:

SECTION 27-176. REFUND REIMBURSEMENT FOR UNUSED OR DAMAGED STAMPS OR METER IMPRINTS.

- (a) Should any person, after acquiring from the Treasurer any stamps provided for in this article, cease to be engaged in a business necessitating the use of the stamps, or should the stamps or meter imprints be damaged to the extent that they are unusable, such person shall be entitled to a refund reimbursement of the denominational or face amount of any such stamps, less any discount, upon presenting the stamps to the Commissioner and furnishing the Commissioner with an affidavit showing, to his satisfaction, that the stamps were acquired by such person but not used, and the reason for requesting the refund reimbursement.
- (b) Any and all refunds reimbursements for unused or damaged stamps provided for under this section may be made on vouchers approved by the Commissioner. Such refunds reimbursements shall be charged against the sums collected for the sale of said stamps and for the use of such imprints. Payment to the person requesting the refund reimbursement shall be made within twenty (20) days of the request.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 5/27/14 (Work Session), **CUT OFF DATE:** 5/21/14
6/10/14 (First Reading) 7/8/14 (Second Reading/Public Hearing)

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

ITEM TITLE:

SA-14-199 AN ORDINANCE AMENDING SECTIONS 6-5 AND 6-6 OF THE WINCHESTER LAND SUBDIVISION ORDINANCE PERTAINING TO APPROVAL OF MINOR SUBDIVISIONS

STAFF RECOMMENDATION:

Approval.

PUBLIC NOTICE AND HEARING:

Public hearing required at second reading on 7/8/14.

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously recommended approval.

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. Zoning	<u> ANG </u>	<u> </u>	<u> 5/21/14 </u>
2. City Attorney	<u> [Signature] </u>	<u> </u>	<u> 5/22/2014 </u>
3. City Manager	<u> [Signature] </u>	<u> </u>	<u> 5/22/14 </u>
4. Clerk of Council	<u> </u>	<u> </u>	<u> </u>
Initiating Department Director's Signature: (Planning)	<u> [Signature] </u>	<u> </u>	<u> 5/21/14 </u>



APPROVED AS TO FORM:

 [Signature]
 CITY ATTORNEY 5/22/2014

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: May 21, 2014

Re: SA-14-199 AN ORDINANCE AMENDING SECTIONS 6-5 AND 6-6 OF THE WINCHESTER LAND SUBDIVISION ORDINANCE PERTAINING TO APPROVAL OF MINOR SUBDIVISIONS

THE ISSUE:

Amend the Subdivision Ordinance to relax the restriction limiting the number of Minor Subdivisions that can be approved for a property within a 12-month period such that more than one administrative approval could be permitted within a 12-month timeframe. The request also brings the local ordinance into compliance with State Code regarding timeframes for recording approved plats

RELATIONSHIP TO STRATEGIC PLAN:

Goal: Develop a High Performing Organization

BACKGROUND:

See attached staff report

BUDGET IMPACT:

NA

OPTIONS:

- Approve the Subdivision ordinance amendment
- Deny the Subdivision ordinance amendment

RECOMMENDATIONS:

Planning Commission recommended approval.

City Council Work Session
May 27, 2014

**SA-14-199 AN ORDINANCE AMENDING SECTIONS 6-5 AND 6-6 OF THE WINCHESTER LAND SUBDIVISION
ORDINANCE PERTAINING TO APPROVAL OF MINOR SUBDIVISIONS**

REQUEST DESCRIPTION

The request would relax the restriction limiting the number of Minor Subdivisions that can be approved for a property within a 12-month period such that more than one administrative approval could be permitted within a 12-month timeframe. The request also brings the local ordinance into compliance with State Code regarding timeframes for recording approved plats.

STAFF COMMENTS

The Land Subdivision Ordinance allows the City Subdivision Administrator to administratively approve Minor Subdivisions which do not entail subdividing parcels into more than 3 lots fronting upon existing public streets where no new streets or utilities are proposed and existing facilities will accommodate the modification. It also requires that the Administrator make a written report of all minor subdivisions at each regular meeting of the Planning Commission.

Section 6-5-3 of the Land Subdivision Ordinance was amended in 1988 to prohibit the Subdivision Administrator from approving any Minor Subdivision within one year of a prior Minor Subdivision for the same parcel or portion thereof. This outright prohibition on approving Minor Subdivisions within 12 months of a prior Minor Subdivision has been found to be an unnecessary impediment to development approval.

The language in Section 6-6 is proposed to be entirely replaced by new language consistent with updates to Virginia Code Section 15.2 which stipulates a 6-month timeframe for recordation of approved subdivision plats in the land records.

RECOMMENDATION

At its May 20, 2014 meeting, the Commission forwarded Subdivision Ordinance Amendment **SA-14-199** to City Council recommending approval because it represents good planning practice.

AN ORDINANCE AMENDING SECTIONS 6-5 AND 6-6 OF THE WINCHESTER LAND SUBDIVISION
ORDINANCE PERTAINING TO APPROVAL OF MINOR SUBDIVISIONS
SA-14-199

WHEREAS, the Land Subdivision Ordinance allows the City Subdivision Administrator to administratively approve Minor Subdivisions which do not entail subdividing parcels into to more than 3 lots fronting upon existing public streets where no new streets or utilities are proposed and existing facilities will accommodate the modification; and,

WHEREAS, the Land Subdivision Ordinance, was amended in 1988 to prohibit the Subdivision Administrator from approving any Minor Subdivision within one year of a prior Minor Subdivision for the same parcel or portion thereof ; and,

WHEREAS; the outright prohibition on approving Minor Subdivisions within 12 months of a prior Minor Subdivision has been found to be an unnecessary impediment to development approval

WHEREAS, the Planning Commission forwarded the request to Council on May 20, 2014 recommending approval of the Land Subdivision Amendment because the amendment represents good planning practice; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the amendment represents good planning practice.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the following Land Subdivision Ordinance provisions are hereby amended and reenacted as follows:

Ed. Note: The following text represents an excerpt of Sections 6-5 and 6-6 of the Land Subdivision Ordinance that is 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.

SECTION 6-5. MINOR SUBDIVISIONS.

6-5-1 The Administrator may certify a subdivision or re-subdivision as a "minor subdivision" if he/she finds that:

6-5-1.1 The proposal is to divide a parcel of land into not more than three (3) lots fronting up an existing street and not involving a new street or the extension of any existing street, street facilities, or utilities; and existing facilities will adequately accommodate the modification; and

- 6-5-1.2 The proposal will not create a violation of any of the provisions of the Zoning Ordinance; and
- 6-5-2 If the Administrator finds that the proposed subdivision or re-subdivision meets all the requirements as set forth above and elsewhere in this chapter, he/she shall certify the proposed plat as a "minor subdivision", and by affixing a notation to that effect and his signature thereto, grant final subdivision approval. At each regular Planning Commission meeting, the Administrator shall make a written report of all minor subdivisions so classified, certified, and approved for filing.
- 6-5-3 The Administrator may reject ~~No subdivision of a parcel of land may be approved~~ of a subdivision pursuant to this section within one year after the date of recordation of a minor subdivision plat for such parcel or part thereof if he/she finds it contrary to good planning practice. (8-9-88, Case #SA-88-01, Ord. No. 029-88).

SECTION 6-6. RECORDATION.

~~Unless the subdivider shall record his approved final subdivision plat in the office of the Clerk of Circuit Court for the City of Winchester within ninety (90) days after final approval, said final plat approval shall be null and void. The subdivider or his agent shall, in writing, inform the Administrator of the date on which said final subdivision plat was filed and note the deed book and page number thereof.~~

Unless a plat is filed for recordation in the office of the Clerk of Circuit Court for the City of Winchester within six (6) months after final approval thereof or such longer period as may be approved by City Council, such approval shall be withdrawn and the plat marked void and returned to the approving official; however, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by City Council or its designated administrative agency, or where the developer has furnished surety to City Council or its designated administrative agency by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one (1) year after final approval or to the time limit specified in the surety agreement approved by City Council or its designated administrative agency, whichever is greater.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 5/27/14 (work session), CUT OFF DATE: 5/21/14
6/10/14 (1st Reading) 7/8/14 (2nd reading)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

RZ-14-193 AN ORDINANCE TO REZONE 1.442 ACRES OF LAND AT 150 COMMERCIAL STREET (Map Number 153-01-J-3) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT TO COMMERCIAL INDUSTRIAL (CM-1) DISTRICT

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 7/8/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

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.

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Zoning & Inspections, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: (Planning) [Signature] 5/21/14



APPROVED AS TO FORM: [Signature] CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Will Moore, Planner
Date: May 21, 2014
Re: RZ-14-193 AN ORDINANCE TO REZONE 1.442 ACRES OF LAND AT 150 COMMERCIAL STREET (*Map Number 153-01-J-3*) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT TO COMMERCIAL INDUSTRIAL (CM-1) DISTRICT

THE ISSUE:

Rezoning the former Health Department (now Gear Clean) property on Commercial St to facilitate expansion of the existing business and to offer additional space for manufacturing and light industrial uses that are not available under the existing B-2 zoning.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 1: Grow the Economy; Objective 6: More manufacturing businesses in Winchester

Goal 4: 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:

See attached staff report

BUDGET IMPACT:

The applicant has separately submitted a site plan for infill development on the site, including a 14,400sf addition. The requested CM-1 zoning will allow for an additional array of uses to occupy this space. While not quantifiable at this time, additional revenue from the expanded commercial/light industrial use and property assessment is anticipated.

OPTIONS:

- Approve
- Deny

RECOMMENDATIONS:

Planning Commission recommended approval.

Council Work Session
May 27, 2014

RZ-14-193 AN ORDINANCE TO REZONE 1.442 ACRES OF LAND AT 150 COMMERCIAL STREET (*Map Number 153-01-J-3*) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT TO COMMERCIAL INDUSTRIAL (CM-1) DISTRICT.

REQUEST DESCRIPTION

The request is to rezone the property to facilitate expansion of the existing business and to offer additional space for manufacturing and light industrial uses that are not available under the existing B-2 zoning.

AREA DESCRIPTION

The subject property currently contains the existing business Gear Clean in the former Health Department building on the north side of Commercial St in the block between Pennsylvania Ave and N Loudoun St. Properties directly to the east are also zoned B-2 and contain an auto parts store and motorcycle sales/service in a former branch bank building. Property to the west and north is zoned CM-1 and contain a variety of contractor and storage uses. Property further to the north includes MR-zoned residences along W. Oates Ave. Property to the south and further to the west is zoned M-1 and contain commercial and industrial uses, including equipment sales/service and apple packing and storage.



STAFF COMMENTS

The proposal for a conventional rezoning (without proffers) of the property is outlined in a letter from Greywolfe, Inc. dated March 31, 2014. The letter cites statements from the Comprehensive Plan specific to the North Geographic Planning Area, including the Economic Development objective to “Work with owners and investors interested in developing properties in the city” and the Land Use objective to “Develop a diversified, sustainable industrial base at appropriate locations which are accessible to transportation facilities.” Additionally, the Character Map in the Comp Plan calls for Commerce Area Revitalization/Infill for the subject and surrounding properties on the north side of Commercial Street.

The applicant has separately submitted a site plan for a 14,400sf addition to the existing 7,440sf building along with associated site improvements, although the plan does not call for a specific use that would be dependent on the rezoning to CM-1. The associated site plan supports the Character Map designation for revitalization/infill at the property. CM-1 designation could support the land use objective for development of a diversified, sustainable industrial base by allowing for an array of light industrial uses that are not otherwise permitted under the current B-2 zoning. Access to transportation facilities from the subject property is convenient, with US 11 (Loudoun St) and US 522 (Fairmont Ave) only a block removed from the property in either direction.

The nearest residential uses are to the north along W. Oates Ave. There is existing CM-1-zoned land with contractor and storage uses located in between the subject property and these residences. It is unlikely that CM-1 zoning on the subject property could create an additional impact on these residential properties considering the surrounding zoning/uses already in place and the separation from the subject property.

RECOMMENDATION

At its May 20, 2014 meeting, the Planning Commission forwarded **RZ-14-193** to City Council recommending approval as depicted on an exhibit titled *"Rezoning Exhibit, RZ-14-193, Prepared by Winchester Planning Department, May 6, 2014"* because the proposed CM-1 zoning is consistent with the Comprehensive Plan Character Map designation for Commerce Area Revitalization/Infill on the north side of Commercial Street.

AN ORDINANCE TO REZONE 1.442 ACRES OF LAND AT 150 COMMERCIAL STREET (*Map Number 153-01-J-3*)
FROM HIGHWAY COMMERCIAL (B-2) DISTRICT TO COMMERCIAL INDUSTRIAL (CM-1) DISTRICT

RZ-14-193

WHEREAS, the Common Council has received an application from Construction Management, Inc., on behalf of property owner Major Properties, LLC, to amend the zoning designation associated with 150 Commercial Street, more specifically identified as Tax Map Section 153, Double Circle 1, Block J, Lot 3; and,

WHEREAS, the adopted Comprehensive Plan calls for Commerce Area Revitalization/Infill on the north side of Commercial Street; and,

WHEREAS, Goal 1, Grow the Economy, Objective 6 of the Winchester Strategic Plan calls for more manufacturing businesses in Winchester; and,

WHEREAS, the Planning Commission forwarded the request to Council on May 20, 2014 recommending approval of the rezoning as depicted on an exhibit titled "*Rezoning Exhibit, RZ-14-193, Prepared by Winchester Planning Department, May 6, 2014*" because the proposed CM-1 zoning is consistent with the Comprehensive Plan Character Map designation for Commerce Area Revitalization/Infill on the north side of Commercial Street; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the rezoning associated with this property herein designated is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of Highway Commercial (B-2) District to Commercial Industrial (CM-1) District:

1.442 acres of land at 150 Commercial Street as depicted on an exhibit titled "*Rezoning Exhibit, RZ-14-193, Prepared by Winchester Planning Department, May 6, 2014.*"

REZONING EXHIBIT

RZ-14-193

PREPARED BY WINCHESTER PLANNING DEPARTMENT

MAY 6, 2014



EXISTING

B-2 ZONING FOR 150 COMMERCIAL STREET



PROPOSED

CM-1 ZONING FOR 150 COMMERCIAL STREET

 Conditional Zoning



GREYWOLFE, INC.

1073 REDBUD ROAD • WINCHESTER, VA 22603
(540) 667-2001 • (540) 545-4001 FAX
GREYWOLFEINC@AOL.COM



City of Winchester
Planning Department
Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
(540) 667-1815
(540) 722-3618 (Fax)

March 31, 2014

Mr. Youmans,

Please find the attached application for a conventional rezoning for Parcel 153-((01))-3 located at 150 Commercial Street. The property is currently zoned B-2 and the owner, Major Properties, LLC; would like to change the zoning to CM-1.

The Comprehensive Plan identifies this property located in the North geographic area is a prime location to "Work with owners and investors interested in developing" and to "Develop a diversified, sustainable industrial base at appropriate locations which are accessible to transportation facilities". The parcel is also located within the Enterprise Zone.

The owners are submitting site plans to construct an addition to expand their existing business, Gear Clean, and to offer two spaces for manufacturing and office.

There are manufacturing and industrial uses within the CM-1 zoning designation that are not available within B-2.

The impacts on traffic will not change between the uses nor will there any other negative effect for the City. Surrounding properties are already within the CM-1 designation and this change is compatible them.

Thank you,


Gary R. Oates, LS-B, PE
GreyWolfe, Inc.

R2-14-193

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 6/10/14 (1st Reading) CUT OFF DATE: 6/4/14
7/8/14 (2nd Reading, Public Hearing)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

RZ-14-35 AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET (Map Number 252-01-2) FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY

STAFF RECOMMENDATION:

Staff would support approval if the Proffers, Development Plan, and Design/Development Standards better mitigated potential impacts arising from the rezoning.

PUBLIC NOTICE AND HEARING:

Public hearing for 7/8/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

On a 4-2 vote, Planning Commission recommended approval subject to the Proffers, Development Plan, and Design/Development Standards

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.

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Zoning & Inspections, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: (Planning Dept)

Handwritten signature of the initiating department director.

6/4/14



APPROVED AS TO FORM:

Handwritten signature and date 6/5/2014 over the text CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Tim Youmans, Planning Director
Date: June 4, 2014
Re: **RZ-14-35 AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET (Map Number 252-01-2) FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY**

THE ISSUE:

Conditionally change the underlying zoning from CM-1 to MR and establish PUD overlay zoning on 2.57 acres of property fronting along the south side of Commerce Street to support the proffered construction of a townhouse development of up to 26 units.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: Create a more livable city for all

Vision 2028- Great neighborhoods with a range of housing choices

BACKGROUND:

See attached staff report

BUDGET IMPACT:

The applicant has submitted a Market and Fiscal Impact Analysis that purports a Net On-Site Fiscal Benefit of \$15,021 to the City. This derived by subtracting the \$86,555 of net City costs from the \$101,676 of net direct City revenues.

OPTIONS:

- Approve the rezoning ordinance
- Deny the rezoning ordinance
- Table the request

RECOMMENDATIONS:

On a 4-2 vote, the Planning Commission recommended approval.

On a 9-0 vote, Council advanced the request from work session expressing intent to deny the rezoning request.

City Council Meeting- First Reading
June 10, 2014

RZ-14-35 AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET (Map Number 252-01-2) FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY

REQUEST DESCRIPTION

The request is to conditionally change the underlying zoning from CM-1 to MR and establish PUD overlay zoning on the entire property to support the proffered construction of a townhouse development of up to 26 units fronting along the south side of Commerce Street.

The submitted Development Plan titled "Generalized Development Plan, Commerce Street Townhomes" dated February 3, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2) depicts 3 townhouse structures and 26 driveways accessed from a one-way common drive wrapping around at the rear of the buildings leading to optional 1-car garages. The Development Plan depicts 16 on-street parallel parking spaces as well as an area for an undefined number of additional parking spaces along the south side of the rear drive aisle. The request also includes a Proffer Statement dated December 3, 2013 with a latest revision date of February 14, 2014.

AREA DESCRIPTION

The site and all other properties fronting along the east-west section of Commerce Street are zoned CM-1. Land uses include a credit union, mini-warehouse and contractor use. Property to the south of the site along Glaize Avenue is zoned MR and contains single-family dwellings. Properties further to the north along the west side of Commerce St are in single-family residential use.



STAFF COMMENTS

Comprehensive Plan Consistency

The Comprehensive Plan identifies the property as a redevelopment site and calls for adaptive reuse to be more compatible with adjacent residential areas. PUD zoning allows for consideration of up to 18 residential units per acre. At 2.57 acres in size, the property could theoretically support up to 46 units. The choice of townhouse development allows for separate ownership of the units, but reduces the physical ability to maximize the density as could be done with multifamily or apartment-styled condominium development. In general the Comprehensive Plan advocates the following:

Citywide Design Objective #1:

“Employ New Urbanism Principles in new development and redevelopment.”

Citywide Housing Objective #6:

“Promote decent affordable housing, particularly to serve targeted populations such as young professionals and retirees.”

The proposed townhouses could serve these targeted populations. The site is also situated in close proximity to a transit stop on the S. Loudoun Street bus route and not too far removed from Shenandoah University.

At 2.57 acres in size, the proposed PUD is considerably below the 5-acre minimum called out in Section 13-1-4.1 of the Zoning Ordinance. However, the Zoning Ordinance allows for the Planning Commission to recommend and City Council to approve a waiver of the 5-acre minimum when the applicant can show that strict adherence would produce unnecessary hardship and preclude development that is more compatible with the Comprehensive Plan than that which could be permitted without the PUD zoning.

Potential Impacts & Proffers

The applicant submitted voluntary proffers to mitigate potential impacts arising from the rezoning of the property from CM-1 supporting nonresidential use to MR with PUD overlay zoning to support 26 townhomes. The latest submitted Proffer Statement is dated February 14, 2014. Generally, the impacts from this rezoning would be the removal of tax-generating commercial development with residential use, which could have some impacts on public education expenditures. Depending upon the number of bedrooms and market targeted for occupancy, it is possible that the 26 units could create negative impacts in the form of school-aged children requiring public education. The applicant notes that the proposal would be for a maximum of 3 bedrooms per unit in both the 16-foot wide units as well as the 20-foot wide units. No floor plans have been submitted to date.

The applicant does proffer to contribute \$300 per townhouse unit to the City to provide for improvements to either Overlook Park or the Quarles Elementary School playground in lieu of dedicating up to 10% of the site for public parkland. Staff believes that a cash proffer in lieu of parkland dedication is desirable.

At the February 18th, March 18th, and April 15th 2014 regular meetings, the Planning Commission tabled the rezoning request in order to allow the applicant time to prepare a Fiscal Impact Analysis for this PUD rezoning application per Sections 13-4-2.2k of the Zoning Ordinance. On May 7, 2014, a Market and Fiscal Impact Analysis was received in the Planning Department. The report assumes that 6 school-aged children (0.222 children per unit) will be generated by the project. The report identifies a \$7,885 annual operating expense per pupil resulting in a total annual school operating cost of \$47,310. Together with other costs to the City, the total annual cost for the 26-unit development is estimated at \$86,655. This figure does not include the capital cost of school facilities to accommodate 6 additional children. This is an important factor since existing schools, especially elementary, are already over capacity in the city.

The fiscal analysis estimates total revenues arising from the development at \$101,676. This includes \$53,105 of real estate tax revenue, \$18,666 of personal property tax revenue, \$22,950 of Non-tax revenue, and a little less than \$7,000 of other revenue. The Non-tax revenue is based upon a per capita

average of \$306 and an estimated total occupancy of 61 persons residing in the 26-unit development. This assumes 2.35 per household. Unless these units are intended for college student occupancies, it is logical to assume that there would likely be only 2 adults. The other .35 persons per unit (i.e. 2.35-2.0=0.35) are most likely children. Assuming this, 0.35 multiplied by 26 units amounts to potentially 9 children, of which some will be below school age. The applicant has indicated that there will be 6 school-aged children. The average pupil generation rate for all townhouses (i.e. many 2-BR units) in Frederick Co per the Development Impact Model is 0.279. The rate employed here for this 'all 3-BR' development is 0.222. It is hard to believe that the rate for this 3-BR development would be any less than the average for all townhouses in the same Winchester-Frederick Co market. Recently proposed townhouse developments in Frederick County include the Madison Village project which proffered \$1,362 for each townhouse unit and \$1,139 for each apartment unit.

The Fiscal Impact Analysis for the Commerce St project indicates a Net On-Site Fiscal Benefit of \$15,021. This derived by subtracting the \$86,555 of net costs from the \$101,676 of net direct revenues. It is surprising, to some degree, that a similar townhouse just over the County line would have a negative net impact resulting in the proffering of \$1,362 for each townhouse unit. It should be noted that just 2 additional school-aged children residing in the townhouse development would tip the net benefit into a net cost to the City at \$7,885 per student.

While this residential rezoning request results in a much smaller quantity of total units than the recently approved Cedar Creek Place project (132 units) and the Jubal Square project (140 units), the quantity of three-bedroom units is a concern. For Commerce St the proposal is for up to 100% of the 26 units to have 3 bedrooms. The Cedar Creek Place proposal included zero (0) three-bedroom units and the Jubal Square project included only 20 three-bedroom units and 8 two-bedroom units with a den. Collectively the 28 Jubal Square units with 3 bedrooms or 2 bedrooms + den constituted only 20% of that total project.

Traffic Impacts

Staff does not believe that a Traffic Impact Analysis should be required by the Planning Commission since Commerce St has adequate capacity to handle the additional traffic.

Site Development and Buffering

Buffering has been provided to screen the townhouse building and rear parking from the existing single-family neighborhood along Glaize Avenue to the south. A detail on the Development Plan calls for an opaque board fence (6' height) and a staggered row of mixed evergreen/deciduous plantings along the rear property line adjoining the Glaize Avenue residential neighborhood. The Plan calls for 2 plants per every 15 feet with half being evergreen and the other half deciduous. The minimum height of installed evergreen plantings is specified at 4' and the minimum caliper of deciduous trees is specified at 1" caliper on the Plan. Both the Plan and the Proffer Statement note that existing "plantings and vegetation" may be used to satisfy the intent of the landscape screens shown as required. Provision 3.5 of the Proffer Statement was amended to include "Adequacy determination to be at time of planting by Zoning Administrator." Staff recommends that 'Planning Director' be substituted for 'Zoning Administrator' and that any existing "vegetation" proposed to meet this intent be clearly depicted on the plan so that it can be evaluated for suitability.

The Development Plan calls for either a double row of evergreen screening (4' min height) or an opaque fence (6' height) along the eastern boundary of the site adjoining the remaining commercially zoned development at the bend in Commerce Street. The applicant is also proffering at least a 100-square foot

landscape area in the front yard of the units. (NOTE: By comparison a typical parking space is at least 162 square feet in size). Staff has encouraged the applicant to employ the New Urbanism practice of keeping the units close to the public street (and putting the parking to the rear). However, since there will be a very small quantity of green space out front, it is important that the developer demonstrate a high quality to that small amount of street-view green space.

Storm Water Management

Storm water management will need addressed. No on-site storm water management is depicted on the Plan, but can be handled during the time of site plan review. The site slopes both to the east as well as to the south. The Plan depicts a natural green area ('Recreational Space') along the southern boundary which should mitigate storm water runoff issues to the Glaize Avenue neighborhood.

Density

The applicant proposes a maximum of 26 townhouses with a maximum of 3 bedrooms per unit. PUD overlay allows for consideration of up to 18 dwelling units per acre, which in the case of 2.57 acres would translate to a maximum of 46 dwelling units. The applicant is proposing a maximum of 26 dwelling units. The actual project density comes out to 10.1 units per acre.

Project Phasing

The applicant has not indicated that there is any proposal to phase in the project as part of the PUD rezoning.

Design Quality

Despite being encouraged to do so, the applicant has not yet submitted any floor plans for this rezoning proposal, and there are few proffers addressing design quality. Proffer 3.1 states that "All buildings on the property shall be constructed using compatible architectural styles." The latest development plan includes an illustrative rendering of the front elevation of the units (Sheet 2, Revised Feb 17, 2014) and proffer 3.2 now states that "unit architecture shall generally conform to the elevation and guidelines" on that sheet of the development plan. The Development Plan depicts rear driveways suggesting access to rear-entry garages although a "Design & Development Standards" sheet notes that the garages are optional. Staff recommends that a note be added to the Development Plan that a fourth bedroom cannot be created in any unit even if the optional garage is converted to living space. The submitted Plan depicts 3 buildings with one building containing 8 townhouse units and the other two buildings containing 9 units. The Design & Development Standards sheet notes that the lots (and thus all of the interior townhouse units) would have a 20-foot minimum width, but then states that up to half of the units may have a 16-foot minimum width. In the High Density Residential (HR) District, where townhouses are allowed by right, the City requires a minimum average townhouse lot width of 22 feet. The applicant should clearly demonstrate how the proposed PUD provides exceptional design to warrant exceptions to these minimum standards that apply where townhouses are permitted without PUD overlay.

RECOMMENDATION

Generally, staff feels that the proposal is consistent with many of the broader elements of the City's long-term vision to provide housing attractive to young professionals and empty-nesters to the City. Staff feels that the use of the PUD provision for this site is acceptable even though it is considerably less than five acres in size, but that the applicant needs to provide better justification from a quality design standpoint for reducing some of the minimum development standards otherwise applicable to townhouse development in the City.

Staff supports a waiver of the 5-acre minimum per Section 13-1-4.1 of the Zoning Ordinance to allow a 2.57-acre PUD because strict adherence would produce unnecessary hardship that would preclude development that is more compatible with the Comprehensive Plan than that which could be permitted without the PUD zoning.

On a 4-2 vote at its May 20, 2014 meeting, the Planning Commission forwarded Rezoning RZ-14-35 to City Council recommending approval because the proposed MR (PUD) zoning, supports the expansion of housing serving targeted populations as called out in the Comprehensive Plan. The recommendation is subject to:

1. the Proffer Statement dated December 3, 2013 and revised February 14, 2014;
2. adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2);
3. the single-page document titled 'Commerce Street Townhomes, Design & Development Standards';

The Planning Commission recommended that City Council approve a waiver of the 5-acre minimum per Section 13-1-4.1 of the Zoning Ordinance to allow a 1.295 acre PUD because the applicant has shown that strict adherence would produce unnecessary hardship that would preclude development that is more compatible with the Comprehensive Plan than that which could be permitted without the PUD zoning.

At its May 27, 2014 work session, on a 9-0 vote, Council forwarded the request for First Reading at the June 10, 2014 meeting expressing its intent to deny the request. A motion to disapprove the rezoning ordinance could read:

MOVE, that Council disapprove Rezoning RZ-14-35 because the application for the proposed MR (PUD) zoning as submitted:

- a) is less than 5 acres in size and the applicant has not demonstrated a clear hardship for a waiver;
- b) would result in residential-only development less desirable than mixed use advocated in the Comprehensive Plan or commercial-only use allowed under the existing CM-1 zoning;
- c) is based upon a fiscal impact analysis that appears to underestimate public education costs for 3-bedroom units housing school-aged children; and,
- d) lacks sufficient design detail such as floor plans to support 3-story 3-bedroom townhouse development with up to half of the units as narrow as 16 feet.

AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY

RZ-14-35

WHEREAS, the Common Council has received an application from Pennoni Associates Inc. on behalf of Evergreen Real Properties, LLC to rezone property at 1570 Commerce Street from Commercial-Industrial (CM-1) District to Medium Density Residential (MR) District with Planned Unit Development (PUD) Overlay; and,

WHEREAS, the Planning Commission forwarded the request to Council on May 20, 2014 recommending approval of the rezoning request as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-35 Prepared by Winchester Planning Department, February 3, 2014*" because the proposed MR (PUD) zoning supports the expansion of housing serving targeted populations. The recommendation is subject to the proffers in the Proffer Statement dated December 3, 2013 and revised February 14, 2014 and to adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2) and a single-page document titled 'Commerce Street Townhomes, Design & Development Standards'; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the rezoning associated with this property herein designated supports the expansion of housing serving targeted populations as called out in the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of Commercial- Industrial (CM-1) District to Medium Density Residential (MR) District with Planned Unit Development (PUD) Overlay: Approximately 2.57 acres of land at 1570 Commerce Street as depicted on an exhibit entitled '*Rezoning Exhibit RZ-14-35 Prepared by Winchester Planning Department, February 3, 2014.*'

BE IT FURTHER ORDAINED by the Common Council of the City of Winchester, Virginia that the rezoning is subject to the proffers in the Proffer Statement dated December 3, 2013 and revised February 14, 2014 and to adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2) and a single-page document titled 'Commerce Street Townhomes, Design & Development Standards'.

PROFFER STATEMENT

REZONING: RZ. # _____: CM-1 to MR (PUD)
PROPERTY: 2.5960 Acres +/-;
Tax Map & Parcels 252-01-2 (the "Property")
RECORD OWNER: Evergreen Real Properties LLC
APPLICANT: Evergreen Real Properties, LLC
PROJECT NAME: Commerce Street Townhomes
ORIGINAL DATE OF PROFFERS: December 3, 2013
REVISION DATE: February 3, 2014; Revised February 14, 2014



The undersigned owners hereby proffer that the use and development of the subject property ("Property"), as described above, shall be in conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. In the event that the above referenced rezoning is not granted as applied for by the Applicant ("Applicant"), these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Property with "Final Rezoning" defined as that rezoning that is in effect on the day upon which the City of Winchester Common Council (the "Council") grants the rezoning.

The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provided at the time of development of that portion of the Property adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein. The term "Applicant" as referenced herein shall include within its meaning all future owners, assigns, and successors in interest. When used in these proffers, the "Generalized Development Plan" shall refer to the plan entitled "Generalized Development Plan, Commerce Street Townhomes" prepared by Pennoni Associates Inc., (the "GDP") dated February 3, 2014.

1 LAND USE:

- 1.1 The project shall be designed to create townhouse building lots in general conformance with the GDP, and as specifically set forth in these proffers subject to modifications as necessary upon final engineering including but not limited to intersection alignments.
- 1.2 All development shall be accomplished in general conformance with the "Commerce Street Townhomes, Design and Development Standards", prepared by Pennoni attached hereto and incorporated herein by reference (the "Design and Development Standards").

1.3 Residential development on the Property shall not exceed 26 dwelling units.

1.4 Surface parking shall be allowed in areas delineated. As a minimum, 2 parking spaces per unit shall be provided which may include onsite parking lots, garage and associated private drive spaces, and if provided, public spaces within 300 ft.

1.5 If provided picnic shelters shall not exceed 50 S.F.

1.6 Home occupations as approved by the HOA and allowed by ordinance.

2. CONSTRUCTION OF A UNIFIED DEVELOPMENT:

2.1 The Property shall be developed as one single and unified development in accordance with applicable ordinances and regulations, the GDP as approved by the Council, and this Proffer Statement.

3. ARCHITECTURE, SIGNAGE, AND LANDSCAPING:

3.1 All buildings on the Property shall be constructed using compatible architectural styles. The Applicant shall establish the required Property Owners' Association to enforce and administer a unified development plan in general conformity with the proffered requirements.

3.2 Unit architecture shall generally conform to the elevations and guidelines provided on Sheet 2 of the GDP.

3.3 A 100 SF landscaped area must be maintained within the front yard of each lot.

3.4 Trees meeting the City of Winchester Street Tree Standard shall be provided along the right-of-way. The total trees provided shall be at least 1 tree per 30 ft. of total road frontage.

3.5 Existing onsite plantings and vegetation may be used to satisfy the intent of the landscape screens shown as required on the Generalized Development Plan. Adequacy determination to be at time of planting by Zoning Administration.

3.6 All parking, sidewalk areas shall be of hard surface material, such as concrete, asphalt or pavers. A porous paver system shall also satisfy this requirement.

4. RECREATION AREAS:

4.1 In lieu of the up to 10% land set aside required by the City of Winchester Land Subdivision Ordinance Para. 5-40 and satisfy the recreation development required by Zoning Ordinance Para. 13-1-6, the Applicant shall contribute to the City of Winchester \$300 per lot for improvements to park facilities as deemed appropriate. It is intended that these funds be

used for improvement to recreational facilities at Overlook Park or Quarles Elementary School. Payment to be made at time of occupancy permit issuance.

- 4.2 Common open space shall be provided by designation of an open space easement over landscaped areas of the site and shall be a minimum of 30% of the site area.

5. CREATION OF PROPERTY OWNERS' ASSOCIATION:

- 5.1 The residential portion of the development shall be made subject to a Property Owners' Association(s) (hereinafter "POA") that shall be responsible for the ownership, maintenance and repair of all common areas, including parking areas and driveways within appropriate easements subject to their jurisdiction, and shall be provided such other responsibilities, duties, and powers as are customary for such associations or as may be required for such POA herein.

- 5.2 The POA shall be so established that it possesses all necessary powers to set and revise fees and dues in sufficient sums to perform the responsibilities assigned to it hereunder and under the Declaration to be recorded creating such Association. In addition, upon any conveyance of a residential unit from the builder thereof to a home purchaser, there shall be a fee paid by the home purchaser to the POA in an amount equal to three times the then-current monthly residential dues applicable to the unit so conveyed.

- 5.3 The POA shall comply with Article 9-9 of the Zoning Ordinance.

- 5.4 The POA documents shall be generally modeled on the Rules and Regulations made a part of these proffers.

6. WATER & SEWER:

- 6.1 The Applicant shall be responsible for connecting all lots to the City of Winchester public water and sewer. It shall further be responsible for constructing all facilities required for such connection. All water and sewer infrastructure shall be constructed in accordance with the requirements of the City of Winchester.

7. TRANSPORTATION:

- 7.1 All private streets and parking areas shall be constructed in accordance with the current Virginia Department of Transportation structural standards and shall be owned and maintained by the Property Owners Association served via appropriate easement.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

Evergreen Real Properties, LLC

By: _____
Michael J. Ranberger

Title: President

STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this _____ day of
_____, 2014, by _____.

My commission expires _____
Notary Public _____



EXISTING PLANTING AND VEGETATION MAY BE USED TO SATISFY THE AESTHETIC LANDSCAPE SCREEN REQUIREMENTS AS REQUIRED.

DOUBLE ROW EVERGREEN SCREEN MIN HEIGHT 48\"/>



ZONING DISTRICT BUFFER
N.T.S.

Prepared by:



Pennoni Associates Inc.
117 East Piccadilly Street, Suite 200
Winchester, Virginia 22601
Tel: 540-687-2139 Fax: 540-665-0493

R2-14-35
GENERALIZED DEVELOPMENT PLAN
COMMERCE STREET TOWNHOMES

1570 COMMERCE STREET
CITY OF WINCHESTER, VIRGINIA

DATE: FEB. 3, 2014

REVISED: FEB. 14, 2014

Sheet 1 of 2



Commerce Street Townhouses - Illustrative Rendering

- The illustrative rendering shows typical fronts of the 20' wide units. The 16' wide units will have similar materials and design.
- Exterior materials will be vinyl siding with 25% of the fronts done in brick veneer. Some units will have the first floor in brick.
- The 20' wide units will be no more than 1 bedroom, 1 and 1/2 bath unit, with an option for a second 1/2 bath finished on the ground floor with the Rec. Room.
- The 16' wide units will be no more than 1 bedroom, 1 and 1/2 bath unit, with an option for a second 1/2 bath finished on the ground floor with the Rec. Room.
- Windows will be vinyl double hung with low-e insulated glass.
- Exterior doors will be insulated metal six panel or patio doors.
- All trim will be maintenance free, aluminum wrapped, synthetic wood or vinyl in complementary colors.
- Roofing will be 30 year architectural grade fiberflax shingles.
- Garage units (if provided) will have a deck above the garage doors which will access from the kitchens on the second floor level.
- If garage units are provided the 20' wide units will have a two car garage and the 16' wide units will have a one car garage.

UNIT A - ELEVATION #1

UNIT A - ELEVATION #2

UNIT A - ELEVATION #3

UNIT A - ELEVATION #4

Front Elevation

R2-14-35

**GENERALIZED DEVELOPMENT PLAN
COMMERCE STREET TOWNHOMES**

**1570 COMMERCE STREET
CITY OF WINCHESTER, VIRGINIA**

REVISED: FEB. 17, 2014

Prepared by:



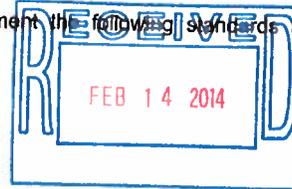
Pennoni Associates Inc.
117 East Piccadilly Street, Suite 200
Winchester, Virginia 22601
Tel: 540-667-2139 Fax: 540-665-0493

Sheet 2 of 2

Commerce Street Townhomes

Design & Development Standards

In order to establish the quality appearance of the development the following standards are proposed.



Structure

Single Family Attached, one home per lot.

Relationship of primary façade to Commerce Street.

Setbacks – Allow intimate pedestrian scale to be developed between building and street.

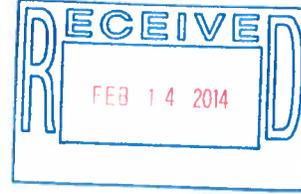
Parking

On-street parking provided.

Overflow parking in rear yard area. Screening to prevent light spillage to adjacent residential.

- Number of Units:** 26 Maximum
- Bedrooms per Unit:** 3 Maximum
- Parking:** 2 Spaces Required per Unit, can be met by public and off street spaces, optional garage units and private driveways.
- Building Height:** 35' maximum
- Building Use:** Single Family Attached Units
- Lot Width:** 20' Minimum except that up to one half of the lots may have a 16' minimum width.
- Front Setback:** Minimum 10'; Maximum 20'
- Side Setback:** Minimum 0'; Maximum 10'
- Rear Setback:** To Parking – Minimum 10'
To Property Line – Minimum 50'
- Block Length:** No More Than 10 Units
- Parking Setbacks:** To Residentially Zoned Property – Minimum 35'
To Property Not Zoned for Residential Use – Minimum 6'
To Public Right-of-Way (exclusive of entrances on public streets) – Minimum 10'

RULES AND REGULATIONS
FOR
COMMERCE STREET REZONING



GENERAL

1. Commerce Street Development Unit Owners Association ("Association"), acting through its Board of Directors, has adopted the following Rules and Regulations ("Regulations"). These Regulations may be amended from time to time by resolution of the Board of Directors.

2. Wherever in these Regulations reference is made to "unit owners," such term shall apply to the owner of any unit, to such owner's tenants whether or not in residence, and such Owner's (or such tenant's) household, servants, employees, agents, visitors, guests, invitees or licensees. Wherever in these Regulations reference is made to the Association, such reference shall include the Association and the managing agent when the managing agent is acting on behalf of the Association.

3. The unit owners shall comply with all the Regulations hereinafter set forth governing the buildings, patios, drives, recreational areas, grounds, parking areas and any other appurtenances.

4. The Association reserves the right to alter, amend, modify, repeal or revoke these Regulations and any consent or approval given hereunder at any time by resolution of the Association or the Board of Directors.

RESTRICTIONS ON USE

5. No part of the development shall be used for any purpose except housing and the common purposes for which the development was designed. Other than any unit designated by the Board of Directors for home occupation use, each unit shall be used as a private residence.

6. No unit owner shall obstruct any of the common elements nor shall any unit owner place or cause or permit anything to be placed on or in any of the common elements (except the areas designated for storage by the Development Instruments or the Board of Directors) without the approval of the Board. Nothing shall be altered or constructed in or removed from the common elements except with the prior written consent of the Board of Directors or the Covenants Committee, as appropriate.

7. The common elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the units. The sidewalks shall be used for no purpose other than for normal transit.

8. Nothing shall be done or kept in any the common elements which will increase the rate of insurance for the buildings or contents thereof applicable for residential use without the prior written consent of the Board of Directors. No unit owner shall permit anything to be done or kept

in the unit or on the common elements which will result in the cancellation of insurance on the buildings or contents thereof or which would be in violation of any public law, ordinance or regulation. No gasoline or other explosive or inflammable material may be kept in any unit or storage area.

9. All garbage and trash must be placed in proper receptacles designated for refuse and no garbage or trash shall be placed elsewhere on any common element.

10. Except in the recreational areas designated as such by the Board of Directors, no playing or lounging shall be permitted, nor shall baby carriages, velocipedes, bicycles, playpens, wagons, toys, benches, chairs or other articles of personal property be left unattended in parking areas, on sidewalks or lawns or elsewhere on the common elements.

11. The toilets and other water and sewer apparatus shall be used only for the purposes for which they were designed, and no sweepings, matches, rags, ashes or other improper articles shall be thrown therein. The cost of repairing any damage resulting from misuse of any such apparatus shall be borne by the unit owner causing such damage.

12. Each unit owner shall keep the unit in a good state of preservation, repair and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors, windows or patios thereof, any dirt or other substance.

13. Nothing shall be done in any unit or on the common elements which may impair the structural integrity of any building or which may structurally change any building nor shall anything be altered or constructed on or removed from the common elements, except upon the prior written consent of the Board of Directors.

14. No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations or all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the unit owner or the Board of Directors, whichever shall have the obligation to maintain or repair such portion of the Property, and, if the latter, then the cost of such compliance shall be a common expense.

15. No unit owner shall make or permit any disturbing noises in any building or do or permit anything which will interfere with the rights, comforts or convenience of other unit owners. All units owners shall keep the volume of any radio, television, musical instrument or other sound producing device in their units sufficiently reduced at all times so as not to disturb other unit owners.

16. The right is hereby given to any owner of any unit to place for sale or for rent signs on any unit owned, but in no event will any sign be larger than one foot by two feet.

17. Draperies, curtain or venetian blinds must be installed by each unit owner on all windows of the unit and must be so maintained thereon at all times.

18. No unit owner shall cause or permit anything to be hung, displayed or exposed on the exterior of a unit, whether through or upon the windows, doors, masonry or patio of such unit that can be seen from the City public street (Commerce Street). The prohibition herein includes without limitation laundry, clothing, rugs, signs, awnings, canopies, shutters, radio or television antennas or any other items. Under no circumstances shall any exhaust fan, air conditioning apparatus, television or radio antennas or other items be installed by the unit owner beyond the boundaries of the lot. No clothesline, clothes rack or any other device may be used to hang any items on any window or patio, nor may such devices be used anywhere on the common elements except in such areas as may be specifically designated for such use by the Board of Directors. Patios shall not be used as storage areas.

PET RULES

19. No animals, livestock, poultry or reptiles of any kind, regardless of number, may be maintained, kept, boarded or raised, in any unit or upon the common elements, except that the keeping of orderly domestic pets (e.g., dogs, cats or caged birds) not to exceed one per unit without the approval of the Board of Directors, and aquarium fish and other limited species of animals which do not normally leave the unit and which do not make any unreasonable disturbance or noise is permitted, subject to the Rules and Regulations adopted by the Board of Directors, and provided that such animals are not kept for breeding purposes.

20. A pet may be maintained in a unit only for so long as it is not a nuisance. Any such pet causing or creating a nuisance or any unreasonable disturbance or noise may be permanently removed from the Development upon ten days written notice from the Board of Directors. Actions which will constitute a nuisance include but are not limited to abnormal or unreasonable crying, barking, scratching or unhygienic offensiveness.

21. Except in pet exercise areas designated by the Board of Directors, pets must be leashed or carried; leashes may not exceed a length which will permit close control of the pet.

22. Pet owners are fully responsible for personal injuries and/or property damage caused by their pets and shall indemnify and hold the Association, each unit owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Development.

23. All pets which may leave the unit must be registered and inoculated as required by law and registered with the Association office. The Board of Directors may establish reasonable fees for registration, not to exceed the additional costs incurred by the Association resulting from the presence of the pets.

24. Owners of pets walked upon the common elements must promptly clean up their pet's droppings in all areas outside any authorized pet exercise areas.

PARKING AND STORAGE

25. No personal property may be stored on the common elements except in storage areas designated as such by the Development Instruments or by the Board of Directors. All personal property placed in any portion of a building or any place appurtenant thereto, including without

limitation the storage areas, shall be at the sole risk of the unit owner and the Association shall in no event be liable for the loss, destruction, theft or damage to such property.

26. Should any employee of the Association at the request of a unit owner move, handle or store any articles or handle, move park or drive any automobile placed in the parking areas, then, and in every such case, such employee shall be deemed the agent of the unit owner. The Association shall not be liable for any loss, damage or expense that may be suffered or sustained in connection therewith.

27. Trailers, campers, recreational vehicles, boats and other large vehicles may be parked on the Property only if expressly permitted by the Rules and Regulations and only in such parking areas, if any, as may be designated for such purpose by the Board of Directors. All vehicles shall be parked wholly within parking space lines. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the common elements; provided, however, that such vehicles may be parked inside the garage located within a unit (if provided). Except in areas designated by the Board of Directors, vehicle repairs other than: (i) emergency maintenance, (ii) ordinary light maintenance (excluding fluid changes and other operations which might soil the common elements) and (iii) normal cleaning are not permitted on the common elements.

28. All unit owners shall observe and abide by all parking and traffic regulations posted by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the unit owner's sole risk and expense.

29. Parking so as to block sidewalks or driveways shall not be permitted. If any vehicle owned or operated by a unit owner shall be illegally parked or abandoned on the Development, the Association shall be held harmless by such unit owner for any and all damages or losses that may ensue, and any and all rights in connection therewith that the owner or driver may have under the provisions of state or local laws and ordinances are hereby expressly waived. The unit owner shall indemnify the Association against any liability which may be imposed on the Association as a result of such illegal parking or abandonment and any consequences thereof.

RECREATIONAL AND COMMON FACILITIES

30. All persons using any of the recreational or common facilities do so at their own risk and sole responsibility. The Association does not assume responsibility for any occurrence, accident or injury in connection with such use. No unit owner shall make any claim against the Association, its servants, agents, or employees, for or on account of any loss or damage to life, limb or property sustained as a result of or in connection with any such use of any of the recreational or common facilities. Each unit owner shall hold the Association harmless from any and all liabilities and any action of whatsoever nature by any tenants, guests, invitees or licensees of such unit owner growing out of the use of the recreational or common facilities, except where such loss, injury or damage can be clearly proved to have resulted from and been proximately caused by the direct negligence of the Association or its agents, servants or employees in the operation, care or maintenance of such facilities.

31. Any damage to a building, the recreational facilities or other common elements or equipment caused by a unit owner or such unit owner's guests or pets shall be repaired at the expense of the unit owner.

ASSOCIATION

32. All charges and assessments imposed by the Association are due and payable on the _____ . Payment shall be made at the managing agent's office by check or money order, payable to the Development. Cash will not be accepted.

33. Complaints regarding the management of the Development or regarding actions of other unit owners shall be made in writing to the managing agent or the Board of Directors.

34. No unit owner shall direct, supervise or in any manner attempt to assert control over or request favors of any employee of the managing agent or the Unit Owners Association.

CONSIDERATION IN USE OF UNITS

35. All persons shall be properly attired when appearing in any common area of the Property and any other public spaces of the Development.

36. All radio, television or other electrical equipment of any kind or nature installed or used in each unit shall fully comply with all rules, regulations, requirements or recommendations of the Board of Fire Underwriters and the public authorities having jurisdiction, and the unit owner alone shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such unit.

GENERAL

37. The planting of plants, flowers, trees, shrubbery and crops of any type is prohibited anywhere on the common elements without the prior written consent of the Board of Directors. No fences may be erected around or on the common elements

REZONING EXHIBIT

RZ-14-35

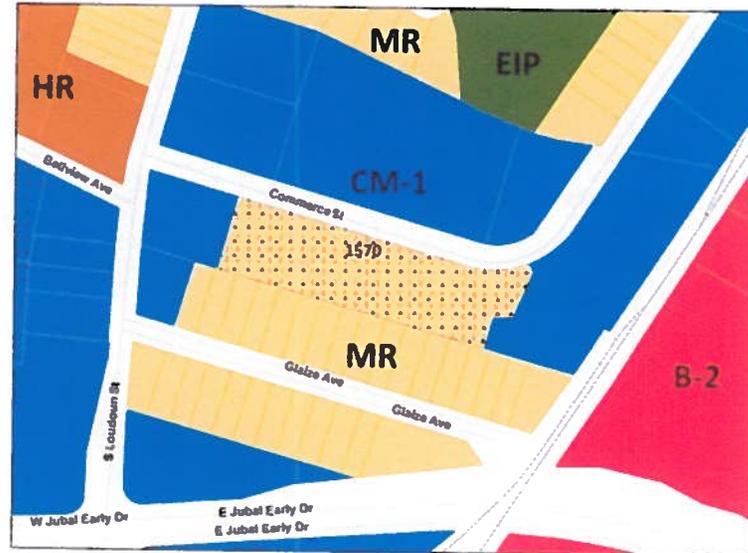
PREPARED BY WINCHESTER PLANNING DEPARTMENT

FEBRUARY 3, 2014



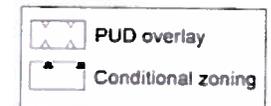
EXISTING

CM-1 ZONING FOR 1570 COMMERCE STREET



PROPOSED

CONDITIONAL MR (PUD) ZONING FOR 1570 COMMERCE STREET



**Market and Fiscal Impact Analysis
for the Commerce Street Townhomes
Development in Winchester, Virginia**

Prepared for:

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May 19, 2014
(Rev. Final)

Market and Fiscal Impact Analysis
for the Commerce Street Townhomes
Development in Winchester, Virginia

Table of Contents

Introduction	1
Aerial View	3
Site Location and Setting	4
Market Analysis for Townhouse Unit Development.....	8
Demographic Trends and Projections.....	8
Market In-Demand for Townhomes	8
Pipeline Proposals.....	9
Net Lease Rates (Cost of Ownership).....	9
Conclusions	9
Fiscal and Economic Impacts	10
On-Site Revenues.....	10
Real Property Tax.....	10
Personal Property Tax.....	10
Utility Tax	12
Motor Vehicle Licenses	12
Recordation Tax	12
Non-Tax Revenue	13
Summary of Tax Revenues.....	13
On-Site Costs to the City	14
Net On-Site Fiscal Impact.....	15
Off- Site Economic and Fiscal Impacts	16
Business Receipts.....	17
Employment and Earnings	17
Off-Site Fiscal Impact	17
Summary of On-Site and Off-Site Fiscal Impacts	18
Appendix: General Fund Expenditure and Reserves	20

**Market and Fiscal Impact Analysis
for the Commerce Street Townhomes
Development in Winchester, Virginia**

Introduction

This report is a Fiscal and Economic Impacts analysis of the proposed development of Commerce Street Townhomes, which is to be located on a 2.57 acre parcel at 1570 Commerce Street on the South side of the roadway in the geographic center of the City of Winchester, near the intersection of Commerce Street and South Loudoun Street. It is an attractive vacant site near Overlook Park. The property is currently zoned CM-1 (commercial industrial), and is proposed to be rezoned to B-2 for the purpose of building the townhomes site, which will allow for townhome unit development of up to 26 units.

The actual development plan is still evolving, but will include 26 units, approximately 1 acre of recreational space, and some on site amenities. The requirement of 2 parking spaces per unit will be met with public and off-street spaces, optional garage units, and private driveways. On-street parking in the community will also be available, and there is a parking area set aside next to the recreational space, as well. The following chart shows the development program for the townhome units, in terms of unit mix, unit sizes, and estimated net leases, reported in constant 2014 dollars. The initial development plan calls for all three-bedroom units.

<u>Preliminary Development Plan</u> (26 Townhome units)			
<u>Design</u>	<u>Units</u>	<u>Unit Size Range</u> (in sq. ft.)	<u>Net Lease*</u> (2014 dollars)
Three-Bedroom	26	1,800 – 2,200	\$52,840 - \$57,080

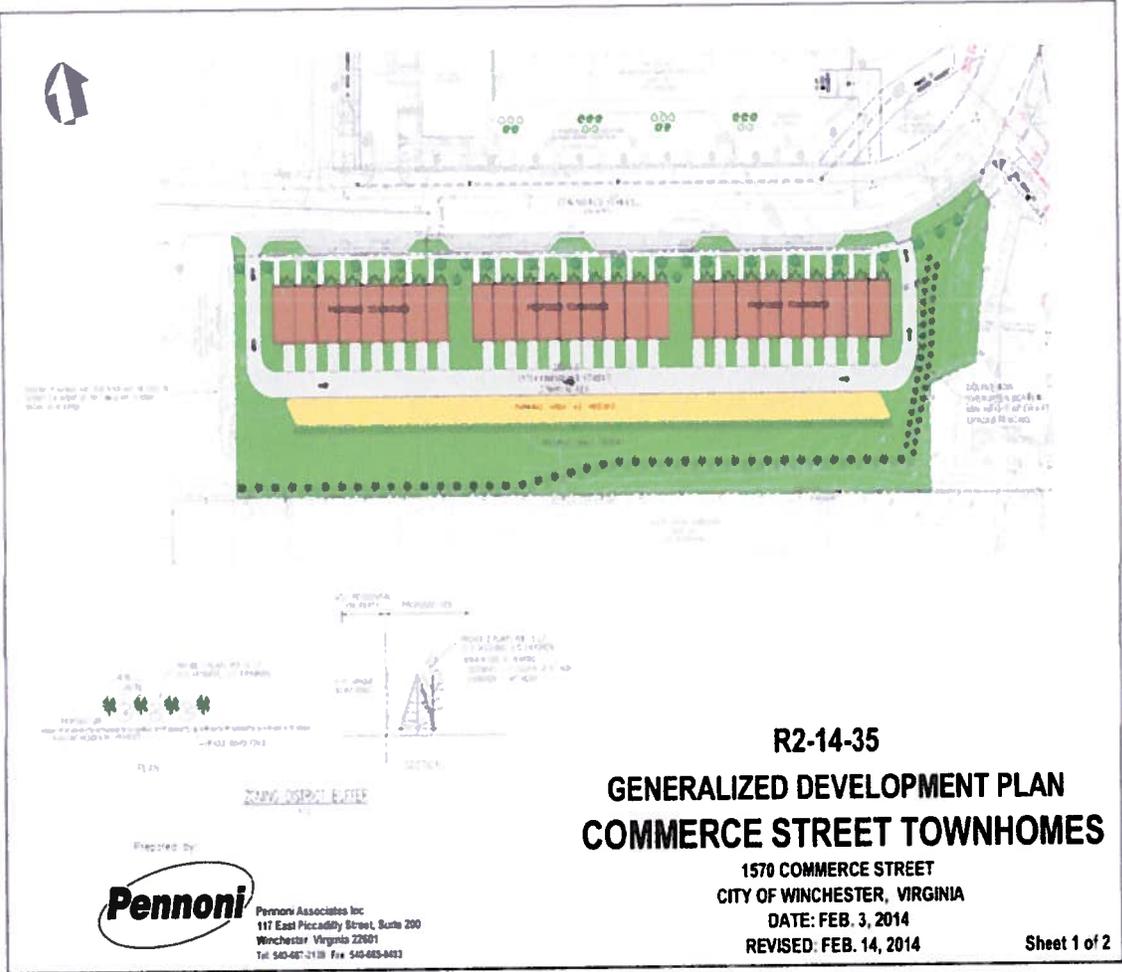
*The term "net lease" is used to show that the "owner" pays for all utilities, fees, and repairs.

Based on these "net leases," we estimate that the average household income of residents at Commerce Street Townhomes will be \$60,000, also reported in constant 2014 dollars. Using the industry accepted average of 30 percent of income allocated to "net lease," a minimum income would be \$57,000 for the three-bedroom units. To use a more conservative figure, we used \$60,000 as the average income for residents at Commerce Street townhomes, as many residents of the three-bedroom units will have incomes well above the minimum requirement.

As planned, the townhome complex is designed to be in the middle of the market for the Winchester area. The net lease rates shown are likely to be conservative, given the design concept and landscaping. These cost estimates were based on other similar townhomes in the Winchester area. Once the townhome unit designs are in place, higher sale prices may be recommended.

The site plan for the development proposal is shown below. All townhomes will be three-story dwellings, and there are 3 separate groupings of townhomes. These will have 8-9 townhomes per grouping, up to 26 units in total. The proposed three-bedroom townhomes will range from 16' wide to 20' wide, depending on interior design.

The recreational area is located on the south portion of the property. The recreation area is primarily just a green/garden area, but plans for a possible pavilion, grills, and picnic tables are under consideration.



Site Location Map

Aerial View

The aerial view below shows the site which is currently vacant. The property is surrounded by midscale residential subdivisions and warehouses and other retail on the northern side. One of the City's parks, Overlook Park, is located just to the North of the property.

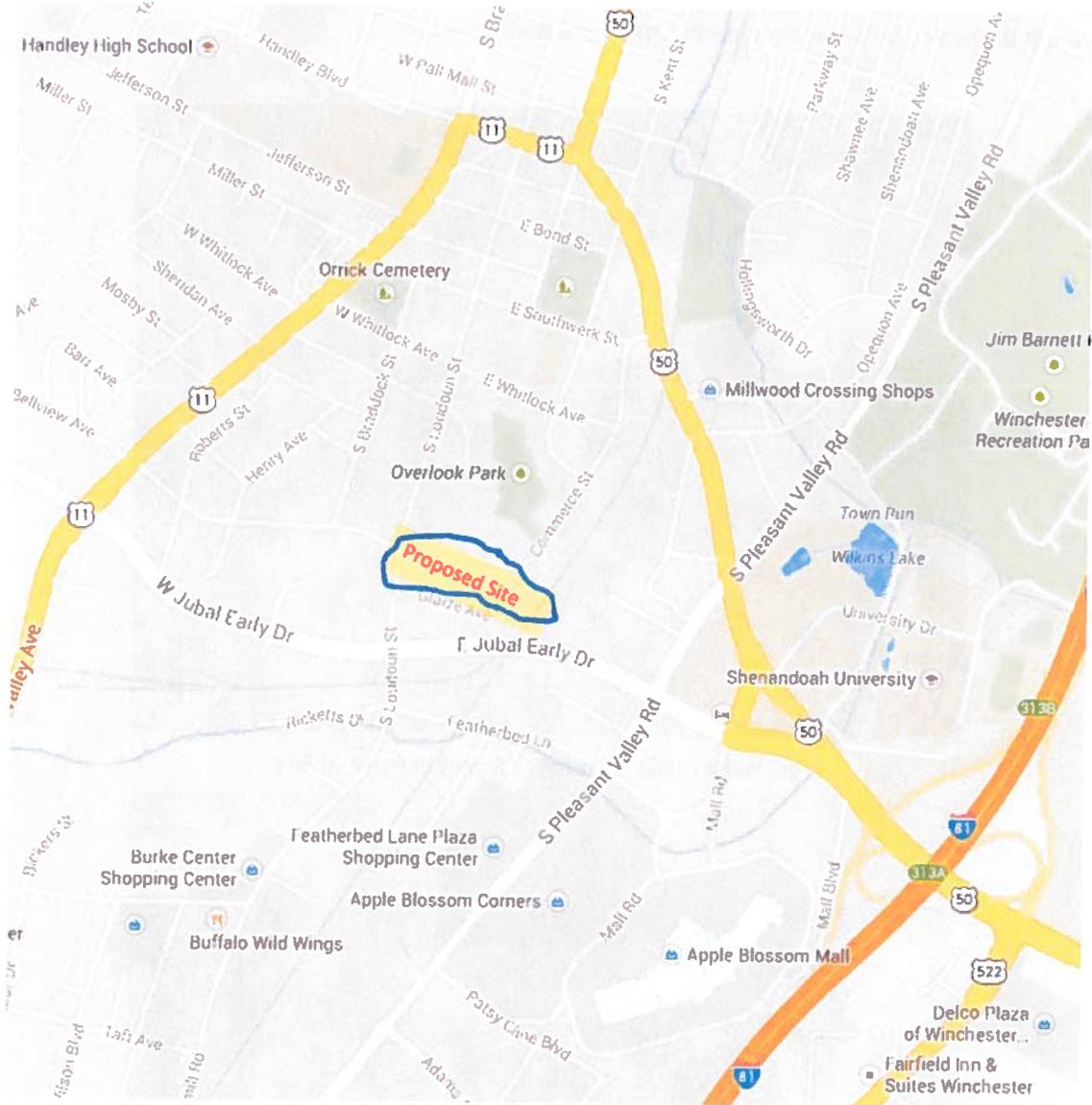


Commerce Street Townhomes Aerial View of Site

The buildings have an attractive exterior with a mix of brick and veneer on the ground floor and on the second floor in the same area. The upper levels will be vinyl siding, and some of the lower levels will be entirely brick. All trim will be maintenance free, aluminum wrapped, synthetic wood or vinyl in complementary colors. Roofing will be 30 year architectural grade fiberglass shingles, and windows will be vinyl double hung with low-e insulated glass. These townhomes will also contain an in-unit washer/dryer.

All of the townhomes will have a similar three-story elevation, regardless of the final interior design concepts and number of bathrooms. The height of each story is shown in the image below.

Map A – Commerce Street Site Location and Setting



Following are photos of the property. The top photo shows the West side of the entrance from Commerce Street. The middle photo is a view east along Commerce Street showing the remainder of the entrance to the planned community. The third photo is the view from the attractive subdivision to the South of the site between Commerce Street and Glaize Avenue.



View West Along Commerce Street in Front of Site



View East Along Commerce Street in Front of Site



View of the Back of Site from Subdivision South of Site

Overall, the Commerce Street site is well located for new townhome development. Several amenities are nearby and the setting is fully attractive for quality housing. Local and regional accessibility is excellent.

Market Analysis for Townhouse Unit Development

To support the assumptions used in the Market and Fiscal Impacts Analysis, as presented in the next subsection of this report, we included a brief market analysis in support of the 26 townhome units proposed, and the unit characteristics planned. The findings of this market analysis are the basis for the assumptions used to calculate the fiscal and economic impacts of Commerce Street Townhomes.

Demographic Trends and Projections

The market area for the Commerce Street Townhomes includes the City of Winchester and Frederick County. The base demographic data are based on the 2010 Census count with updates to 2012 from the Census' American Community Survey, as well as the Winchester Frederick County Economic Development Commission's 2013 Annual Report and their demographics web-tool. We used the projection date of 2017, even though Commerce Street Townhomes are likely to be started by mid-2014 and could be completed by mid-to-late-2015.

The key demographic factor under study is the magnitude and growth of homeowners with incomes of \$60,000 and above, when incomes are reported in constant 2014 dollars. Statistically, homeowners at Commerce Street Townhomes will need incomes on average of \$57,000+. As noted previously, we have used a more conservative income level of \$60,000+ (rounding up slightly) for our analyses.

From the Winchester Frederick County VA EDC website (<http://winva.com/build-a-report>), by 2013, the Winchester area had 7,155 households with an income between \$50,000 and \$74,999, and 5,374 households with income between \$75,000 and \$99,999. The 2013 Median Household Income in the market area was \$57,234 based on the EDC's data, which supports the targeted audience (buyers) for this development.

In addition to middle- and upper-income renters, Winchester has a second source of townhome unit demand, the upper class students and graduate students at Shenandoah University. We estimate, based on data provided by university officials, that 1,300 students live in off-campus housing. Many live in area townhomes for rent, including locations in Stephens City. University students typically do not pay rents at the top of the market, so this source of rental housing unit demand was not included in our market analysis for Commerce Street.

Market In-Demand for Townhomes

Currently there is only one townhome community that is comparable with the townhomes to be built at Commerce Street. Limestone Place townhomes, built in the early 2000s, are all 22-foot wide units, with 100% brick finish, and have living, dining, and kitchen areas on the entry level. Due to their age, however, Limestone Place units have home values comparable or slightly lower to Commerce Street Townhomes. A quick web-search in May 2014 shows that many of the Limestone Place townhomes have been converted to rentals and short-term corporate housing, with the likelihood of a higher transient population than is planned for the Commerce Street community. In addition to the sizable number of Limestone Place townhomes for rent by professional real estate companies, there are condos for rent and currently 80 rentals in adaptive reuse buildings in Old Town.

There are three key points to be made in regard to the magnitude and quality of the Winchester townhome market:

1. For a relatively large marketplace of over 10,000 households, Winchester has very few townhomes at this quality level, but a significant number of household incomes capable of affording Commerce Street Townhomes.
2. The vacancy rate is near zero for Limestone Place, which is in high demand, and
3. The only comparable townhome community is over 10 years old.

These data indicate a large pent-up demand for new townhome properties.

Pipeline Proposals

There are no other active proposals for very similar new townhome unit developments in Winchester. In Frederick County proper, the Townes at Tasker is an 81 lot townhome development that will begin house construction in a few weeks. These homes are constructed by Dan Ryan Builders. Five units will be available soon, with more in earlier stages of construction. Another mixed size/mixed style development, the Madison Village project (just east of the City along Route 522 South), was recently approved by Frederick County and is slated to have up to 640 units of which about half are proposed as townhouses.

If Commerce Street Townhomes are also approved, the Winchester area townhome market will be increased by approximately 107 to 407 units between Townes at Tasker, Madison Village, and Commerce Street. The Commerce Street Townhomes project, if approved by City officials, will likely be ready for occupancy by sometime in 2015, which may be much sooner than the larger Madison Village project.

Net Lease Rates (Cost of Ownership)

As a Fee Simple sale, the owner pays for all utilities, mortgage, interest, insurance, and taxes. Based on standard utility and other cost factors for this type of home in this region, the "net lease" rate for the three-bedroom properties is estimated to be \$1,420+ per month. (*The term "net lease" is used in available statistical reports to show that the "owner" pays for all utilities, fees, and repairs, whether the unit is leased or rented.)

Conclusions

Based on the relatively low number of current townhomes in the Winchester area, the market area is projected to support far more new townhome units over the 2010 to 2017 forecast period than Townes at Tasker, Madison Village, and Commerce Street Townhomes can support, even combined. There are no other Winchester townhome communities beyond these three in the pipeline to support this demand. Overall, with the pent-up demand that exists for new townhomes due to household growth and a continued slow for-sale housing market locally, the demand for quality townhomes should continue at the same pace, or higher compared with the market for homes during the 2000 decade.

Fiscal and Economic Impacts

The fiscal impacts analysis compares the revenues to be forthcoming from a the apartment and commercial project, Commerce Street Townhomes, with the costs the municipality - here the City of Winchester - that will serve the project, once it is built out and stabilized occupancies have been achieved. The net fiscal benefit from the project will be the difference between those revenues and the costs. The fiscal impacts for Commerce Street Townhomes will include both the on-site revenues and costs generated on-site by the development and also the revenues and costs generated off-site by the economic impacts of the development within the City of Winchester. For these off-site impacts, an economic impacts analysis is undertaken to show how resident expenditures and business purchases will stimulate further business within Winchester, giving the new business receipts, employment and employee earnings resulting from those expenditures. As explained above, the economic impacts will be the basis for fiscal impacts occurring off-site from Commerce Street Townhomes.

On-Site Revenues

Revenues coming directly from Commerce Street Townhomes will consist of revenues generated by the activities on site for the City of Winchester. The analysis to follow will show that the proposed project will generate over \$101,000 in revenues each year for the City after buildout and stable occupancies are achieved. All dollar amounts for revenues and costs due to the development on- or off-site will be expressed in constant year 2014 dollars, with no correction for inflation. This allows a more direct basis for comparison with the present. The analysis of on-site revenues begins with the property taxes and follows with other smaller taxes for the City.

Real Property Tax

Real Estate Assessments for Commerce Street Townhomes are projected to be \$215,000 per unit, including land and land preparation. Total taxable value for the 26 units will come to \$5.59 million. At the real estate tax rate of \$0.95 per \$100 of valuation, real estate tax revenue from this set of 26 townhomes would be \$53,105 each year after buildout, in constant year 2014 dollars.

Personal Property Tax

Personal property taxes for residences in Virginia are based on the depreciated values of vehicles used solely for residential purposes. The first step in calculating the personal property tax for Commerce Street Townhomes residents is to estimate the average depreciated value of vehicles in the City. This is done by dividing the personal property tax that is residential by the number of vehicles in the City. Included in the tax is the Personal Property Tax Relief Act (PPTRA) reimbursement from the Commonwealth to the City. The proportion of the property assessment that is residential for 2014 is 100 percent.

As shown in Table 1, the total residential personal property tax including PPTRA is divided by the tax rate of \$4.50 per \$100 valuation to give the total depreciated value of vehicles in the City as \$198 million. This total value divided by 16,500 estimated vehicles in the City gives an average depreciated value per vehicle of \$11,991.

Table 1. Estimation of the Average Depreciated Value Per Vehicle, Winchester, Virginia, 2013	
	Amount
FY 2014 Personal Property Tax	\$9,621,500
Proportion Residential	0.59
Residential Personal Property Tax	\$5,676,685
PPTRA	\$3,226,980
Total Residential Personal Property Tax	\$8,903,665
Tax Rate	\$0.05
Total Residential Depreciated Value	\$197,859,231
Estimated Number of Vehicles	16,500
Average Depreciated Value per Vehicle	\$11,991
Sources: FY 2014 Adopted Budget for Winchester, Virginia. And the American Community Survey of the U.S. Census Bureau.	

Residents in the Commerce Street Townhomes (at 95% occupancy) are projected to own 42 vehicles based on a metric of 1.66 vehicles per home based on 2011 Census data. With an average taxable value of approximately \$11,991 per vehicle, the total on-site personal property value of resident-owned vehicles would be \$497,627. At the tax rate of \$4.50 per \$100 of valuation, the on-site personal property tax would be \$22,393 annually, in constant 2014 dollars. This is shown in Table 2.

Table 2. Personal Property Taxes (PPT) at Commerce Street Townhomes at Buildout, Winchester, Virginia (constant \$2014)	
	Amount
Commerce Street No. Units	26
Percent Occupied	0.95
Occupied Units	25
Vehicles per Unit	1.66
Number of Vehicles	42
Depreciated Value Per Vehicle	\$11,991
Total Depreciated Value	\$497,627
Tax at \$4.50/\$100	\$22,393
Sources: Table 3 and Management Analysis, Inc.	

Where three adults are living in a three-bedroom townhome, it is likely that the number of vehicles will be three (one for each) as compared to one or two vehicles for the units owned and/or occupied by a couple or a couple with a small child. As such, the estimate of \$22,393 in PPT is conservative.

Utility Tax

For residential households, at least four utilities are typical among most common, which are the gas, electric, telephone, cellular, and internet utilities. Utility taxes are capped by Winchester statute at the rate of \$3.00 per utility per month, and based on the square footage of these townhomes, this maximum value was chosen. The following chart shows that for 26 townhome units at Commerce Street Townhomes (at 95% occupancy), utility taxes would come to \$3,600 per year. (See Table 3.)

Townhome Utility Tax	Amount
Number of Units	26
Occupied at 95%	25
Utilities Per Unit	4
Each Utility Tax/Month	\$3
Number of Months	12
Tax Per Household Nr.	\$144
Total City Utility Tax Revenue	\$3,600

Motor Vehicle Licenses

Each motor vehicle in Winchester is subject to a license fee of \$24 per vehicle. In the derivation of the personal property tax at Commerce Street Townhomes, it was shown that there would be 42 vehicles at the townhomes. At a fee of \$24 per vehicle, the total for the 25 occupied townhomes would be \$1,008 annually.

Where three adults are living in a three-bedroom townhome, it is likely that the number of vehicles will be three (one for each) as compared to one or two vehicles for the units owned and/or occupied by a couple or a couple with a small child. The estimate of \$1,008 in motor vehicle license fees is conservative.

Recordation Tax

The Commonwealth of Virginia taxes all exchanges of real property at the rate of \$0.25 per \$1,000 of value, or .00025. One-third of this amount is returned to the municipality where the transaction occurred. It is assumed that the Commerce Street Townhomes are taxed five times in 20 years, once at initial completion of the construction of the project, and also sold 4 times in 20 years. At the given tax rate, the share for Winchester on the property valued at \$5.69 million would be \$2,347 (See Table 4).

Table 4. Recordation Tax for Commerce Street Townhomes, at Buildout, Winchester, Virginia (constant \$2014)	
	Townhomes
Real Estate Value	\$5,690,000
First and 4 times each 20 years	5
Total Taxable Value	\$28,450,000
Tax at state level	\$0.00025
State Tax	\$7,113
Share to City	0.33
City Recordation Tax	\$2,347
Source: Management Analysis, Inc.	

Non-Tax Revenue

Revenues for the City other than tax revenues total \$16 million, or 20 percent of the budget, for FY 2014. These revenues include local revenues such as fees, charges, and permits. They also include non-local revenues, including revenues from the Commonwealth and from the Federal Government. The fiscal impacts analysis expresses this non-tax revenue on a per capita basis. There were an estimated 26,900 residents in Winchester at the beginning of this fiscal year, and the non-tax revenue on a per capita basis for these people would be \$306. Multiplying this rate by the number of residents at Commerce Street Townhomes (61) gives a total of \$18,666 in projected new non-tax revenue.

Summary of Tax Revenues

In total, the sum of projected revenues forthcoming from Commerce Street Townhomes after buildout would be approximately \$101,676 each year, in constant 2014 dollars. The individual sources of these revenues are summarized in Table 5.

Table 5. Summary of Revenues for Commerce Street Townhomes, at Buildout, Winchester, Virginia (constant \$2014)	
	Townhomes
Real Property Tax	\$53,105
Personal Property Tax	\$18,666
Utility Tax	\$3,600
Motor Vehicle Licenses	\$1,008
Recordation Taxes	\$2,347
Non-Tax Revenue	22,950
Total	\$101,676
Source: Tables 3-6 and Management Analysis, Inc. calculations	

On-Site Costs to the City

Table 6 calculates the costs to the City of Winchester to provide services to the residents at Commerce Street. Explanations of the calculations follow:

- **Residents:** There will be 26 townhomes at Commerce Street. Assuming stable occupancies of 95 percent (which is conservatively low), there would be 25 occupied units at any time. Census data for Winchester from 2008-2012 indicates there are 2.42 persons per household, so there would be approximately 61 residents. At a cost to the City of \$645 per resident (from the budget for the City of Winchester), the "population cost" of residents would come to \$39,345.
- **Schools:** Pupil generation rate is a key factor in determining the costs of public school education for Commerce Street Townhomes. Census data for Winchester from 2008-2012 indicates there are 2.42 persons per household, 22.2% of which are under 18, but 6.8% of which are under 5.

Because these are starter homes with, likely, single professionals, younger families or persons with no children, we used an assumption of 12% under 5 years of age, instead of the average of 6.8%. We can, therefore, expect 0.222 students per household or approximately six school-age students within the community.

"Overall, only 25% of households now have children, and this is expected to decline to 20% in the next two decades." Page 3, Final Report, Winchester Economic Development Analysis & Master Plan, March 28, 2011

The annual costs to the City of Winchester at buildout and stabilization of Commerce Street Townhomes are calculated in Table 6, below. It applies the population and pupil parameters described above for the community to give the City costs for residential services and facilities, and public school education for residence at the site. The total cost is \$86,865 as shown.

Table 6. Calculation of Costs of Services and Facilities for the City of Winchester to Serve Residents at Commerce Street at Buildout (constant \$2014)	
	<u>Townhomes</u>
Number of Residents	61
Capita Cost Per Resident	\$645
Total Population Cost	\$39,345
Number of Pupils	6
Capita Cost Per Pupil	\$7,885
Total School Cost	\$47,310
Total Cost to the City	\$86,655
Sources: Appendix Table A-3 (Adopted FY 2014 Budget for the City of Winchester) and Management Analysis Inc.	

Net On-Site Fiscal Impact

The chart below summarizes the revenues, costs, and net fiscal benefit to be derived from buildout of the Commerce Street development. The townhomes show a net benefit of about \$15,021. The costs of education drive up the costs to the City for the townhomes. The following sections will show the off-site business spin-off fiscal impacts from the development, which will not significantly alter this net fiscal benefit

<u>Commerce Street On-site Fiscal Benefit</u>	<u>Townhomes</u>
Total Revenue	\$101,676
Less: Total Costs	\$86,655
Net Fiscal Benefit	\$15,021

This figure is based, where appropriate, on an occupancy rate of 95% annually. If all units are sold and occupied for a several years before being re-sold, the Net Fiscal Benefit will be higher than the conservative \$15,021 calculated herein.

Off- Site Economic and Fiscal Impacts

In addition to the revenues and costs that accrue to the City of Winchester from the townhomes "on-site" - that is, due to the apartments and residents themselves - there are also off-site impacts that occur as residents on-site spend their income off-site in the City, and as those off-site businesses re-spend the income from purchases from residents by the purchase of goods and services from other vendors in the City. Consumer budgets are identified by the U.S. Bureau of Labor Statistics by area and income level.

According to the Census data, the median household income in the City of Winchester is \$45,959 averaged over the period 2008-2012. This is close to the income level of households in the comparable complexes and, with inflation to 2015, close to the anticipated average income for Commerce Street Townhome owners. This picture is improved if one assumes that the potential market area for buyers is the greater Winchester area (which includes the Frederick County suburbs), where the median household income averaged \$67,694 county-wide. Commerce Street Townhomes is an ideal in-city starter community for young families and young single professionals. Winchester area consumers spend 25.61 percent for housing and 9.89 percent for home utilities; the taxes for these were discussed previous.

The key finding of the data below is that the new townhome residents are likely to spend 66.81 percent of their purchases in and around the City of Winchester.

Commodity	Percent of Spending
Housing	25.61%
Utilities	9.89%
Groceries (Food and household supplies at local grocery stores and markets)	13.37%
Transportation (Gas, Repairs, Bus Fare, etc.)	11.79%
Healthcare (Visits to local doctors and hospitals, purchased of supplies and medication at local drug stores, etc.)	4.98%
Misc. Goods and Services (Dry cleaning, Hair/Nails, Clothing, Home Furnishings, etc.)	36.67%

Source: Spend Analysis (2013) - "Winchester, VA - W.V. Metro Statistical Area," published January 2014

Consumer and business expenditures made off-site in the City are translated into economic impacts in the City using multiplier matrices provided for the local area by the U.S. Bureau of Economic Analysis. These multipliers capture the round-by-round flows of expenditures in the City initiated by residents of the townhomes. The multipliers are specific to Frederick County, but since the City figures so heavily in the County economy - accounting for almost all of the jobs- it is assumed here that the impacts will apply essentially to Winchester for 60 percent of resident expenditures. Most of the rest of consumer expenditures will leak out of the region.

There are separate matrices for business receipts, employment and employee earnings. The items in the consumer budget are multiplied in turn by these expenditure-specific categories in each matrix and summed to give the "spin-off" or "ripple effect" of circulation of money through the economy. The ripple effects, plus the original consumer expenditures, equal the total economic impacts of townhome residents on the City economy.

Business Receipts

Residents at Commerce Street Townhomes will spend about 66.81 percent (derived from the data above) of their remaining \$50,000 of income after subtracting out ownership costs, or about \$33,405 per household. Some other uses of income are taxes, savings, and transfers to other family members not living on-site. Overall, this is \$868,530 in expenditures from the 26 townhomes, of which \$521,118 (60% of \$868,530) is expected to remain in the City. The ripple or multiplier effect will generate another \$1.3 million in receipts among City businesses from residents, for a total business receipts impact of \$1.9 million from residents. In addition, the business receipts collected from the public will generate additional taxes of \$53,675 as revenue to the City.

<u>Source of Impact in City</u>	<u>Residents</u>
Direct Expenditures	\$ 521,118
Indirect Ripple Effect	\$ 1,157,523
Total Business Receipts	\$1,678,641
Additional Potential Tax Revenue on end-user Business Receipts – Taxes on Items Sold to Customers (10.3% of \$521,118)*	\$53,675

*Based on City's Combined Sale Tax and Meals Tax Rate.

Employment and Earnings

Employment and employee earnings impacts come from the ripple or multiplier effects of resident expenditures on businesses in the City, i.e., these are the employees, and their earnings, that support the increased business receipts in the City. There will be approximately 14 new full-time equivalent employment positions created in Winchester, with earnings for these employees of \$469,000, for average earnings of \$33,500. This is a relatively modest earnings level because so much of the impact is on retail trade and consumer services such as cleaning and laundries and other household services.

Off-Site Fiscal Impact

Table 7 summarizes the revenues and costs to the City of Winchester from the off-site impacts of the Commerce Street Townhomes, for the 14 new employees generated by the business expenditures above. These impacts derive primarily from the \$1.9 million in new business receipts in the City, plus estimates of real property and business personal property for a typical commercial operation. It is proper to look at these impacts as long-term. That is, it is not likely that 14 new employees in many different firms will lead to immediate expansion of the property tax base, but this should happen over time as part of business expansion in the City. Other tax receipts should accrue as soon as consumers at Commerce Street Townhomes begin making expenditures, that is, as soon as the property is built out and stable occupancies are achieved. Revenues are calculated for off-site impacts in the same fashion as on-site revenue impacts were as explained and calculated in preceding paragraphs.

Costs are based on 14 new employees at a cost to the City of \$645 per employee, as derived above in Table 6. As shown below, there is potentially a significant benefit to the City as a result of new resident

expenditure. The initial benefit of \$53,270 will become a small net benefit over time as the impact of the increased consumption and employment ripple and multiply.

	Townhomes
Real Estate Tax	\$2,144
Business Property Tax	\$1,782
Retail Sales Tax	\$55,110
Motor Vehicle License Tax	\$346
Utility Tax	\$366
Recordation Tax	\$61
Non-tax Revenue	\$2,492
Total Revenue	\$62,300
Less Costs to the City	(\$9,030)
Net Fiscal Benefit to the City	\$53,270
Source: RIMS II Modeling System, U.S. Bureau of Economic Analysis	

Summary of On-Site and Off-Site Fiscal Impacts

The preceding sections of this fiscal and economic analysis have derived both the on-site and off-site impacts of the residents of Commerce Street Townhomes at buildout. As the impact is minimal, it is simpler just to revisit the overall net cost to the City, keeping in mind that fiscal benefits from consumer expenditures will rise over time. The initial net fiscal benefit to the City is \$68,291 annually, becoming even more of a benefit in future years.

Net On-Site Benefit of the Townhomes	\$15,021
Net Off-Site Benefit of the Townhomes	\$53,270
Net Total Benefit to the City	\$68,291

The current assessed value of the vacant 2.569 acre Commerce Street property is \$569,500. At the City's Real Estate Tax rate of \$0.95 per \$100 in valuation, this commercially-zoned vacant property generates \$5,410 to the City per year. The net fiscal benefit of Commerce Street Townhomes to the City, therefore, would be significantly higher than the taxes generated for the vacant site as it is now.

Since the area on Commerce Street is currently zoned CM-1 (Commercial Industrial), it is important to consider the potential financial benefits of a commercial/business facility operating in place of

Commerce Street Townhomes. Similar studies show that retail sales tax for applicable businesses would generate considerable revenue to Winchester if such businesses were built on this site.

The Net Present Value of this property to the City is higher with Commerce Street Townhomes as this project is ready to begin immediately. Townhomes that are constructed, sold, and occupied have a higher real estate value than a potential business or warehouse not yet built. The real estate taxes and residential personal property taxes available by approving this development will be considerably higher for Commerce Street Townhomes compared to the cost in lost revenue opportunity while waiting for another businesses offer to build on the site someday in the future.

Appendix: General Fund Expenditure and Reserves

Appendix Table A-1 summarizes expenditures from the General Fund for the City of Winchester from FY 2011 (actual expenditures) to FY 2014 (the current adopted budget). The General Fund Budget sets the revenues and expenditures that most directly impact the citizens and businesses of the City. Included in the General Fund is a transfer of tax monies to the School Board for operations and debt service. There are other sources of funding for schools, such as federal and state funding, that are specific to the School Fund and do not depend on local revenues. There has been a steady growth in General Fund expenditures over this four-year period, of which a small part is due to inflation. Actual General Fund expenditures in FY 2011 were \$66.1 million, compared to the Adopted Budget for FY 2014, the current year, with expenditures budgeted at \$72.1 million.

	<u>FY 2011</u>	<u>FY2012</u>	<u>FY 2013</u>	<u>FY2014</u>
	<u>Actual</u>	<u>Actual</u>	<u>Projected</u>	<u>Adopted</u>
GENERAL GOVERNMENT				
General Government	\$3,496,423	\$4,304,202	\$5,180,565	\$5,419,044
Judicial	\$593,636	\$2,803,718	\$3,059,800	\$3,122,200
Public Safety	\$14,715,540	\$17,118,801	\$18,409,535	\$18,300,464
Public Works	\$3,259,254	\$3,150,423	\$3,308,500	\$3,360,400
Health and Welfare	\$2,568,193	\$1,052,019	\$1,055,261	\$1,063,196
Recreation & Culture	\$4,477,909	\$3,151,966	\$3,006,459	\$3,319,639
Community Development	\$1,919,248	\$1,888,738	\$3,811,752	\$2,032,544
City Debt Service	<u>\$2,290,202</u>	<u>\$1,801,305</u>	<u>\$1,835,400</u>	<u>\$1,652,720</u>
Subtotal	\$33,320,405	\$35,271,172	\$39,667,272	\$38,270,207
PUBLIC SCHOOLS				
Schools Operating	\$25,351,902	\$25,351,902	\$26,651,702	\$26,301,702
Schools Debt Service	<u>\$7,427,421</u>	<u>\$7,218,037</u>	<u>\$7,694,100</u>	<u>\$7,602,700</u>
Subtotal	\$32,779,323	\$32,569,939	\$34,345,802	\$33,904,402
TOTAL GENERAL FUND	\$66,099,728	\$67,841,111	\$74,013,074	\$72,174,609
Percent Schools	49.50%	48.00%	46.40%	47.00%
Source: FY 2014 Adopted Budget, City of Winchester, Virginia				

Corresponding to the General Fund expenditures presented in Table A-1 are the General Fund Revenues as tabulated in summary form in Table A-2. General Fund revenues for the years shown exceed General Fund expenditures for those years, implying the creation of surplus revenues which may be allocated in part to other uses and to reserves. General Fund revenues for FY 2011 (actual) were \$71 million, rising to \$80 million budgeted for FY 2014. FY 2012 is an unusual year, with revenues of \$103 million. The explanation for this unusual amount is the raising of bonds in that year in the amount of \$27 million for

facility construction. Table A-2 also shows the percent of revenue that derives from local taxes, about 80 percent in FY 2014.

Table A-2. Summary of General Fund Revenues, Actual, Projected, and Budgeted, City of Winchester, Virginia, FY 2011 to FY 2014				
	FY 2011 Actual	FY 2012 Actual	FY 2013 Amended	FY 2014 Adopted
Real Estate Taxes	\$24,158,677	\$25,119,396	\$26,708,500	\$27,411,500
Personal Property Taxes	<u>\$9,783,473</u>	<u>\$9,753,481</u>	<u>\$9,911,500</u>	<u>\$9,621,500</u>
General Property Taxes	\$33,942,150	\$34,872,877	\$36,620,000	\$37,033,000
Other Local Taxes	<u>\$25,568,468</u>	<u>\$25,755,729</u>	<u>\$26,191,100</u>	<u>\$26,875,000</u>
Total Taxes	\$59,510,618	\$60,628,606	\$62,811,100	\$63,908,000
Total Non-tax Revenue	<u>\$12,112,785</u>	<u>\$42,721,710</u>	<u>\$18,880,865</u>	<u>\$16,092,000</u>
Total General Fund	\$71,623,403	\$103,350,316	\$81,691,965	\$80,000,000
Percent Local Taxes	83.10%	58.70%	76.90%	79.90%
Source: FY 2014 Adopted Budget, City of Winchester, Virginia				

Table A-3 presents an allocation of FY 2014 General Fund expenditures to users of those funds -- "population" (residents), "employment" (businesses) and "pupils" (for the transfer of General Fund revenues to the School District). Funds are allocated by department in proportion to population (51 percent) and employment (49 percent), except in the cases of health and welfare, community college, and parks, recreation and cultural, which are allocated entirely to population. Resulting per capita costs are \$645 for population, \$515 for employees, and \$7,885 for public school pupils.

Table A-3. Allocation of FY 2014 General Fund Expenditures to Users - Population (Residents), Employment (Businesses), and Pupils (Public Schools K-12)			
-	FY 2014	FY 2014	FY 2014
Department or Use	Population	Employment	General Fund
GENERAL GOVERNMENT			
General Government	\$2,769,484	\$2,649,560	\$5,419,044
Judicial	\$1,595,647	\$1,526,553	\$3,122,200
Public Safety	\$9,352,728	\$8,947,736	\$18,300,464
Public Works	\$1,717,383	\$1,643,017	\$3,360,400
Health and Welfare	\$1,063,196	\$0	\$1,063,196
Recreation & Culture	\$3,319,639	\$0	\$3,319,639
Community Development	\$1,038,762	\$993,782	\$2,032,544
City Debt Service	<u>\$844,647</u>	<u>\$808,073</u>	<u>\$1,652,720</u>
Subtotal	\$21,701,487	\$16,568,720	\$38,270,207
Relative Tax Burden	79.90%	79.90%	79.90%
Tax Burden	\$17,336,233	\$13,235,922	\$30,572,155
Number of Persons	26,881	25,717	52,598
Gen. Gov't Per Capita	\$645	\$515	\$581
PUBLIC SCHOOLS			
Schools Operating	\$26,301,702	\$0	\$26,301,702
Schools Debt Service	<u>\$7,602,700</u>	<u>\$0</u>	<u>\$7,602,700</u>
Subtotal	\$33,904,402	\$0	\$33,904,402
Relative Tax Burden	100.00%	0%	100.00%
School Tax Burden	\$33,904,402	\$0	\$33,904,402
Number of Pupils	4,300	0	4,300
Cost Per Capita	\$7,885	\$0	\$6,299
TOTAL GENERAL FUND	\$55,605,889	\$16,568,720	\$72,174,609
Source: FY 2014 Adopted Budget, City of Winchester, Virginia, Virginia Employment Commission, City of Winchester School Board, U.S. Census of Population, and S. Path & Assoc., Inc.			

B-2014-21

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 5/20/2014 **CUT OFF DATE:** 5/13/2014

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

ITEM TITLE: Resolution adopting the schedule of Council meetings during fiscal year 2015.

STAFF RECOMMENDATION: Adopt the resolution setting the meeting schedule to provide for a high performing City organization.

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. 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. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	<i>5/14/2014</i>
6. City Manager	<i>[Signature]</i>	_____	<i>5-13-14</i>
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: *[Signature]* *5/13/14*
Date



APPROVED AS TO FORM:
[Signature] *5/14/2014*
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Dale Iman, City Manager
Date: May 20, 2014
Re: Schedule of Council Meetings

THE ISSUE:

Is it the desire of Council to set a schedule for its regularly held meetings?

RELATIONSHIP TO STRATEGIC PLAN:

Develop a high performing City organization

BACKGROUND:

In the past, the City Council has adopted a resolution at the beginning of each fiscal year to set the meeting dates for the regular meetings according to City Code Section 2-24 and for the work sessions. This eliminates the need to advertise each meeting separately making a more efficient use of staff time.

BUDGET IMPACT:

None

OPTIONS:

1. Continue with the current practice of adopting the resolution at the beginning of each fiscal year.
2. Advertise each meeting separately as scheduled.

RECOMMENDATIONS:

It is recommended the Council adopt the resolution setting the schedule for regular meetings and work sessions.



THE COMMON COUNCIL

Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
540-667-1815
TDD 540-722-0782
www.winchesterva.gov

I, Kari J. Van Diest, Deputy Clerk of the Common Council, hereby certify on this 11th day of June 2014 that the following Resolution is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 10th day of June 2014.

RESOLUTION

WHEREAS, the Common Council of the City of Winchester, Virginia, finds it desirable to establish a schedule of its Regular Meetings for the period beginning July 1, 2014, and concluding June 30, 2015; and

WHEREAS, Section 15.2-1416 of the Code of Virginia, 1950, as amended, allows the said Council to also establish a schedule of alternate dates for each of said Regular Meetings so that in the event the Mayor (or Vice-Mayor, in the absence of the Mayor) declares that weather or other conditions are such that it is hazardous for the members to attend a scheduled Regular Meeting, then all hearings and other matters shall be conducted at the continued meeting with no further advertisement required.

NOW THEREFORE, BE IT RESOLVED that all meetings hereinafter described shall be conducted at Rouss City Hall, 15 North Cameron Street, Winchester, Virginia, beginning at 7:00 P.M. for the Regular Meeting and 6:00 P.M. for the Work Sessions; and

BE IT FURTHER RESOLVED that the following schedule of Regular Meetings is, hereby, adopted with the alternate or continued date appearing in parenthesis beside the date for each Regular Meeting:

Schedule of Regular Meetings

July 8, 2014	(August 5, 2014)
August 12, 2014	(September 2, 2014)
September 9, 2014	(October 7, 2014)
October 14, 2014	(November 4, 2014)
November 11, 2014	(December 2, 2014)
December 9, 2014	(January 6, 2015)
January 13, 2015	(February 3, 2015)
February 10, 2015	(March 3, 2015)
March 10, 2015	(April 7, 2015)
April 14, 2015	(May 5, 2015)
May 12, 2015	(June 2, 2015)
June 9, 2015	(July 7, 2015)

Schedule of Work Sessions

July 15, 2014	(August 5, 2014)
July 22, 2014	(August 5, 2014)
August 19, 2014	(September 2, 2014)
August 26, 2014	(September 2, 2014)
September 23, 2014	(October 7, 2014)
October 7, 2014	(October 7, 2014)
October 21, 2014	(November 4, 2014)
October 28, 2014	(November 4, 2014)
November 18, 2014	(December 2, 2014)
November 25, 2014	(December 2, 2014)
December 16, 2014	(January 6, 2015)
January 6, 2015	(January 6, 2015)
January 20, 2015	(February 3, 2015)
January 27, 2015	(February 3, 2015)
February 17, 2015	(March 3, 2015)
February 24, 2015	(March 3, 2015)
March 17, 2015	(April 7, 2015)
March 24, 2015	(April 7, 2015)
April 21, 2015	(May 5, 2015)
April 28, 2015	(May 5, 2015)
May 19, 2015	(June 2, 2015)
May 26, 2015	(June 2, 2015)
June 16, 2015	(July 7, 2015)
June 23, 2015	(July 7, 2015)

BE IT FURTHER RESOLVED that all advertisements for Public Hearings should reflect the alternate date.

Resolution No. 2014-XX.

ADOPTED by the Common Council of the City of Winchester on the 10th day of June 2014.

Witness my hand and the seal of the City of Winchester, Virginia.

*Kari J. Van Diest
Deputy Clerk of the Common Council*

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 05/27/2014 CUT OFF DATE: _____

RESOLUTION X ORDINANCE PUBLIC HEARING

ITEM TITLE: Refunds to Oasis Brands for Prorated Business License Taxes and to Winchester Emergency Physicians for Overpaid Business License Taxes

STAFF RECOMMENDATION: Approve

PUBLIC NOTICE AND HEARING:

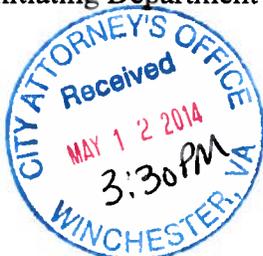
ADVISORY BOARD RECOMMENDATION:

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>JS</i>	_____	5/12/14
2. Treasurer _____	<i>Ph</i>	_____	5/12/2014
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>AW</i>	_____	5/14/2014
6. City Manager	<i>[Signature]</i>	_____	5-13-14
7. Clerk of Council	<i>[Signature]</i>	_____	5-15-14
Initiating Department Director's Signature: <i>Alice T. [Signature]</i>	_____	_____	05/12/14 Date



APPROVED AS TO FORM:

[Signature] 5/14/2014
CITY AT

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Ann T. Burkholder, Commissioner of the Revenue
Date: May 12, 2014
Re: Refunds for Prorated and Overpaid Business License Taxes

THE ISSUE: Two taxpayers have requested refunds of business, professional and occupational (BPOL) taxes paid.

RELATIONSHIP TO STRATEGIC PLAN: This is a matter of fair and equitable taxation, which relates to Goal 2: Create a high-performing City organization.

BACKGROUND: Code of the City of Winchester §27-8, in accordance with Code of Virginia §58.1-3981 requires City Council approval of any refunds in excess of \$2,500.00. Code of the City of Winchester §28-12 provides for refunds of BPOL taxes paid under certain circumstances.

1. Oasis Brands filed and paid for a business license for 2014, then relocated its business to another locality. The taxpayer has applied for a prorated refund to ensure the licensed privilege is taxed only for that fraction of the year during which it was exercised within the City.
2. Winchester Emergency Physicians PC filed and paid for a 2014 business license as if the physicians were still operating under its prior organizational structure. The office of the Commissioner of the Revenue has since made adjustments to reflect the current organizational structure. Pursuant to Code of the Winchester §28-12, the taxpayer has requested a refund for the over-reported and overpaid portion of the license tax.

BUDGET IMPACT: During budget planning, this office communicated to the Finance Department that a business was intending to move and that the relevant budget line item for revenue should be adjusted accordingly.

OPTIONS: When appropriate, the office of the Commissioner of the Revenue offers the option of either a credit on the account towards future taxes or a refund. In the case of Oasis Brands, a portion of the refund will be applied toward 2014 business tangible personal property taxes.

RECOMMENDATION: Pursuant to Code of the City of Winchester §27-8, the Commissioner of the Revenue respectfully requests that the City Council, with the consent of the City Attorney, authorize the Treasurer to issue these two refunds in the amounts certified by the Commissioner of the Revenue for each.

RESOLUTION

WHEREAS, Oasis Brands has requested a prorated refund of Business License Taxes for tax year 2014; and

WHEREAS, Winchester Emergency Physicians PC has requested a refund of over-reported and overpaid Business License Taxes for tax year 2014; and

WHEREAS, the office of the Commissioner of the Revenue has certified that each of these taxpayers has properly requested and is entitled to this refund; and

WHEREAS, the office of the Commissioner of the Revenue wishes to maintain accurate and equitable tax records.

NOW therefore be it RESOLVED, that Common Council hereby approves the refund of \$135,446 to Oasis Brands for prorated Business License Taxes and the refund of \$2,771.80 to Winchester Emergency Physicians PC for overpaid Business License Taxes; and directs the City Treasurer to refund said amounts together with any penalties and interest paid thereon.



Ann T. Burkholder, Commissioner of the Revenue
15 North Cameron Street
Winchester, VA 22601
Email: commrevenue@winchesterva.gov

Telephone: (540) 667-1815
FAX: (540) 667-8937
TDD: (540) 722-0782
Website: www.winchesterva.gov

Certificate of the Commissioner of the Revenue

Oasis Brands filed and paid for a 2014 business license in the City, then relocated its business to another locality. Pursuant to Code of the Winchester §28-12, the taxpayer has requested a prorated refund to ensure the licensed privilege is taxed only for that fraction of the year during which it was exercised within the City.

Pursuant to Code of the City of Winchester §27-8 and §58.1-3981 of the Code of Virginia, I certify that Oasis Brands is due a refund of \$135,446.00 for prorated Business License taxes.

Verified by Commissioner of the Revenue:

Ann T. Burkholder

Date:

05/12/14

Consent by City Attorney:

Anthony C. Williams

Date:

5/14/2014



Ann T. Burkholder, Commissioner of the Revenue
15 North Cameron Street
Winchester, VA 22601
Email: commrevenue@winchesterva.gov

Telephone: (540) 667-1815
FAX: (540) 667-8937
TDD: (540) 722-0782
Website: www.winchesterva.gov

Certificate of the Commissioner of the Revenue

Winchester Emergency Physicians PC filed and paid for a 2014 business license as if the physicians were still operating under its prior organizational structure. The office of the Commissioner of the Revenue has since made adjustments to reflect the current organizational structure. Pursuant to Code of the Winchester §28-12, the taxpayer has requested a refund for the over-reported and overpaid portion of the license tax.

Pursuant to Code of the City of Winchester §27-8 and §58.1-3981 of the Code of Virginia, I certify that Winchester Emergency Physicians PC is due a refund of \$2,771.80 for overpaid business license taxes.

Verified by Commissioner of the Revenue: 

Ann T. Burkholder

Date: 05/12/14

Consent by City Attorney: 

Anthony C. Williams

Date: 5/19/2014

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: May 20, 2014 **CUT OFF DATE:** _____

RESOLUTION X ORDINANCE PUBLIC HEARING

ITEM TITLE: Resolution to Authorize the City Manager to Sign Wide Area Network Contract with Conterra Fiber Solutions

STAFF RECOMMENDATION: Adopt Resolution

PUBLIC NOTICE AND HEARING: Non required

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: Included in current and proposed budgets

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. <u>Finance</u>	<u>B</u>		<u>5/13/14</u>
2. _____			
3. _____			
4. _____			
5. <u>City Attorney</u>	<u>[Signature]</u>		<u>5/14/2014</u>
6. <u>City Manager</u>	<u>[Signature]</u>		<u>5-15-14</u>
7. <u>Clerk of Council</u>	<u>[Signature]</u>		<u>5-15-14</u>
Initiating Department Director's Signature: <u>Thomas J. Flynn</u>			<u>5/13/14</u> Date



APPROVED AS TO FORM:
[Signature]
CITY ATTORNEY
5/17/2014

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Thomas Lloyd, Information Technology Director
Date: May 13, 2014
Re: **Wide Area Network Contract**

THE ISSUE: A new Wide Area Network contract to support Information Technology connectivity is required.

RELATIONSHIP TO STRATEGIC PLAN:

2014: Goal 2 Develop a High Performing Organization and support the IT Master Plan
2015: Goal 3 Develop a High Performing Organization and upgrade, increase the use of information technology to increase productivity and to engage the customer service

BACKGROUND:

The current contract with COMCAST expires in November 2014. City Schools and the City issued a joint Request for Proposals (RFP) for a new contract to provide a fiber optic wide area network with 1GB service to each of the Schools and City locations. The City has seven (7) connections. Two responsive proposals were received. Conterra was the lowest responsible respondent. Schools awarded their work in March 2014.

BUDGET IMPACT:

The wide area network is funded in the 2014 current and 2015 proposed budgets. The COMCAST proposal cost \$14,653.21 per month. The Conterra proposal cost \$6,083.00 per month. Conterra is amortizing the cost of construction over the five (5) year life of the contract. The City currently pays COMCAST \$6,650 per month for a lower bandwidth network that is limited to 1 GB total in the core.

OPTIONS:

There were two options coming out of the Request for Proposals process. Continue with COMCAST at a substantial increase in cost or move to Conterra and get more capability for slightly less cost.

RECOMMENDATIONS:

Approve the Resolution authorizing the City Manager to sign the contract with Conterra

COMMON COUNCIL



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
540-667-1815
TDD 540-722-0782
www.winchesterva.gov

RESOLUTION

Wide Area Network Replacement

WHEREAS, The City of Winchester needs to acquire wide area network services to replace an expiring contract; and

WHEREAS, The Winchester Public Schools and the City issued a joint Request for Proposal for a wide area network replacement contract; and

WHEREAS, Conterra Fiber Solutions was the lowest responsible respondent.

NOW, THEREFORE BE IT RESOLVED, by the Common Council of the City of Winchester that:

The City Manager is authorized to execute a contract for wide area network services with Conterra Broadband Services, LLC.



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Telephone: (540) 667-1815
FAX: (540) 722-3618
TDD: (540) 722-0782
Website: www.winchesterva.gov

CONTRACT
#T2014-02

THIS CONTRACT WAS MADE AND ENTERED INTO THIS 13th DAY OF MAY, 2014, BY AND BETWEEN CONTERRA BROADBAND SERVICES, LLC., 2101 REXFORD ROAD, STE. 200E, CHARLOTTE, NC 28211, F.I.N. OR S.S. NUMBER 58-2615152("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 T2014-02 (RFP #T2014-02"), DATED FEBRUARY 11, 2014, TO PROVIDE A SECURE, DEDICATED HIGH-SPEED NETWORK COMMUNICATION SERVICE AND RELATED GOODS OR SERVICES, AS MORE FULLY DESCRIBED AND REQUESTED WITHIN THE RFP, AND IS HEREBY FULLY INCORPORATED IN ITS ENTIRETY;

WHEREAS, CONTRACTOR HAS SUBMITTED A PROPOSAL IN RESPONSE TO THE RFP DATED MARCH 12, 2014, SIGNED BY MR. VAN E. SNOWDON, EXECUTIVE VICE PRESIDENT, WHICH STATES PRICING, QUALIFICATIONS, GOODS AND SERVICES, AND ARE HEREBY FULLY INCORPORATED IN ITS ENTIRETY;

WHEREAS, IF APPLICABLE, CONTRACTOR AND CITY HAVE NEGOTIATED COMPENSATION, TERMS AND CONDITIONS IN RESPONSE TO THE RFP, AND THE NEGOTIATION SUMMARY IS HEREBY FULLY INCORPORATED IN ITS ENTIRETY;

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

1. MAIN BODY OF THE CONTRACT;
2. NEGOTIATION SUMMARY;
3. CITY'S PROCUREMENT;
4. CONTRACTOR'S RESPONSE.

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 PROVIDE THE CITY THE SERVICES OUTLINED IN RFP #T2014- 02, WHICH IS INCORPORATED IN ITS ENTIRETY HEREIN BY REFERENCE. THE CITY SHALL PAY THE CONTRACTOR THE ASSIGNED PRICING. THE CONTRACTOR SHALL FORWARD AN INVOICE FOR SUCH WORK TO THE INFORMATION TECHNOLOGY DIRECTOR UPON INSPECTION AND ACCEPTANCE OF THE DELIVERED GOODS AND SERVICE DURING THE TERM OF THIS CONTRACT. THE

CITY SHALL PAY SUCH INVOICE 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 SIXTY (60) MONTHS FROM DATE OF SERVICE ACCEPTANCE AND INITIATION, OR IF THE CONTRACT IS TERMINATED IN WRITING BY EITHER PARTY. THE CITY RESERVES THE RIGHT TO CANCEL AND TERMINATE THIS CONTRACT, WITHOUT PENALTY, UPON TEN (10) DAYS WRITTEN NOTICE TO CONTRACTOR. THE PARTIES UNDERSTAND AND AGREE THAT THE CITY, AT ITS SOLE OPTION, MAY RENEW THIS CONTRACT FOR TWO (2) ADDITIONAL TWELVE (12) MONTH PERIODS.
3. APPLICABLE LAW AND VENUE: THE PARTIES AGREE THAT THIS CONTRACT FOR SERVICES SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH 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.
4. IF ANY PROVISION OF THIS AGREEMENT IS FOUND TO BE ILLEGAL, INVALID OR UNENFORCEABLE, THAT SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISION OF THIS AGREEMENT.
5. 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 #T2014-02. 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.

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS INSTRUMENT ON THE DATE INDICATED BELOW, WITH ONE (1) FULLY SIGNED ORIGINAL DELIVERED TO CONTRACTOR AND ONE (1) FULLY SIGNED ORIGINAL DELIVERED TO THE CITY.

CONTRACTOR

CITY OF WINCHESTER

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Negotiation Summary

This Negotiation Summary sets forth the terms and conditions under which CONTERRA will deploy and provide certain telecommunications and related services described herein (the "Services") for the CUSTOMER and CUSTOMER'S employees, agents and students. CONTERRA and CUSTOMER may be individually referred to herein as "party" or collectively as "parties."

DEFINITIONS

"Certification" shall mean the verification by CONTERRA, as acknowledged by CUSTOMER, that the Services meet the performance requirements set forth in Attachment A.

"Deficient Minutes" shall be the total number of minutes in a calendar month that are in excess of the number of minutes of path non-availability permitted by the terms of the Services level standards that CONTERRA is required to meet under the terms of this Agreement.

"Deficiency Credit" shall mean an amount equal to the total number of Deficient Minutes in the calendar month for which such Deficiency Credit is sought multiplied by a fraction of which the numerator is the Monthly Service Fee and the denominator is the number of minutes in the relevant month.

"Infrastructure" shall mean the CONTERRA-owned service delivery infrastructure deployed and maintained by CONTERRA and used in the provision of the Services to CUSTOMER. For purposes of this Agreement Infrastructure shall also include equipment.

"Service Locations" shall mean the location(s) specified in Attachment A at which Service and Infrastructure is deployed.

"Non-Recurring Charge" shall mean that portion of the total charge for the provision of the Services under this Agreement that is designated as the non-recurring charge listed on Attachment A for the use of the Infrastructure.

"Monthly Service Fee" shall, during the Initial Term and any extension hereof contemplated by Section 9 of this Agreement, mean the monthly service charge listed on Attachment A. Following the Initial Term and the expiration of any such extensions, the "Monthly Service Fee" shall mean the then current month-to-month service rate set by CONTERRA upon thirty (30) days prior written notice to CUSTOMER.

"Outage Event" shall mean any outage or other loss of the Services, other than any outage that (i) is not reported by CUSTOMER to CONTERRA within five (5) days of occurrence, (ii) is attributable to CONTERRA's scheduled network maintenance, (iii) is attributable to failure or outage of related telephone circuits (whether ordered by CONTERRA or CUSTOMER), (iv) results from CUSTOMER's applications, equipment or facilities, (v) results from any act or omission of CUSTOMER or any user of CUSTOMER's equipment or account, or (vi) is due to or occasioned by any riots, wars, acts of enemies, national emergency, acts of vandalism, strikes, floods, fires, hurricanes, tornados, acts of God, or by any other cause not within the control of CONTERRA that by the exercise of reasonable diligence CONTERRA is unable to prevent, (vii) results from CONTERRA not having been granted site access by the CUSTOMER, or (viii) results from CUSTOMER'S unauthorized use of equipment or the Services.

"Site Access" shall mean twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year ("24x7x365") access to CUSTOMER premise(s) provided to CONTERRA for routine or emergency maintenance of the CONTERRA network.

"Service Window" shall mean twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year ("24x7x365") where the services are being provided.

TERMS AND CONDITIONS

1. The Service, Deployment and Access.

- (a) The Services. Subject to and in accordance with the terms and conditions of the Agreement, CONTERRA shall provide to CUSTOMER at mutually-agreeable CUSTOMER'S designated locations the Services as defined in Attachment A hereto.
- (b) Deployment. CONTERRA, its agent(s) or contractor(s) shall schedule deployment meetings with the CUSTOMER. CONTERRA shall deploy the CONTERRA-owned service infrastructure. CUSTOMER's appointed representative must be present on a regular basis during deployment to be performed by CONTERRA. CONTERRA assumes no liability for files, data, or other information that may be lost on CUSTOMER'S computer system during the deployment process and to the extent allowable by law. After deployment and during the term of this Agreement, CUSTOMER shall provide CONTERRA with 24x7x365 access (with reasonable notice to the CUSTOMER when possible) to CUSTOMER'S premise(s) to inspect, repair and maintain CONTERRA's infrastructure. Upon termination or expiration of this Agreement, or disconnection of the Services, CUSTOMER shall be obligated to return the equipment to CONTERRA or to provide CONTERRA with access to CUSTOMER'S premise(s) to recover such equipment as CONTERRA in its sole discretion shall decide. CONTERRA shall not be held liable for, nor will CONTERRA restore or reconfigure the CUSTOMER'S new or existing network components after de-deployment. Even if the equipment (or any portion of the Infrastructure) is or becomes physically attached in any manner to real estate at the Service Location (including any building on such real estate), in no event will the Infrastructure be deemed to be affixed to or as a part of such real estate. Rather, the Infrastructure is and shall remain CONTERRA's personal property. For purposes of clarification, upon the termination or expiration of this Agreement, there shall be no equipment (except for fiber), left in Service Locations used for the provision of service for other customers. In addition, CUSTOMER grants to CONTERRA a non-exclusive right to deploy transmission cables and lines between the Infrastructure and between the Service Locations in connection with CONTERRA's use, maintenance, and operation of the Infrastructure. CONTERRA may use the Infrastructure and real property for any activity compatible with the conduct of CONTERRA's business for the CUSTOMER. CONTERRA may make any substitutions to or modifications of the Infrastructure as it determines may be necessary or compatible with the conduct of CONTERRA's business for the CUSTOMER. In addition, CONTERRA may lease space on its fiber to a third party. For purposes of clarity CONTERRA shall not use any equipment located within a Service Location for the provision of service to a third party without the express permission of the CUSTOMER.
- (c) Governmental Approval. CONTERRA shall use commercially reasonable efforts to procure, process, or to receive any governmental licenses, permits, consents or approvals necessary for the deployment of the Infrastructure ("Authorizations"). CUSTOMER shall cooperate fully with CONTERRA in order to secure any such Authorizations. In the event that CONTERRA is unable to secure any such Authorizations within a reasonable time and at a reasonable cost (as determined by CONTERRA in its reasonable judgment), CONTERRA may terminate this Agreement by notifying CUSTOMER. All work hereunder which is required by the law of the state within which CUSTOMER is located to be performed by a licensed contractor shall be performed by an appropriately licensed contractor.
- (d) Changes in Deployment. Attachment A includes network design that CONTERRA has determined is necessary to provide the Services to CUSTOMER as required by this Agreement. In the event that CUSTOMER requests that CONTERRA modify that design then CUSTOMER shall be responsible for all costs and related charges associated with any such request. CONTERRA shall only change the design referenced in Attachment A in response to a properly authorized written directive from CUSTOMER.

- (e) Change Order. Any changes requested or required by the CUSTOMER that differ from the network design specified in Attachment A must be properly authorized in a written directive from CUSTOMER. CUSTOMER shall pay, as a relocation or reconfiguration fee, CONTERRA's actual out-of-pocket cost and the cost of all labor and services of any such relocation or reconfiguration ("Costs") plus an additional twenty percent (20%) of the Costs.
- (f) Scalable Broadband Services. CONTERRA's network may be expanded to include additional locations and capacity increased at any time during the term of this Agreement to meet CUSTOMER's requirements. CUSTOMER shall request specific service upgrades based on pricing quoted at time of request. CUSTOMER may add sites (subject to changes in pricing and/or fees) at any time during the term of this Agreement.

2. CONTERRA Service Levels, Support, Maintenance and Indemnification.

- (a) Availability Commitment. CONTERRA custom engineers each network solution up to 99.99% availability. CONTERRA shall use commercially reasonable efforts to maintain Services availability for the CUSTOMER 100% of the time, except during Outage Events. At CUSTOMER's request, CONTERRA shall calculate the Deficiency Credit for any calendar month. CONTERRA shall credit to CUSTOMER's account as a refund the Deficiency Credit upon written request by CUSTOMER.
- (b) Latency Commitment. CONTERRA's goal is for round-trip transmissions between designated end-points to average eight (8) milliseconds or less except during Outage Events ("Latency Commitment"). The foregoing Latency Commitment is measured by averaging sample measurements taken during the Service Window between hub routers. Upon written request of CUSTOMER, for each minute in the Service Window during a calendar month for which CONTERRA fails to satisfy its Latency Commitment, CONTERRA shall credit to CUSTOMER's account as a refund the total number of latency minutes divided by the total number of minutes during the Service Window in that month.
- (c) Packet Loss Commitment. CONTERRA's network packet loss between designated end-points shall be limited to 0.1% or less each day except during Outage Events ("Packet Loss Commitment"). Packet loss is measured by standard, industry-accepted methods and measured during the Service Window between designated end-points. Upon written request of CUSTOMER, for each minute in the Service Window for which CONTERRA fails to satisfy its Packet Loss Commitment during a calendar month, CONTERRA shall refund the total number of minutes where there was a packet loss of more than 0.1% divided by the total number of minutes during the Service Window in that month.
- (d) CUSTOMER Reporting Commitment. CONTERRA shall provide CUSTOMER at least forty-eight (48) hours advance notice of scheduled outages for network maintenance. The standard weekly maintenance window is Monday through Sunday from 1:00 a.m. to 6:00 a.m. local time. Notice of other scheduled maintenance outages will be provided to CUSTOMER's designated point of contact by telephone, e-mail, fax, or pager as elected by CONTERRA.
- (e) Credit Limit. In no event shall CUSTOMER's total credits for any calendar month exceed the Monthly Service Fee.
- (f) CONTERRA Support. CONTERRA shall repair or replace any Infrastructure not functioning in accordance with CONTERRA'S published specifications for the Services. CONTERRA shall not provide technical support, maintenance, repair or deployment service for CUSTOMER's software, hardware or equipment unless CONTERRA, in its sole discretion, agrees to do so in a separate written contract. CUSTOMER support will be available on a commercially reasonable basis via telephone, via electronic mail or through CONTERRA's Internet site (www.conterra.com) ("Internet Site"). Telephone numbers for such CUSTOMER support are posted on the CONTERRA Internet Site and are included in Section 7 of this Agreement. If CUSTOMER'S use of their software, hardware or equipment requires that CONTERRA visit CUSTOMER'S premises for assistance, repair, deployment or connection, CONTERRA shall be entitled to charge CUSTOMER CONTERRA's then prevailing labor rates and related costs for each such visit, and CUSTOMER agrees to pay CONTERRA such charges. CONTERRA does not undertake to correct or repair, and shall have no responsibility for the correction or repair of, software, hardware or equipment that CONTERRA does not supply. CONTERRA

- will undertake commercially reasonable network management, traffic analysis, operational procedures and user policies to support the service level standards provided in this Section 2.
- (g) CONTERRA Response Times. CONTERRA shall provide a CUSTOMER support service contact point. CONTERRA shall respond within an average of four (4) hours to any CUSTOMER notification, made to this contact point, of any failure of any Infrastructure to meet CONTERRA'S published specifications for the Services.
- (h) Indemnification. CONTERRA agrees to indemnify and hold harmless CUSTOMER, and its board members, employees, agents and representatives (collectively, "CUSTOMER Indemnities") against any and all costs, claims, liabilities or expenses that any of the CUSTOMER Indemnities may incur as a result of, or arising out of, or related to CONTERRA'S willful, negligent, tortious or criminal acts or omissions. In the event of any claim, which, if true, would be subject to indemnification hereunder, CUSTOMER or the affected CUSTOMER Indemnities shall notify CONTERRA and CONTERRA shall cooperate in their defense at CONTERRA's cost and expense.

3. CUSTOMER'S Obligations.

(a) Payment.

- i. *Monthly Service Fee*. CONTERRA shall invoice CUSTOMER each month in advance for a Monthly Service Fee as shown in Attachment A of this Service Agreement. CUSTOMER shall pay the Monthly Service Fee within thirty (30) days of the invoice. If applicable, CONTERRA will invoice CUSTOMER on a per site basis until all sites are operational.
 - ii. *CUSTOMER Ultimately Responsible*. NOTWITHSTANDING ANYTHING TO THE CONTRARY, CUSTOMER IS RESPONSIBLE FOR PAYMENT OF ALL FEES.
 - iii. *Failure To Pay*. If CUSTOMER fails to pay the Monthly Service Fee within thirty (30) calendar days of the due date, CONTERRA may impose a late fee or disconnect the Services, or both, in its sole discretion. CUSTOMER shall pay CONTERRA such late fees. CONTERRA's late payment fee shall be five (5%) of the Monthly Service Fee.
 - iv. *Re-connect*. If CUSTOMER disconnects the Services or if CUSTOMER'S Services are disconnected due to nonpayment or other breach of this Agreement, and if CONTERRA subsequently agrees to reconnect the Services, CUSTOMER may be charged a fee for reconnecting and redeploying the Services. Such fee shall be equal to one hundred percent (100%) of the then applicable Monthly Service Fee.
 - v. *Charges for other services or goods*. From time to time CUSTOMER may decide to select additional services or purchase additional goods offered by CONTERRA or by third parties. The Monthly Service Fee does not cover any such services and goods, and the CUSTOMER shall be charged separately for them. CUSTOMER agrees to pay for such other services and goods that it selects or purchases.
 - vi. *Taxes*. CUSTOMER shall pay all federal, state and local taxes, fees, charges, surcharges or similar exactions imposed on the Services and/or products that are subject of this Agreement including but not limited to state and local sales, use and gross receipts taxes (collectively, "Taxes").
- (b) Current address and information. CUSTOMER is required, and agrees, to keep CONTERRA notified in a timely manner of any changes in the information CUSTOMER provides to CONTERRA, including information provided when CUSTOMER initiates use of the Services.
- (c) Assignment or Sharing of Service. CUSTOMER may not resell, share, sublicense or otherwise distribute the Services, or any portion thereof, to any third party without the prior written consent of CONTERRA.
- School/Facility Closure. CUSTOMER shall immediately notify CONTERRA if CUSTOMER becomes aware that the school or
- (d) facility governed by the Agreement will be closed prior to the term of the Agreement or any extension. CUSTOMER has the duty to notify CONTERRA as soon as CUSTOMER receives such information. CUSTOMER shall be responsible for all costs and fees associated with the school or facility through the end of Agreement or any extension thereof.

4. CUSTOMER'S Warranties, Representations and Indemnification.

- (a) Warranties and Representations. CUSTOMER warrants and represents that CUSTOMER shall use the Services only for the originally intended purpose(s), in accordance with this Agreement, all FCC rules and regulations, and all applicable laws, and CUSTOMER shall make all payments required herein plus any and all applicable Taxes. CUSTOMER warrants that all funds due from CUSTOMER hereunder have been allocated for the uses contemplated in this Agreement or if they have not been allocated, CUSTOMER believes that such funds will be allocated, that there is no current basis to believe that such funds will not be allocated and that CUSTOMER has taken every necessary step to assure the availability of CUSTOMER funds hereunder.
- (b) CUSTOMER Indemnification. To the fullest extent allowed by law, CUSTOMER agrees to indemnify and hold harmless CONTERRA, its subsidiaries and affiliates, assigns and the members, officers, directors, employees, contractors, agents and representatives of CONTERRA and its subsidiaries and affiliates (together "CONTERRA Indemnities") against any and all costs, claims, liabilities or expenses any of the CONTERRA Indemnities may incur as a result of, or arising out of, or related to: (i) CUSTOMER'S breach of this Agreement or of CUSTOMER'S warranties and representations made herein; (ii) CUSTOMER'S willful, negligent, tortious or criminal acts or omissions; (iii) any improper use of CUSTOMER'S password, name or user name; or (iv) CUSTOMER'S violation of any third party's rights. In the event of any claim, which, if true, would be subject to indemnification hereunder, CONTERRA or the affected CONTERRA Indemnities shall notify CUSTOMER and CUSTOMER shall cooperate in their defense at CUSTOMER'S sole cost and expense. As part of CUSTOMER'S indemnification obligations, CUSTOMER shall reimburse CONTERRA for any costs that CONTERRA incurs, including complaint fees charged by jurisdictional authorities, network or service providers, and investigation expenses, due to complaints filed regarding CUSTOMER'S activity (or activity for which CUSTOMER is responsible) in using the Services.

5. CONTERRA's Ownership of Service Infrastructure, Hardware and Appurtenances.

The Infrastructure, hardware and appurtenances (to include, but not limited to, fiber optic cabling and apertures) to be located on CUSTOMER premises by CONTERRA to provide the Services under this Agreement are, and shall remain, the property of CONTERRA. Additionally, such of these items as CONTERRA may request shall be returned to CONTERRA in good and working condition upon the termination or expiration of this Agreement, or the disconnection of CUSTOMER'S Services. CUSTOMER shall use reasonable care to avoid damaging any and all Infrastructure and hardware components of the CONTERRA deployment, and shall not alter, modify, sell, license, lease, assign, encumber, relocate, move or tamper with any of the same. Additionally, CUSTOMER shall be responsible for all costs of repair or replacement of items returned damaged or in poor working condition due to CUSTOMER's negligence or failure to properly care for said Infrastructure, hardware or appurtenances.

6. Contact Us.

- (a) Notices. All notices, invoices and other communications required or permitted under the Agreement shall be in writing and shall be deemed to have been given only if and when: (i) personally delivered (including by means of a messenger service), or (ii) by United States first class mail postage prepaid (preferably registered, certified or return receipt requested), or (iii) when delivered (and receipted for) by an overnight delivery service, in each case addressed to the address set forth in the first paragraph of the Agreement.
- (b) Billing Information, Questions or Concerns. If CUSTOMER has questions or concerns or simply would like more information about the costs CUSTOMER might incur in using the Services or with CUSTOMER'S particular account, CUSTOMER may contact CONTERRA at 1.877.365.6701.
- (c) General Information. For general information about CONTERRA and CONTERRA's services, CUSTOMER may visit the CONTERRA Internet Site or contact CONTERRA at 1.877.365.6701.

- (d) CUSTOMER Support and Service. For CUSTOMER service and support, CUSTOMER may contact CONTERRA via telephone, via electronic mail or via the CONTERRA Internet Site. CUSTOMER shall visit the CONTERRA Internet Site for up-to-date contact information.

7. Disclaimers and Limitation of CONTERRA's Liability.

- (a) CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT (i) THE SERVICES, SOFTWARE, DATA AND ANY OTHER SERVICES, SOFTWARE OR INFRASTRUCTURE PROVIDED BY CONTERRA UNDER THE AGREEMENT ARE NOT GUARANTEED TO BE ERROR FREE, UNINTERRUPTED, SECURE OR ALWAYS AVAILABLE OR AVAILABLE WITH SUFFICIENT CAPACITY EXCEPT AS DEFINED ELSEWHERE IN THE AGREEMENT; (ii) THE USE OF THE SERVICES, THE INTERNET, AND ANY SOFTWARE OR INFRASTRUCTURE PROVIDED BY CONTERRA IS AT CUSTOMER'S SOLE RISK; AND (iii) ANY AND ALL CONTERRA SERVICES AND PRODUCTS ARE PROVIDED "AS IS AND AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN WARRANTIES WHICH CANNOT LEGALLY BE EXCLUDED. CONTERRA MAKES NO WARRANTY THAT THE SERVICE WILL WORK ON CUSTOMER'S PARTICULAR COMPUTER, NETWORK OR COMPUTER SYSTEM EXCEPT AS DEFINED BY THE IEEE STANDARD 802.3 DEFINING THE PHYSICAL LAYER AND TRANSPORT LAYER OF ETHERNET. CUSTOMER FURTHER EXPRESSLY ACKNOWLEDGES AND AGREES THAT (i) CONTERRA SHALL HAVE NO RESPONSIBILITY FOR DAMAGE OR DESTRUCTION TO CUSTOMER'S COMPUTER OR NETWORK SYSTEM, DATA, INFORMATION OR INFRASTRUCTURE UNLESS THROUGH NEGLIGENCE ON BEHALF OF CONTERRA; (ii) CONTERRA HAS NO RESPONSIBILITY WHATSOEVER FOR ANY THIRD PARTY CONTENT, DATA, INFORMATION, PROGRAMS OR OTHER MATERIAL THAT CUSTOMER MAY USE WITH OR ACCESS USING THE SERVICES; (iii) IT IS SOLELY THE CUSTOMER'S RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS AND USEFULNESS OF ALL OPINIONS, ADVICE, SERVICES, MERCHANDISE AND OTHER INFORMATION PROVIDED THROUGH THE SERVICE OR ON THE INTERNET GENERALLY; AND (iv) EXCEPT FOR ISSUES ARISING OUT OF CONTERRA'S MATERIAL DEFAULT OF THE AGREEMENT, IN NO EVENT SHALL CONTERRA BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, ACTUAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS OF ANY KIND WHATSOEVER) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DEPLOYMENT, USE, MAINTENANCE, FAILURE, REMOVAL OR OPERATION OF THE SERVICES, SOFTWARE OR INFRASTRUCTURE PROVIDED BY CONTERRA, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF CONTERRA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER AND IN SUCH STATES OR OTHER JURISDICTIONS CONTERRA'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- (b) SUBJECT TO THE FOREGOING, CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT (i) CONTERRA'S MAXIMUM LIABILITY TO CUSTOMER UNDER THE AGREEMENT OR ARISING OUT OF OR RELATED TO THE SERVICES WILL BE THE AGGREGATE AMOUNT CUSTOMER HAS ACTUALLY PAID TO CONTERRA FOR THE SERVICE; (ii) CONTERRA HAS ESTABLISHED ITS PRICING FOR THE SERVICES AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES; AND (iii) THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS TELECOMMUNICATIONS SERVICE AGREEMENT SHALL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED THEIR

ESSENTIAL PURPOSE. THE FOREGOING IS SUBJECT ONLY TO THE SPECIFIC SERVICE LEVEL STANDARDS AND REMEDIES SET FORTH IN SECTION 2 ABOVE.

8. Term and Termination.

- (a) Extension of Term of Agreement. The initial term or any subsequent term, may be extended by exercising any of the following options:
- (i) CUSTOMER has the option to extend for one (1) period of up to five (5) years ("Extension Term"), through the provision of written notice to CONTERRA not less than ninety (90) days before the Expiration Date or the end of the Extension Term. The Monthly Service Fee shall be adjusted as of the first day of any Extension Term (the "Adjustment Date") so that the Monthly Service Fee shall be increased, but not decreased, by the percentage increase of the Consumer Price Index ("CPI") as measured from the CPI published for January in the calendar year of the commencement of the Service Term to the CPI published for January in the calendar year of the Adjustment Date. The new Monthly Service Fee shall be in effect for the entire Extension term.
 - (ii) During an extension term CUSTOMER may terminate such term upon ninety (90) days written notice to CONTERRA.
- (b) Termination by CUSTOMER for convenience. The parties acknowledge and agree that if the CUSTOMER terminates this Agreement or an underlying service in whole or in part, CUSTOMER shall pay the 100% of all remaining monthly costs and fees of the original 60 month Agreement term. In such event this Agreement will terminate on the last day of the fiscal period for which commitments were received.
- (c) Termination by CUSTOMER for cause. If CONTERRA repeatedly and persistently fails to substantially provide the Services as required by the terms of this Agreement, CUSTOMER may terminate this Agreement by written notice to CONTERRA. CUSTOMER shall give CONTERRA thirty (30) days written notice of such intention to terminate and an opportunity to cure any such default. In the event that CONTERRA cures during that thirty (30) day period, then CUSTOMER may not terminate this Agreement. Further, in the event CONTERRA fails to cure, the Customer shall pay 100% of remaining monthly costs through the thirty (30) day cure period.
- (d) Termination by CONTERRA. If CUSTOMER breaches this Agreement, and following a minimum ninety (90) day written notice to CUSTOMER, CONTERRA reserves the right in its discretion to suspend or terminate this Agreement and to disconnect the Services, in whole or in part, with just cause as provided for by this Agreement, and providing the cause has been fully declared to the CUSTOMER, allowing the CUSTOMER the ninety (90) days to cure said cause. CUSTOMER shall pay the 100% of all remaining monthly costs and fees.
- (e) Termination by CONTERRA. If CONTERRA is unable to secure, lease, or provision required permitting and/or easements under reasonable terms and conditions as determined in the sole discretion of CONTERRA, and this site is essential to providing the Services, CONTERRA may terminate this Agreement.

9. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia without regard to its conflict of laws principles.

10. Mediation. To the extent allowed under Virginia law, in the event of an alleged breach of the Agreement by CONTERRA or CUSTOMER or in the event of any other dispute arising out of the Agreement and involving CONTERRA and CUSTOMER such breach or dispute initially shall be submitted to nonbinding mediation prior to the institution of any litigation. The parties agree to utilize the services of a retired judge, or other qualified mediator mutually acceptable to both parties.

11. Miscellaneous.

- (a) Entire Telecommunications Service Agreement. Contract T2014-02 constitutes the entire agreement between the parties on the subject matter hereof and may be amended or modified solely by written agreement signed by each of the parties hereto.
- (b) No Third Party Beneficiaries. Contract T2014-02 is not intended to confer and does not confer any rights or remedies upon any person or entity other than the parties to the Agreement and the CONTERRA Indemnified Parties.
- (c) Severability. If any part of Contract T2014-02 is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties and the remaining portions shall remain in full force and effect.
- (d) No Assignment. CUSTOMER or CONTERRA may not assign Contract T2014-02 and may not be assigned in whole or in part without CUSTOMER and CONTERRA's prior written consent.
- (e) CUSTOMER Contact. CUSTOMER shall designate a Representative who shall have the authority to represent and bind the CUSTOMER in all of its dealings with CONTERRA, and shall serve as a contact person in the event that CONTERRA needs to contact the CUSTOMER for any reason. Representative's contact information is as follows:

Name: _____

Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

- (f) Replacement of CUSTOMER Representative. In the event that CUSTOMER replaces Representative, it shall appoint a new Representative and provide CONTERRA written notice of such change and the new Representative's contact information within five (5) days.
- (g) Site Specific Services. The Services are provided to the sites initially selected by CUSTOMER and reflected on Attachment A. CUSTOMER may not transfer the Services to another location without CONTERRA's prior written consent (even if CUSTOMER moves to a new place of business).
- (h) Information Availability. CONTERRA shall have no obligation to make any specific information, data, service, programs, newsgroups or other material available through the Services and may block any such material in its sole discretion.
- (i) Policies. CONTERRA's Conflict of Interest Policy in Attachment D are incorporated herein and are an integral part of this Service Agreement.
- (j) Remedies Non-Exclusive. Wherever a remedy is expressly provided to CONTERRA hereunder, such remedy is intended to add rather than to restrict all of CONTERRA's remedies in law and equity.
- (k) No Waiver. If CONTERRA fails, at any time, to enforce any right or remedy available to it under Contract T2014-02, that failure will not be construed to be a waiver of the right or remedy with respect to that or any other breach or failure by CUSTOMER. Any waiver must be in writing and signed by CONTERRA.

ATTACHMENT A

City of Winchester

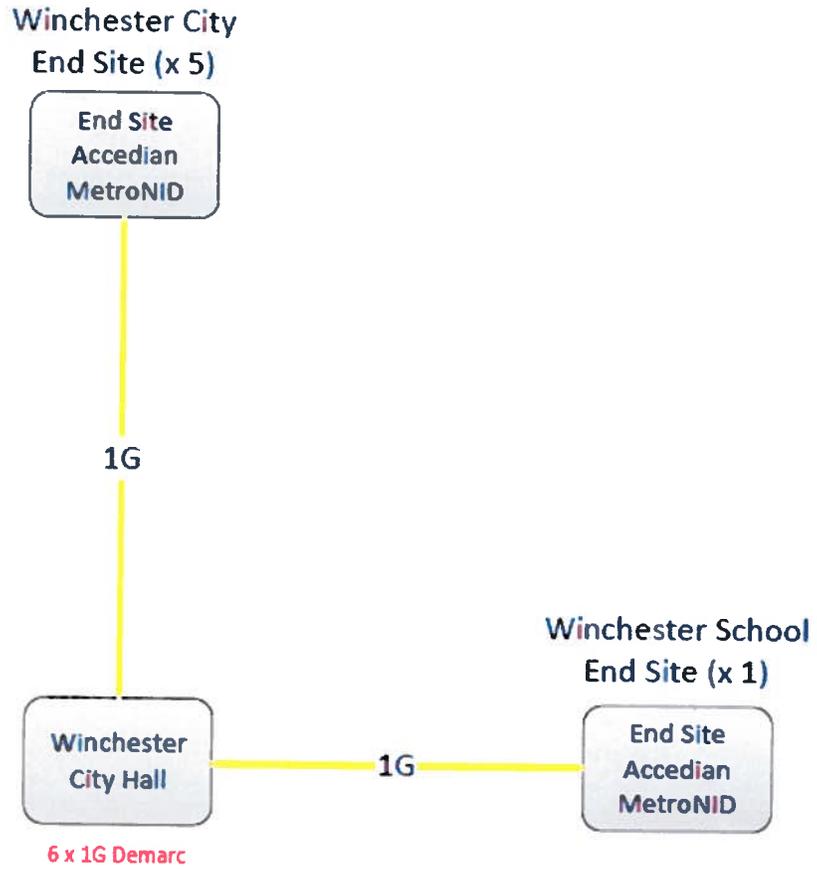
Narrative Description: Wide Area Network (WAN) Service including 1Gbps Connections for 7 sites. This service complies with the Schools and Libraries Division's Wide Area Network (WAN) Fact Sheet.				
Quantity	Product or Service Description	Unit Cost (per location)	Extended Cost	
			Monthly Recurring	Non-Recurring
7	1 Gbps Wide Area Network Services (per month)	\$869.00	\$6,083.00	\$0.00

Service Locations				
Name of Site	Address	City	State	Zip
Rouss City Hall	15 N Cameron St.	Winchester	VA	22601
Timbrook Public Safety Center	231 E Piccadilly St.	Winchester	VA	22601
War Memorial	1001 E Cork St.	Winchester	VA	22601
City Yards	301 E Cork St.	Winchester	VA	22601
Joint Judicial Center	5 N Kent St.	Winchester	VA	22601
Social Services	24 Baker St.	Winchester	VA	22601
Winchester Public Schools	12 N Washington St.	Winchester	VA	22601

ATTACHMENT B

NETWORK DESIGN

Network Design subject to change upon final engineering.



ATTACHMENT C

The prices in this contract are based on the following assumptions:

- IT Director and/or Superintendent have authority to approve work plans and infrastructure locations.
- CUSTOMER provides assistance and support for zoning and building permits as required by the local municipalities.
- CUSTOMER provides site access as required by CONTERRA personnel and contractors and provides contact names, phone numbers, fax numbers and e-mail addresses.
- CUSTOMER provides AC plug on their existing UPS at each service location, or a single outlet 15 amp receptacle is required.
- CUSTOMER provides connectivity between CONTERRA and CUSTOMER's equipment with a standard Layer 2 interface in the form of an electrical Ethernet RJ45. This point of demarcation (demarc) is to be located at CONTERRA's direction within eight (8) feet of Conterra infrastructure.
- CUSTOMER provides a free and clear path from the exterior of the building to interior infrastructure location(s) for all coaxial cable and other necessary cable/wire runs including, but not limited to, building penetrations, inside conduit and proper authorizations from the building owner.
- CUSTOMER provides unobstructed access to the grounds and cabling runways for infrastructure location and construction regardless of building ownership. Infrastructure may include, but not be limited to fiber mounting structures, cabinets and wall racks.
- Interior environmental conditions conducive to the proper operations of electronics infrastructure.
- CUSTOMER's existing back-up power supply, where available, accepts Conterra's infrastructure.
- All Change Orders will be billed at cost plus 20% and are borne by the CUSTOMER.

ATTACHMENT D



Conflict of Interest Policy

POLICY STATEMENT:

Conterra Ultra Broadband, LLC, a South Carolina limited liability company (the "Company") has confidence in the loyalty, dedication, and integrity of all its employees. It is important to recognize, however, that even the appearance of a conflict of interest may be just as damaging to the Company's reputation as a real conflict. This policy (the "Policy") addresses actual and perceived conflicts of interest which might arise in the course of an employee's duties and activities. Employees who engage in business or professional activities outside the Company should ensure that these activities do not interfere with their obligations to the Company. Employees should not personally gain any advantage at the expense of the Company or its reputation.

GUIDELINES:

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in a personal gain for that employee, a relative, a close personal relationship, or a related organization as a result of Company business dealings. Examples of personal gain include, but are not limited to, the following:

- Accepting money or gifts for service performance as part of one's job is strictly forbidden.
- Participating in the selection, award, or administration of a contract, purchase or lease where an actual or perceived conflict of interest exists.
- Participating in any Company deliberation or decision that may result in a direct benefit to the employee or to anyone with whom the employee has a close personal relationship or to any organization of which the employee is an officer, director or trustee.
- Receiving any fee, honorarium or other payment for activities related to the scope of an employee's work at the Company (other than Company compensation or reimbursement of out-of-pocket expenses). These payments should be paid to the Company, and if received directly by an employee should be turned over to the senior financial officer of the Company.
- Purchasing or selling of Company property or other goods or services which the employee could use or might appear to have the opportunity to use, for personal gain,
- Using confidential information or proprietary knowledge gained as a result of his/her relationship with the Company for personal gain.

To avoid conflicts of interest and any conduct which may suggest the appearance of any impropriety, and comply with Company policy and any applicable state and federal laws governing conflict of interests, all employees must decline receiving or offering gifts of any type from its E-Rate (or related government program) customers. Company does recognize, however, that situations may arise when it would be appropriate to accept a gift, gratuity (from a vendor) or an award. Employees must receive approval from their manager prior to engaging or agreeing to any such activity. Such non E-rate related situations include:

- Reasonable business expenses at lunch, dinner, or business meetings with present or prospective customers and suppliers when the return of the expenditure on a comparable basis is likely to occur and would be properly chargeable as a business expense.
- Awards given by charitable, educational, civil, or religious organizations for meritorious contributions or service.

**Winchester Public Schools
City of Winchester**

Request for Proposal

Network Communications Services

WPS RFP T2014-02

Due by 2:00 PM March 12, 2014

February 11, 2014

TABLE OF CONTENTS

	<u>Section</u>
Introduction and Purpose	A
Scope of Services	B
Selection Procedures	C
Submittal Requirements	D
Evaluation Criteria and Selection Process	E
Questions	F
Special Terms and Conditions	G
General Terms and Conditions	H
Contract	I
Appendices	
A	Site Locations
B	Service Options
C	Pricing

A. INTRODUCTION AND PURPOSE

INTRODUCTION:

The City of Winchester (City), founded in 1744, is the oldest Virginia City west of the Blue Ridge Mountains. Located at the northern entrance to the Shenandoah Valley, the City is the medical, commercial governmental and financial center for the surrounding area.

The City encompasses 9.3 square miles and is located at the crossroads of U.S. Highways 11, 17, 50, 522, Interstate 81 and State Route 7. Interstate 66, terminating 11 miles south of the City at Interstate 81, provides a third transportation artery to Washington, D.C., 72 miles to the southeast. The City's 2007 population was estimated at 26,000 with 7,650 single family attached and detached homes and over 4,000 multi-family dwelling units.

PURPOSE:

Winchester Public Schools (Schools) and the City of Winchester (City) seek one (1) qualified contractor to provide secure, dedicated high-speed network communication service between their various sites. The intent is to provide communication services that will enhance educational and administrative activities throughout the city. This wide area network (WAN) service should be capable of accommodating present needs and be adaptable to meeting future needs of the City and Schools.

The City and Schools are separate entities cooperating on this RFP to provide such services using a consistent and uniform infrastructure throughout the city. All costs and fees associated with city links and the link joining the Schools and city segments will be billed to the City. All costs and fees associated with the Schools links will be billed to the Schools. Separate agreement documents showing the service sites and associated fees will be issued to the Schools and to the City. The service provider must be properly registered for participation in the Schools and Libraries Program of the Universal Service Fund (E-Rate), and the Schools segment design and implementation must qualify under current federal Universal Service program requirements. Appendix A lists the City and Schools sites to be included in the service.

The current contract expires in November of 2014 and the communication services received under this request for proposals will be fully tested and operational no later than October 1, 2014.

This Request for Proposal (RFP), plus the resulting agreement, shall be consistent with, and governed by the Act, the Virginia Public Procurement Act (VPPA).

TECHNOLOGY ENVIRONMENT:

City and Schools sites are currently linked via a physical star topology fiber network owned by the current vendor. The star emanates from the Network Operations Center (NOC) at the School Board's Central Administration Offices at 12 N. Washington St., Winchester, Virginia. The current vendor furnishes communication services by providing and managing vendor owned network devices with options for fiber or twisted-pair connections to City or Schools owned Cisco layer 2 switches. The current logical network design allows for the City and Schools to share resources while maintaining separate edge firewalls. This logical design is facilitated by the current physical infrastructure which provides a point to point connection from 12 N. Washington St. to 1001 East Cork Street.

PRE-PROPOSAL CONFERENCE:

None scheduled.

SCHEDULE OF EVENTS:

The following summarizes the Schools' and City's desired timeline of events for this project:

- | | | |
|----|-----------------------------------|--|
| 1. | RFP Distribution | February 11, 2014 |
| 2. | Proposal Submissions Due (Part I) | March 12, 2014 at 2:00P.M.(local time) |
| 3. | Interviews (Optional) | March 2014 |
| 4. | Award of Contract | March 2014 |
| 5. | Begin Project Implementation | TBD |
| 6. | New System Fully Operational | October 1, 2014 (no later than) |

CONTRACT TERM

The contract term shall be for a period of sixty (60) months from date of service acceptance and initiation or if the Contract is terminated in writing by either party. The Schools and City reserve the right to cancel and terminate this Contract, without penalty, upon ten (10) days written notice to contractor. The parties understand and agree that the Schools and City, at its sole option, may renew this Contract for two (2) additional twelve (12) month periods.

B. SCOPE OF SERVICES

1. **GENERAL OVERVIEW:** The City and Schools are seeking communications services that provide high speed connectivity between their various sites. The City and Schools are separate entities cooperating on this joint RFP to provide such services using a consistent and uniform infrastructure throughout the city. The project includes the system design/engineering, and any construction that may be necessary to establish and maintain the service. The proposal provided to the Schools and City must include all labor, materials, equipment and accessories required to furnish, configure, install, and integrate a complete wide area network connection. The minimum required throughput is 1,000 Mbps. The Schools office is currently the primary hub for termination of all physical connections
2. **CONTRACTOR AND EMPLOYEE QUALIFICATIONS:** Contractor shall be an established network provider within the industry for at least five (5) years and provide the personnel, experience, and technical knowledge in providing a quality, high speed network communication service for governmental entities, consultation services, technical support, credible maintenance and warranty services. The assigned Project Manager shall be capable of performing and supervising all services for the Schools and City with at least ten (10) years of experience within the industry.
3. **QUALITY OF WORKMANSHIP:** All work shall be of the highest quality and performed according to the standards of the industry and to the satisfaction of the Schools and City. Contractor shall guarantee all work and implement safeguards to avoid dishonest assessments, unacceptable performance, irregular service and erroneous data. The contractor shall provide all personnel with a complete set of specifications and schedules to ensure all required services are complete. All labor, tools, equipment, and supplies shall be provided by the contractor and shall meet all applicable local, state and federal standards.
4. **DESIGN AND PERFORMANCE OF THE CONTRACTOR'S WAN SOLUTION:** Minimum requirements include the following:
 - a. The proposal provided to the Schools/City under this section must include all labor, materials, equipment and accessories required to furnish, configure, install, and

integrate a complete wide area network connection. The Schools and City require the contractor to provide and install an integrated, robust, wide area network connection with the following minimum specifications:

- i. A fiber based 1 gigabit (1000Mbps full duplex) fiber optic (Ethernet capable) connectivity (minimum) for each Schools and City site. See Appendix A for site locations.
 - ii. All sites shall terminate with a minimum fiber gigabit Ethernet handoff at each location. The site demarc shall be determined by Schools' and City technical staff. All site connections currently terminate at the Schools' NOC at 12 N Washington St.
 - iii. Schools shall continue maintaining central administrative control of Schools' networks through the current internal firewall ASA 5585-X, 6509 core switch, and ASA 5520 external firewall cluster.
 - iv. City shall maintain central administrative control at City Hall, 15 North Cameron Street, Winchester, VA 22601.
 - v. The circuits shall be capable of carrying multiple data services such as various computer applications, digital video and Voice over IP, etc. Proposals should address quality of service or other factors deemed important to support multiple data communication services.
 - vi. An uptime guarantee of 99.95% or better shall be provided. The plan for reporting outages and a minimum response time after an outage is reported should be addressed in the proposal. Network outage resolution should be coordinated with the Schools and City technical staff.
 - vii. All vendor equipment installed shall be under repair maintenance at no cost to the Schools and City for the life of the contract agreement. Any special environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in the proposal, should any such requirements be applicable.
 - viii. As required, any associated equipment racks, digital equipment, power conditioning, data cabling, and termination equipment shall be provided by the service provider. The awarded service provider shall own and maintain any and all equipment required up to point of handoff at the existing demarc locations.
 - ix. A detailed "as-built" network diagram will be provided to Schools and City prior to the operational date of October 1, 2014. The diagram and any supporting documentation shall show physical network connections down to the jack, patch panel, and switch port level as it relates specifically to the Schools/City locations. This documentation shall also show the technology used for network traffic transport, technology used to secure network traffic in transit, and any redundant paths to the Internet.
- b. The City requests an optional proposal, including costs, to terminate all City remote connections at 15 N. Cameron St, either physically or logically. See Option A in Appendix B
 - c. The City requests an optional proposal, including costs to add four additional sites. See Option B in Appendix B.

5. **SERVICE EXPECTATIONS, DELIVERABLES AND ACCEPTANCE:** The Schools and City and the successful contractor shall each assign a single point of contact in order to improve the quality and communication of the required services and deliverables. The successful

contractor shall have sufficient technical knowledge, resources, and staff to respond and perform the following:

- a. Implementation and Installation Services:
 - i. All labor, supervision, quality control, equipment, transportation, and materials shall be included in the implementation of the network
 - ii. System installation for both software and hardware shall be completed by October 1, 2014, including test period. At the Schools' or City's sole option and in writing, the Information Technology Director or designee may extend this date.
 - iii. On-site "Go Live" support will be required. **It is imperative that all business functions carry on as normal when we go live.**
 - iv. Upon installation, the Contractor shall certify the network communication network is fully operational. A test of the new system shall be conducted with representatives from Schools and/or City Technology staff and upon successful completion, acceptance of the system may be signed. If acceptance cannot be made, the Schools or City will continue to retain 5% of the total project cost until completion of the system can be verified and tested. See Contract Administration section for acceptance time lines.
 - v. The vendor is responsible to obtain all necessary right of ways and permits for this project. During the term of this contract, any changes in the routing of the fiber cable due to city or county infrastructure changes and/or requirements will be the responsibility of the vendor at no expense to the Schools or City.
 - vi. Any and all site inspections and/or site or service work shall be coordinated with Schools and/or City Technology staff.
- b. Technical Support:
 - i. The Schools and City shall require access to technical support services twenty-four (24) hours a day, seven (7) days a week. Technical support shall be made available by a toll-free phone number. If the Schools or City notifies the successful firm that a work stoppage has occurred and becomes critical that services are restored, the Schools and City shall require a response time of two (2) hours.
- c. Warranty and Guarantee:
 - i. Minimum requirements shall be governed by the Code of Virginia, Section 8.2 including:
 1. Goods or services furnished as a result of this bid shall be covered by the most favorable commercial warranties, expressed or implied, that offeror and/or the manufacturer give to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the Schools or City by any other clause of this bid. The Schools and City reserve the right to request from bidders a separate manufacturer certification of all statements made in the bid proposal or supplemental information.
 2. Guarantee: Coordination and administration of ALL warranty work for the network shall be the responsibility of the Contractor. All warranty registrations and serial number information shall be filled out by the Contractor and mailed to all manufacturers of components that comprise the requested bid, with copies being provided upon delivery to the Information Technology Directors or designee.

6. **CONTRACT ADMINISTRATION:**
 - a. The Schools and City each will assign an Owner's Representative to be the Contract Administrator for their respective contracts and they may authorize a designee delegated to perform these duties as outlined: ordering, monitoring of progress, review and acceptance, quality assurance, invoice payment and scheduling of services.
 - b. Acceptance:
 - i. The Schools and City have ten (10) business days from time of completion to accept the project work and ensure compliance to all City specifications, and state and federal laws.
 - ii. If work is rejected in whole or in part due to poor quality or workmanship then Schools or City shall outline in writing the problem and notify the Contractor.
 - iii. Time requirement:
 1. When the Contractor is notified in writing by the Schools or City of non-acceptance, the Contractor shall have five (5) business days to correct the problem. The Owner Representatives or designee may extend this period if agreed upon in writing by both parties.
 - c. Contract Officer:
 - i. For Schools shall be: Steven R. Muller, Director of Technology, 12 N. Washington Street, Winchester, VA 22601. Phone 540-667-4253. Duties include: making decisions for dispute resolution, administering change orders and amendments, executing supplemental agreements, and authorizing contract renewal.
 - ii. For City shall be: Steven Corbit, Purchasing Agent, Finance Department, 15 N. Cameron Street, Winchester VA 22601. Phone 540-667-2378. Duties include: making decisions for dispute resolution, administering change orders and amendments, executing supplemental agreements, and authorizing contract renewal.
7. **ADDITIONAL SERVICES (TASK ORDERS):** Additional task order assignments beyond the initial project work may be required as the Schools or City believe it to be in their best interests and the functionality network.

C. **SELECTION PROCEDURE**

This Request for Proposals is divided into two parts:

- Part I - Written Submission of Proposed WAN solution; and
- Part II - Interviews and Presentations from Part I short-listed firms, only.

In general, the selection of a firm will be conducted by the following process:

PART I

1. Proposed WAN solution will be submitted in the form defined under Submittal Requirements (Section D).
2. An Evaluation Committee, composed of Schools and City Staff, will evaluate and rank all firms.
3. Firms will be evaluated and ranked in accordance with the Part I – Evaluation Criteria (Section E).

PART II

1. Based on the results of the process to this point, the highest ranked firms will be invited to make a presentation to the Evaluation Committee.
2. The Evaluation Committee will complete the final evaluation and rank the firms as set forth in Evaluation Criteria (Section E), in order to select one (1) firm whose proposed system and services are deemed most meritorious per Virginia Code §2.2-4301.

D. SUBMITTAL REQUIREMENTS

1. GENERAL INSTRUCTIONS:

- a. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original hardcopy, one (1) original electronic copy in .pdf format and two (2) copies of the original hardcopy are to be submitted in a sealed envelope bearing the company name, mailing address, the RFP name, the RFP number, the date and the time due mailed or delivered to: Winchester Public Schools Attn: Steve Muller, Technology Department, 12 N Washington St. Winchester VA 22601.
- b. **Proposals must be received NO LATER THAN March 12, 2014 at 2:00 PM LOCAL TIME.**
- c. Late Proposals: It is the responsibility of the firm to insure the Schools' Director of Technology receives the submittal by the proposal due date and time. Late Proposals will be returned to offeror unopened, if the container is properly identified with the firm's return address.
- d. No other distribution of the proposal shall be made by the offeror. Offerors must clearly label the original with the word "ORIGINAL" on the cover and must clearly label all copies with the word "COPY" on the cover.

2. PROPOSAL PREPARATION:

- e. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the Schools' Director of Technology requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- f. Proposals shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content. Avoid excessive content and unrelated work samples.
- g. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material.

Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

- h. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- i. Limit your Proposal to a maximum of **thirty (30) total pages**, to include **ALL** exhibits, resumes, letters, attachments, and enclosures. Dividers are allowed and will not count towards your 30 pages.
- j. Ownership of all data, materials and documentation originated and prepared for the Schools and City pursuant to the RFP shall belong exclusively to the Schools and City and be subjected 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 the public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of §2.24342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

2. **PART I - SUBMITTAL CONTENT:** Written proposals shall contain the following information presented in the following order:

- a. List the three (3) most relevant projects completed or contracted by the firm within the last five years that demonstrates similar services outlined within the Scope of Work. Include short descriptions, dates, Service Provider Identification Number (SPIN) and FCC Registration Number (FRN) and client references (include client contact person, address and phone number) of these representative projects. The Schools and City prefer to see local government projects and comparable projects in the K-12 customer market that will outline the complexity of similar work.
- b. Summary qualification of the organization. At a minimum, provide the following information (if proposal includes a solution from more than one vendor, supply this information for all vendors): Number of employees, Number of active installations of the proposed software/system, Number of new customers acquired over the past twenty-four (24) months, Number of customers lost over the past twenty-four (24) months, Annual research and development budget, and five (5) year Technology Roadmap for your company.
- c. Summary qualifications of key individuals (and office location for each) to be assigned to the work. A Principal In-Charge or Project Manager must be assigned. Full resumes may be attached as an appendix. Resumes must exhibit qualifications and experience of the individual in the type of work to be conducted with emphasis on similar projects.
- d. List the outside services to be used. Describe the anticipated scope of work by sub-consultants and how they will be coordinated. Specific names of sub-consultants are

not required, but preferred at this time. The intent of this section is to ascertain what outside services the firm will require.

- e. Firm shall confirm in writing that they are not currently on any debarment or suspension list of any local, state or federal government. Any firm found to be listed shall be rejected as non-responsive to this RFP.
- f. Furnish a detailed background of your company's knowledge and experience in the installation of a network communication system, in particular a local government wide area network.
- g. Provide a detailed description of the methodology and understanding of the project applications, equipment, software, hardware and systems being offered or required for the complete, turn-key solution.
- h. Acknowledgment that a detailed "as-built" network diagram will be provided to Schools and City. The diagram and any supporting documentation shall show physical network connections down to the jack, patch panel, and switch port level as it relates specifically to the Schools/City locations. This documentation shall also show the technology used for network traffic transport, technology used to secure network traffic in transit, and any redundant paths to the Internet.
- i. The proposal should include a description of how the vendor will monitor service and performance and make associated reports of usage available to the Schools and City.
- j. Complete and return Appendix C: Pricing. **Appendix C will be the sole vehicle for determination of price.** In addition, provide itemized pricing for Schools and City by site as part of proposal document. Separate pricing and agreement documents shall be provided for the Schools and the City. Provide an itemized listing of all unit cost prices for your proposed system, including but not limited to: software, hardware, licenses, installation, implementation, conversion, peripherals, and training required to implement your solution. Ensure any additional unit costs for goods or services are incorporated within your pricing proposal. Outline all recurring fees, fixed rates, processing fees and hourly rates to be used to complete the Scope of Services. Extra charges and fees will not be looked at favorably so ensure accurate rates. Monthly Service Price: Provide your firm's monthly service rate and any monthly recurring rates that will apply. No extra charges will be allowed.
- k. The proposal should include a listing of equipment to be provided and a discussion of network architecture including diagrams. Cisco is the standard internetworking equipment currently in use.
- l. Enclose a detailed, comprehensive project time line, including but not limited to: design/start-up phase, implementation phase, milestones, and all other time related task(s). Assume the project kick-off would begin March 2014 and develop the timeline from there. On-site "Go Live" support will be required. In your proposal, please address specifically how you will support Schools and City staff as we go live with the new system. Also indicate what support is available to Schools and City staff the first month after we go live. **It is imperative that all business functions carry on as normal when we go live.**

- m. Define your firm’s ability to provide account management, network maintenance and technical support. Please advise the following, but answers do not need to be limited to: service plans, your technician credentials, support hours, best method of contact, quality assurance, call and response tracking, frequency and scheduling of software updates, resource library and training materials, and training classes for software updates or new employees. Please include a copy of the vendor’s applicable service level agreement (SLA) with respect to both account management and network maintenance and technical support.
- n. Contract documents should be submitted for review with the bid. Separate contract documents should be submitted for Schools and City. The Schools are under time constraints related to qualifying for Universal Service funds and, upon approval of the school board, desires to move quickly to secure services.
- o. Provide your most favorable warranty and guarantee documentation.
- p. Verify that required insurance coverage is available (*insurance certificates need not be submitted until the award stage*).

3. PART II – SUBMITTAL CONTENT (Optional Presentation and Interview of only the short-listed firm(s) selected by the Evaluation Committee)

- a. Each short-listed firm shall summarize the capabilities and performance of the firm and the proposed methodology and system to meet the needs of the Schools and City. The presentation shall introduce the assigned staff to the account, depict how staff will be organized to accomplish the work, outline quality assurance and showcase technical knowledge. The Schools and City will further assess the firm’s availability of resources, industry knowledge, ability to meet timelines, system compatibility and quality control procedures. Question and answer period will follow.

E. EVALUATION CRITERIA

Each member of the Evaluation Committee will individually evaluate each firm on the basis of the following criteria. Upon the Evaluation Committee’s group meeting, the Evaluation Committee members may individually rescore the firms and the Purchasing Agent will then develop a composite ranking of each firm and rank the firms from first to last.

PART I - Evaluation Criteria

Score (Pts):

▪ System installation price and monthly rate	30
▪ Understanding and capability to meet needs	15
▪ Prior experience providing solutions of similar scale	15
▪ Prior experience with educational and governmental agencies	10
▪ Time to implement	15
▪ System Design and Performance	15

PART II - Evaluation Criteria

- Final adjustments to Part I criteria scores may be made by the Evaluation Committee upon conclusion of the presentations, onsite demonstrations, interviews and any additional information and sources.
- Three (3) references may be interviewed before the Evaluation Committee selects the top firm to begin negotiations.

- Compensation:** Offeror will not be compensated for the cost of proposal preparation whether or not an award is consummated.
- Investigations:** The Evaluation Committee may make such reasonable investigations, as it deems proper and necessary to determine the ability of the firm to perform the work. The Evaluation Committee and/or its representative(s) reserves the right to inspect the firm's physical premises prior to award to satisfy questions regarding the firm's capabilities.

F. QUESTIONS

Questions regarding this solicitation must be submitted in writing at least five (5) days prior to the proposal due date. The Schools will issue a written addendum to any inquiries that alter the scope of the proposal. Questions and responses will be posted in the vendor section of the Schools' website at <http://www.wps.k12.va.us/vendors/index.cfm>. All other contacts with Schools or City personnel concerning this solicitation are discouraged. Submit inquiries via e-mail to mullers@wps.k12.va.us.

G. SPECIAL TERMS AND CONDITIONS:

For purposes of this RFP, "City" or "City of Winchester" in the Special Terms and Conditions section means Winchester Public Schools and the City of Winchester

1. **AWARD:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The City of Winchester may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the City of Winchester determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.
2. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the City of Winchester reserves the right granted by § 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.
3. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for three (3) years after final payment, or until audited by the City of Winchester, whichever is sooner. The City, its authorized agents, and/or City auditors shall have full access to and the right to examine any of said materials during said period.

4. **COOPERATIVE PROCUREMENT:** Any successful Bidder/Offeror, may at its sole discretion, allow any public body, locality, authority, agency, and school board of the Commonwealth to participate in the Bid/Proposal for the purpose of combining requirements to increase efficiency or reduce administrative expenses.
5. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the City of Winchester will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the City of Winchester or any agency or institution of the Commonwealth has purchased or uses its products or services.
6. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for ninety (90) days. At the end of the ninety (90) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
7. **LIQUIDATED DAMAGES, GOODS AND NONPROFESSIONAL SERVICES:** Delivery is required not later than October 1, 2014. It is understood and agreed by the bidder/offeror that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of \$1,000.00 per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of the City of Winchester, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.
8. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the City of Winchester's satisfaction at the contractor's expense.
9. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the City of Winchester. Request a scheduled meeting to inspect each site.
10. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
11. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Agent or designee. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the Purchasing Agent or designee the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
12. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owner's representative that the work is fully operational and in compliance with contract

specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.

13. **PRODUCT INFORMATION:** The bidder/offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the City of Winchester to determine if the product and service offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.
14. **CONFIDENTIALITY (City):** The City agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the City.
15. **CONFIDENTIALITY (Contractor):** 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. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.
16. **EQUIPMENT ENVIRONMENT:** Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.
17. **NEW EQUIPMENT:** Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment.
18. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
19. **SOFTWARE UPGRADES:** The City shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the City's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
20. **EXCESSIVE DOWNTIME:** Should the Network availability not meet the 99.95 % uptime guarantee on a weekly basis, the contractor agrees to pro-rate the weekly services charges. availability requirement
21. **OPERATIONAL COMPONENTS:** Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.
22. **RENEWAL OF CONTRACT:** This contract may be renewed by the City of Winchester for two (2) one-year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the City of

Winchester's intention to renew shall be given approximately ninety (90) days prior to the expiration date of each contract period.

- a. If the City of Winchester elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the Service category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
 - b. If during any subsequent renewal periods, the City of Winchester elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the Service category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
23. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the City of Winchester by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.
24. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The City reserves the right to require proof of certification prior to award and at any time during the term of the contract.
25. **RELOCATION OF EQUIPMENT:** Should it become necessary to move equipment covered by the contract to another location, the City reserves the right to do so at its own expense. If contractor supervision is required, the City will provide prior written notice of the move at least thirty (30) days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the City. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.
26. **WORK ESTIMATES (TIME AND MATERIAL CONTRACTS):** Under this time and material contract, the contractor shall furnish the agency with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the agency determines that the estimated price is not fair and reasonable, the agency has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the agency reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

H. CITY OF WINCHESTER REQUIRED GENERAL TERMS AND CONDITIONS:

For purposes of this RFP, “City” and “City of Winchester” in the General Terms and conditions section means Winchester Public Schools and the City of Winchester

- A. APPLICABLE LAWS AND COURTS
- B. ANTI-DISCRIMINATION
- C. ETHICS IN PUBLIC CONTRACTING
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF BIDDERS/OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. SEVERABILITY OF CONTRACT
- P. CHANGES TO THE CONTRACT
- Q. DEFAULT
- R. TAXES
- S. USE OF BRAND NAMES
- T. TRANSPORTATION AND PACKAGING
- U. INSURANCE
- V. ANNOUNCEMENT OF AWARD
- W. DRUG-FREE WORKPLACE
- X. NONDISCRIMINATION OF CONTRACTORS
- Y. AVAILABILITY OF FUNDS
- Z. LICENSES AND PERMITS
- AZ. TERMINATION
- BZ. HOLD HARMLESS INDEMNIFICATION
- CZ. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION
- DZ. 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:
 - a. 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.
 - b. 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.
 - c. 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.
- E. **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.
- F. **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.
- G. **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.
- H. **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.
- I. **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 (5) working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent or designee.

J. **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 thirty (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 (1%) 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.

K. **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

- L. **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.
- M. **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.
- N. **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.
- O. **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.
- P. **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 and School Board. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of a bidder/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.
- Q. **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.
- R. **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.
- S. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offers) 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/offers) 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/offers) 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.
- T. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offers) 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.
- U. **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 Contractors	\$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
	(Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2008 - \$2,000,000. This complies with §8.01-581.15 of the <i>Code of Virginia</i> .)
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

- V. **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 Schools and City will publicly post such notice on their respective websites for a minimum of ten (10) days.
- W. **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.

- X. **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.
- Y. **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.
- Z. **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.
- AZ. **TERMINATION:**
- a. 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.
 - b. 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.
- BZ. **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.

- CZ. **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 identifiable information as part 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.
- DZ. **BID PRICE CURRENCY:** Prices are to be stated in US dollars unless otherwise specified in the solicitation.

Appendix A: Site Locations

City of Winchester Locations

Existing Connections		Notes
Rouss City Hall	15 North Cameron Street	1
Timbrook Public Safety Center	231 East Piccadilly Street	
War Memorial	1001 East Cork Street	
City Yards	301 East Cork Street	
Joint Judicial Center	5 North Kent Street	
Social Services	24 Baker Street	
Winchester Public Schools	12 North Washington Street	2
Prospective Connections (Option B)		
South End Fire Station # 5	17 West Monmouth Street	
Friendship Fire Station # 1	627 North Pleasant Valley Road	
Shawnee Fire Station # 4	2210 Valor Drive	
Rouss Fire Station # 2	3 South Braddock Street	
Notes:		
1. Provide an option to terminate all City connections at Rouss City Hall (Option A)		
2. Links Schools and City's Networks		

Winchester Public Schools Locations

Central Administrative Offices	12 North Washington Street	Notes
John Handley High School	425 Handley Boulevard	
Daniel Morgan Middle School	48 South Purcell Avenue	
Virginia Ave. Charlotte DeHart Elementary School	550 Virginia Avenue	
John Kerr Elementary School	536 Jefferson Street	
Garland Quarles Elementary School	1310 South Loudoun Street	
Frederick Douglass Elementary School	100 Cedarmeade Avenue	
Douglas Community Learning Center	598 North Kent Street	

Appendix B: Service Options

Option A: Termination of All City Links to Rouss City Hall

Current service terminates all links to the School's NOC at 12 N. Braddock Street. With this option, School sites will still terminate here. Costs for the City should be adjusted to provide for the City's links to terminate in the IT department NOC at Rouss City Hall, 15 N. Cameron St.

Option B: Additional City Sites

This option should provide the City with the costs of adding and operating links to the following additional site. Please quote 1Gb as well as alternate bandwidth options. Traffic to these sites will be minimal:

Prospective Connections (Option B)

South End Fire Station # 5	17 West Monmouth Street
Friendship Fire Station # 1	627 North Pleasant Valley Road
Shawnee Fire Station # 4	2210 Valor Drive
Rouss Fire Station # 2	3 South Braddock Street

Appendix C: Pricing

**WINCHESTER PUBLIC SCHOOLS
REQUEST FOR PROPOSAL
NO. T2014-02
Due By 2:00 PM March 12, 2014**

Network Communications Services

FOR PROVIDING ALL NECESSARY LABOR, EQUIPMENT AND MATERIALS TO DO THE WORK AS SET FORTH IN THE PROPOSAL AND SPECIFICATIONS AND AT THE FOLLOWING PRICE:

Provider's complete pricing as described herein:

Schools' Total Installation	
School's Monthly Fee for All Sites	
City's Total Installation	
City's Monthly Fee for All Sites	
Total Cost Adjustment to City: Option A	
Total Cost for City: Option B	

(Provide itemized pricing for Schools and City by site as part of proposal document. Separate pricing and agreement documents shall be provided for the Schools and the City.)

INDICATE THE NAME AND TELEPHONE NUMBER OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS BID.

PROVIDER NAME: _____

TAX I.D. NO. (EIN, SSN): _____

FRN #: _____ **SPIN#:** _____

ADDRESS: _____

CITY/STATE/ZIP: _____

SIGNED BY: _____

Company Principal/Authorized Signature

PRINT NAME & TITLE: _____

TELEPHONE NUMBER: _____

EMAIL: _____

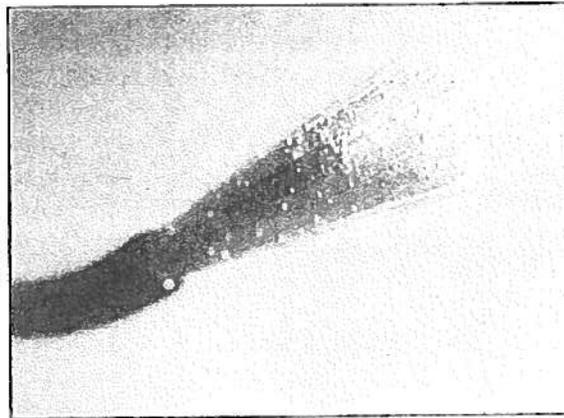


**Winchester Public Schools
City of Winchester, VA**

March 12, 2014

Original
Proposal Response

**WPS RFP T2014-02
Network Communications Services**



HELPING AMERICA GET UP TO SPEEDSM



Proposal Validity Period- The information and pricing contained in this proposal is valid for a period of 180 days from the date on the proposal cover page unless extended in writing by Conterra Broadband Services, LLC.

Terms and Conditions- Unless otherwise stated herein, this proposal is conditioned upon negotiation of mutually acceptable terms and conditions.

Copyright Notice and Statement of Confidentiality- *Conterra Broadband Services*, *Conterra Fiber Solutions* and *Helping America Get Up to Speed* and all other Conterra marks contained herein are trademarks of Conterra and or affiliated companies. The contents of this document are unpublished, proprietary, and confidential and may not be copied, disclosed, or used, in whole or part, without the express written permission of Conterra Broadband Services, LLC or affiliated companies, except to the extent required by law and insofar as is reasonably necessary in order to review and evaluate the information contained herein.



Contacts and Corporate Information

[REDACTED]
Executive Vice President
704-936-[REDACTED]

[REDACTED]@conterra.com

[REDACTED]
Senior Account Executive

[REDACTED]@conterra.com

Corporate Offices

2101 Rexford Rd Suite 200E
Charlotte, North Carolina 28211
704.936-1800
877.365.6701 toll-free
704.936-1801 fax
www.conterra.com

Conterra Broadband Services, LLC
Incorporated 1996
South Carolina LLC
Federal ID # 582615152
SPIN # 143025700
FCC RN # 009750324
Form 499: Filer ID# 823694

TABLE OF CONTENTS

Letter of Transmittal

Section 1: Executive Summary

Section 2: Bid Forms

Section 3: Part I- Submittal Content

Section 4: Pricing Proposals

Section 5: Appendices

- A. Service Contract Agreement**
- B. Conterra RFP Exceptions**
- C. Conterra Construction Overview**
- D. Web Monitoring Application**
- E. Customer Training and Orientation**
- F. Company Safety Overview**
- G. Accedian Network Interface Overview**
- H. Insurance Certification**
- I. Audited Financials**



2301 Rexford Road
Suite 200 East
Charlotte, NC 28211

March 12, 2014

Winchester Public Schools
Attn: Steve Muller
Technology Department
12 N Washington Street
Winchester, VA 22601

RE: WPS RFP T2014-02

Thank you for the opportunity to respond to your Request for Proposal for Network Communications Services. Conterra Broadband Services proposes to replace your current oversubscribed low bandwidth network with a [redacted] wire speed to all locations. The proposed network is scalable upon demand [redacted] at any location without further supplemental construction. We have future proofed your network costs today.

Note: The service will be delivered over [redacted] will be utilized.
[redacted]
[redacted]
ensure all entities receive [redacted] service.

We have designed the network [redacted] district. Conterra will provide a [redacted]

The Company

Conterra Broadband Services, LLC ("Conterra"), d.b.a. **Conterra Fiber Solutions**, is a national provider of facilities-based broadband services for K-12, government and healthcare entities, telecom carriers, and select enterprises. Conterra and its subsidiaries currently provide high-speed Ethernet services to over [redacted] high-speed broadband service [redacted] and broadband "backhaul" service for [redacted]

Conterra has provided high-speed wide area network service to these school districts in Virginia: [redacted], utilizing the Federal E-Rate program.

In addition, Conterra provides both network communications services for the [redacted] and for their various government agencies. We have recently completed a [redacted] network for the [redacted] the contract to provide like services to the [redacted]



We specialize in providing dedicated managed optical fiber solutions for multi-site wide area networks that include the system design, engineering, deployment, service, maintenance and on-going monitoring of the network.

The Winchester Public Schools and City Offerings

Conterra will provide a state-of-the-art private, [REDACTED] Layer 2 Ethernet network connecting all locations [REDACTED]. Highlights of the offering are:

- No [REDACTED]
- 100% E-Rate eligible service
- Dedicated [REDACTED] connecting all locations
- [REDACTED] directly into each entity's equipment room (demarc)
- Bandwidth wire line speed of [REDACTED] all locations. No oversubscription of bandwidth
- The Ethernet service is scalable [REDACTED] at any location with no additional construction, making this WAN scalable with the district's requirements

Turn-Key Network:

- Professional Design, Network Engineering, Deployment, Systems Integration and Project Management
- Turn-up, Testing and Training
- Includes all equipment racks, digital equipment, data cabling, and associated termination equipment as required
- Network Operations and Command and Control Monitoring
- On-site Maintenance for the Term of the Contract

Conterra Customer Support

- Network Operations Center (NOC) located in Charlotte, NC with backup in Lancaster, PA
- 24 hours a day, 7 days a week, 365 days a year customer support
- Local Conterra field technicians and engineering support
- 4 hour guaranteed on-site repair
- 99.99% network end-to-end service level availability
- Web based portal allows district personnel to monitor key network metrics such as bandwidth, latency, and jitter measurements

Highly Experienced Management Team

Conterra brings together a team of industry veterans focused on delivering top-quality services to our customers. Conterra's management team is comprised of seasoned optical fiber and data networking executives with world class qualifications to engineer, design, deploy and operate carrier grade Ethernet networks.

Financial Stability

Conterra's owners include: The Goldman Sachs Group, Inc. ("**Goldman Sachs**"), GE Capital Equity Investments, ("**GE Capital**"), and Duke Energy Corporation ("**Duke**"), America's largest utility company.

Pricing Options:

1. **Option A: City and/or School Networks**
 - o [REDACTED] speed to all sites.
 - o [REDACTED] speed to all sites.
2. **Option B: City + Firehouses**
 - o [REDACTED] to all sites.
 - o [REDACTED] speed to all site
3. **Option C: City + Schools**
 - o [REDACTED] speed to all sites.
 - o [REDACTED] speed to all site
4. **Option D: City + Schools + Firehouses**
 - o [REDACTED] speed to all sites.
 - o [REDACTED] speed to all site

Prices quoted are based upon the procurement of all locations and will remain in effect for a period of 180 business days after the scheduled bid opening. The district may extend the terms of the contract as mutually agreed upon. We acknowledge receipt of all posted amendments to this solicitation.

Conterra represents and warrants that it has met the requirements of this Request for Service in all matters affecting performance of the services and that the proposal. Conterra agrees to comply with the Fair Labor Standard Act, Equal Opportunity Employment Act, and all other applicable Federal, State and Local laws, regulations and executive orders to the extent that the same may be applicable. Conterra looks forward to the opportunity for further discussions with district personnel.

Offered by,



Van E. Snowdon
Executive Vice President
vsnowdon@conterra.com
704.936.1803 office
704.516.5988 mobile
704.936.1801 fax

Appendix A: Site Locations

City of Winchester Locations

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Appendix C: Pricing

WINCHESTER PUBLIC SCHOOLS
 REQUEST FOR PROPOSAL
 NO. T2014-02
 Due By 2:00 PM March 12, 2014

Network Communications Services

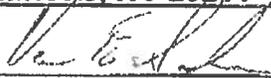
FOR PROVIDING ALL NECESSARY LABOR, EQUIPMENT AND MATERIALS TO DO THE WORK AS SET FORTH IN THE PROPOSAL AND SPECIFICATIONS AND AT THE FOLLOWING PRICE:

Provider's complete pricing as described herein: (See attached Pricing Sheets for Bandwidth Options)

Schools' Total Installation	[REDACTED]
School's Monthly Fee for All Sites	[REDACTED]
City's Total Installation	[REDACTED]
City's Monthly Fee for All Sites	[REDACTED]
Total Cost Adjustment to City: Option A	[REDACTED]
Total Cost for City: Option B	[REDACTED]

(Provide Itemized pricing for Schools and City by site as part of proposal document. Separate pricing and agreement documents shall be provided for the Schools and City.)

INDICATE THE NAME AND TELEPHONE NUMBER OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS BID.

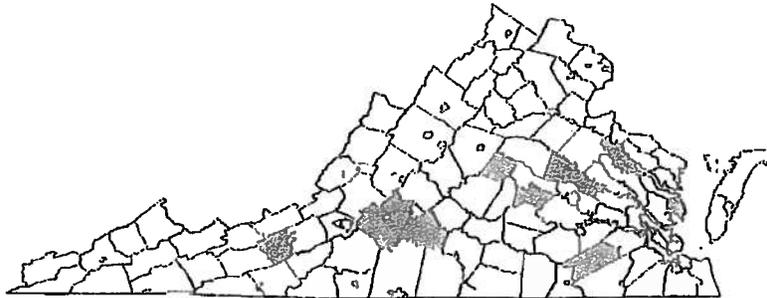
PROVIDER NAME: CONTERRA BROADBAND SERVICES
 TAX I.D. NO. (EIN, SSN): 58-2615152
 FRN #: 0009750324 SPIN#: 143025700
 ADDRESS: 2101 Rexford Road, Suite 200E
 CITY/STATE/ZIP: Charlotte, NC 28211
 SIGNED BY: 
Company Principal/Authorized Signature
 PRINT NAME & TITLE: Van E. Snowdon / Executive Vice President
 TELEPHONE NUMBER: 704-936-1803
 EMAIL: vsnowdon@conterra.com

EXECUTIVE SUMMARY

The Company

Conterra Broadband Services, LLC ("Conterra"), d.b.a. **Conterra Fiber Solutions**, is a national provider of facilities-based broadband services for K-12, healthcare and government entities, telecommunications carriers, and select enterprises that require bandwidth intensive, carrier-grade data, video and voice transport services. Conterra and its subsidiaries currently operate in [REDACTED] and provide wide area networking services to over [REDACTED]. We have built and own [REDACTED] transport in support of our broadband services.

We specialize in providing managed optical solutions for multi-site school district wide area networks that include the system design, engineering, deployment, service, maintenance and on-going monitoring of the network.



Our Virginia K-12 E-Rate WANs have included: Bedford, Powhatan, Sussex, Fluvanna, Pulaski, Hanover, Essex and Mathews.

The Offering

Leased managed layer 2 Ethernet services: Conterra has proposed to build a private high-speed fiber optical Ethernet network. Highlights of the offering are:

- E-Rate eligible Priority 1 Layer 2 managed Ethernet services.
- Fiber built all the way into each location equipment room.
- The hand-off [REDACTED]
- Bandwidth wire-speed [REDACTED] to each location.
- The Ethernet service can be easily upgraded to [REDACTED] making this WAN scalable with the District's future requirements.
- The Service Level Availability on the network is a [REDACTED]

In preparation for our bid submission and award of contract, Conterra has conducted a thorough **on-site** route engineering and construction survey for this project that includes but not limited to labor, equipment and material required, city, local and state permits, installation of conduit, aerial strand and fiber optical cable, building entries, fiber slicing and complete network testing. In addition, we have made inclusions in the project for all state and local inspections, erosion control and electrical work. Our

extensive pre-proposal design and engineering preparation allows Conterra to hit the ground running after contract award.

Turn-Key Network

Conterra is offering a complete turnkey managed Ethernet service. This includes; network design, permitting/licensing services, and complete deployment of all infrastructure and digital equipment, on-going operation, and support of the network for the term of the contract.

Customer Support

Conterra supports its customers with a state-of-the-art Network Operations Center (NOC) located in the Conterra Corporate Offices in Charlotte, NC with backup in Lancaster, PA that proactively monitors all networks 24 hours a day, 7 days a week, 365 days a year, to ensure carrier-grade performance.

Conterra utilizes its own trained field technicians to support its service. Conterra will monitor the equipment used to provide the service and repair or replace hardware with a two hour MTTR. Conterra optical networks are backed by flexible Service Level Agreements (SLA) with 99.99% reliability.

Financial Stability

Conterra's owners include: The Goldman Sachs Group, Inc., GE Capital Equity Investments, and Duke Energy Corporation. Audited Financial Results have been included.



Bank of America



COBANK
The Financial Group

Duke Energy

I. PART I - SUBMITTAL CONTENT: Written proposals shall contain the following information presented in the following order:

- a. List the three (3) most relevant projects completed or contracted by the firm within the last five years that demonstrates similar services outlined within the Scope of Work. Include short descriptions, dates, Service Provider Identification Number (SPIN) and FCC Registration Number (FRN) and client references (include client contact person, address and phone number) of these representative projects. The Schools and City prefer to see local government projects and comparable projects in the K-12 customer market that will outline the complexity of similar work.

Powhatan County Public Schools, VA

WAN Transport- Direct Optical Fiber Point-to-Point Connections
Bandwidth Speed [REDACTED]
Locations- 9 Schools
SLA- [REDACTED] End-to-End
Operational: September, 2013
SPIN 143025700
FRN 2443166, 2443131, 2443133

Contact:

[REDACTED]
Director of Administrative Technology
2320 Skaggs Road
Powhatan, VA 23139

[REDACTED]@powhatan.k12.va.us

Conterra has just completed a [REDACTED] to support its 21st century requirements of data, video and voice requirements of the Powhatan County Public Schools, Virginia. Consisting of nine total educational and administrative facilities, this school district covers an area of 262 square miles and serves approximately 4,483 students. It has been instrumental in the district's goal of "The Pathway to Success" which is implementing one-to-one student/teacher technologies.

The optical fiber network provides [REDACTED] to each location and is scalable to [REDACTED] location with no supplementary construction. Additionally, Conterra [REDACTED] Internet Access to the school district.

Conterra's [REDACTED] will be used to support Powhatan's Internet Access, on-line testing and videoconferencing network which provide student credit courses, virtual field trips, graduate degrees and certifications for district staff members along with professional development support.

Gadsden Independent School District, NM

WAN Transport- Direct Point-to-Point Optical Fiber Ethernet
Bandwidth Speed- [REDACTED]
Locations- 23
SLA- [REDACTED] % End-to-End
Operational: January 9, 2014
SPIN 143025700
FRN 2412751

Contact:

[REDACTED]
Director of Technology
P.O. Drawer 70
Anthony, NM 88021

[REDACTED]@gisd.k12.nm.us

Conterra has just completed an all fiber optical network to support the data, video and voice requirements of the Gadsden Independent School District (GISD) located in Sunland Park, New Mexico. Consisting of twenty-three educational facilities and two administrative facilities, Gadsden Independent School District covers an area of 1,400 square miles and serves approximately 14,200 students.

The optical fiber network [REDACTED] to each GISD location and is scalable to [REDACTED] with no supplementary construction.

Conterra's gigabit network will be used to support Gadsden Independent School District's Internet Access and videoconferencing network which provides student credit courses, virtual field trips, graduate degrees and certifications for district staff members along with professional development support. GISD will utilize this dedicated network to implement "Bring Your Own Devices".

Red Lion School District, PA

WAN Transport - Fiber Optical and FCC Licensed Microwave Ethernet
Bandwidth Speed - [REDACTED]
Locations- 9 Schools
SLA- [REDACTED] % End-to-End
Operational- Fall 2012
SPIN 143025700
FRN 2407323

Contact:

[REDACTED]
Network Manager
225 East Broadway
Red Lion, PA 17356
[REDACTED] ext. 102
[REDACTED]@rlasd.net

Located in Southern York County Pennsylvania, the Red Lion Area School District is comprised of 7 elementary schools, a junior high and a comprehensive high school. Leveraging the power of educational technology, Red Lion has implemented a "Bring Your Own Technology" policy, which enables students to bring their personal computing and communications devices to school. This initiative created extraordinary peak-hour demand for bandwidth and Internet access during the school day.

When the resulting need for a comprehensive, cost effective network solution was identified, the Red Lion Area School District conducted an RFP process and selected Conterra to provide its wide area network services. Conterra already provided microwave links to a few of the schools, so the school district was confident that Conterra could deliver the reliable, scalable connectivity it required.

The Red Lion Area School District is already seeing benefits from this hybrid network, which incorporates the best attributes of microwave and fiber technology. The network has dramatically increased the amount of bandwidth available to support applications such as distance learning, social media, web 2.0 and cloud-based solutions and is a platform that can support current and future security needs as well. According to Jared Mader, Director of Technology Services for the Red Lion Area School District, "with Conterra's network, the bandwidth on the WAN will no longer be the limiting factor for performance."

b. **Summary qualification of the organization.** At a minimum, provide the following: Number of employees, Number of active installations of the proposed software/system, Number of new customers acquired over the past twenty-four (24) months, Number of customers lost over the past twenty-four (24) months, Annual research and development budget, and five (5) year Technology Roadmap for your company.

Conterra Broadband Services

Since 2003, Conterra Broadband Services, LLC ("Conterra"), d.b.a. Conterra Fiber Solutions, has been a national provider broadband service for K-12, government and healthcare entities, telecom carriers, and select enterprises. Conterra and its subsidiaries currently provide high-speed Ethernet services to over [REDACTED]-rate eligible wide area network service to approximately [REDACTED]

Our wireless carrier backhaul circuits [REDACTED] for the major cellular carriers such as [REDACTED].

Conterra has provided high-speed wide area network to these school districts in Virginia: Bedford, Powhatan, Sussex, Fluvanna, Hanover, Pulaski, Essex and Mathews, utilizing the Federal E-Rate program.

In addition, Conterra provides both network communications services for the [REDACTED] and for their various government agencies. We have recently completed a [REDACTED] network for the [REDACTED] and have verbally been awarded the contract to provide like services to the [REDACTED]

Conterra currently has [REDACTED] and sub-contracts certain job responsibilities to several hundred other contract employees.

Notable customers acquired over the last 24 months Include:

[REDACTED]

- c. Summary qualifications of key individuals (and office location for each) to be assigned to the work. A Principal In-Charge or Project Manager must be assigned. Full resumes may be attached as an appendix. Resumes must exhibit qualifications and experience of the individual in the type of work to be conducted with emphasis on similar projects.

Deployment Program Management Team for Winchester

██████████ Senior Project Manager

██████████ will function as the Senior Project Manager for this project. He has over 20 years experience in telecommunication project management, including fiber and wireless projects, contract estimating, contract supervision, project reporting, and documentation. ██████████ is proficient in cost estimating, fiber optic routing, subcontractor management, and project management. He has a strong working relationship with all local municipalities and understands all requirements set forth by the local jurisdiction.

██████████ specializes in deployments of large scale Ethernet networks. He has overseen the deployment of over 200 K-12 wide area networks for Conterra. He has just completed the deployment of our wide area network in ██████████

██████████ holds a Masters in Project Management from George Washington University School of Business and BS in Electrical Engineering from Penn State University.

Sr. VP Network Deployment

██████████ is responsible for the nationwide deployment of Conterra networks. His career has included 12 years as a project deployment leader for major carriers such as Vanguard Cellular Systems, AT&T and Cingular. While at AT&T, ██████████ was responsible for an annual capital budget in excess of \$250 million and a staff of over 40 direct and indirect personnel.

██████████ has overseen the construction of over 4,000 Ethernet sites including over 270 K-12 school district WANs. During his career in telecommunications, ██████████ has been responsible for all aspects of access network development including: Design Engineering, Site Acquisition, Municipal Approvals, Construction, Integration, Commissioning and Network Acceptance. ██████████ is a graduate of Penn State University.

Telecom Experience: 20+ Years

██████████ Senior VP, Engineering

██████████ has 30 years of engineering major telecommunications networks including managed private fiber optical network design. He is responsible for the final design and engineering of your project.

██████████ has operated in the telecommunications industry in 31 states with 16 different telecom carriers and infrastructure providers. In 2000, he managed the acquisition, design and build-out of 15 data centers for an internet service provider in the Northeastern United States

Telecom Experience: 30+ Year



[REDACTED]
Government Accounts Specialist

[REDACTED] has over 30 years experience with high technology and communications companies specializing in management of complex business relationships, project management, regulatory issues, joint venture formation, competitive analysis and business development.

Telecom Experience: 30+ Years

[REDACTED]
Eastern Engineering Specialist

[REDACTED] has 27 years experience in the design, engineering and construction of complex fiber networks. He is a specialist in process management, contracting services, proven leadership in project management and change management.

Telecom Experience: 25+ Year

[REDACTED]
Data Network Manager

[REDACTED] has 20 years of experience in data networking, and IP based networks. Prior to joining Conterra, [REDACTED] was Director of Data Systems Engineering at US LEC, a regional CLEC and ISP, and was responsible for the implementation of IP systems and the building and management of numerous Internet services such as Email, Usenet News, DNS, and Web Hosting.

Telecom Experience: 20+ Years

[REDACTED]
Government Accounts Specialist

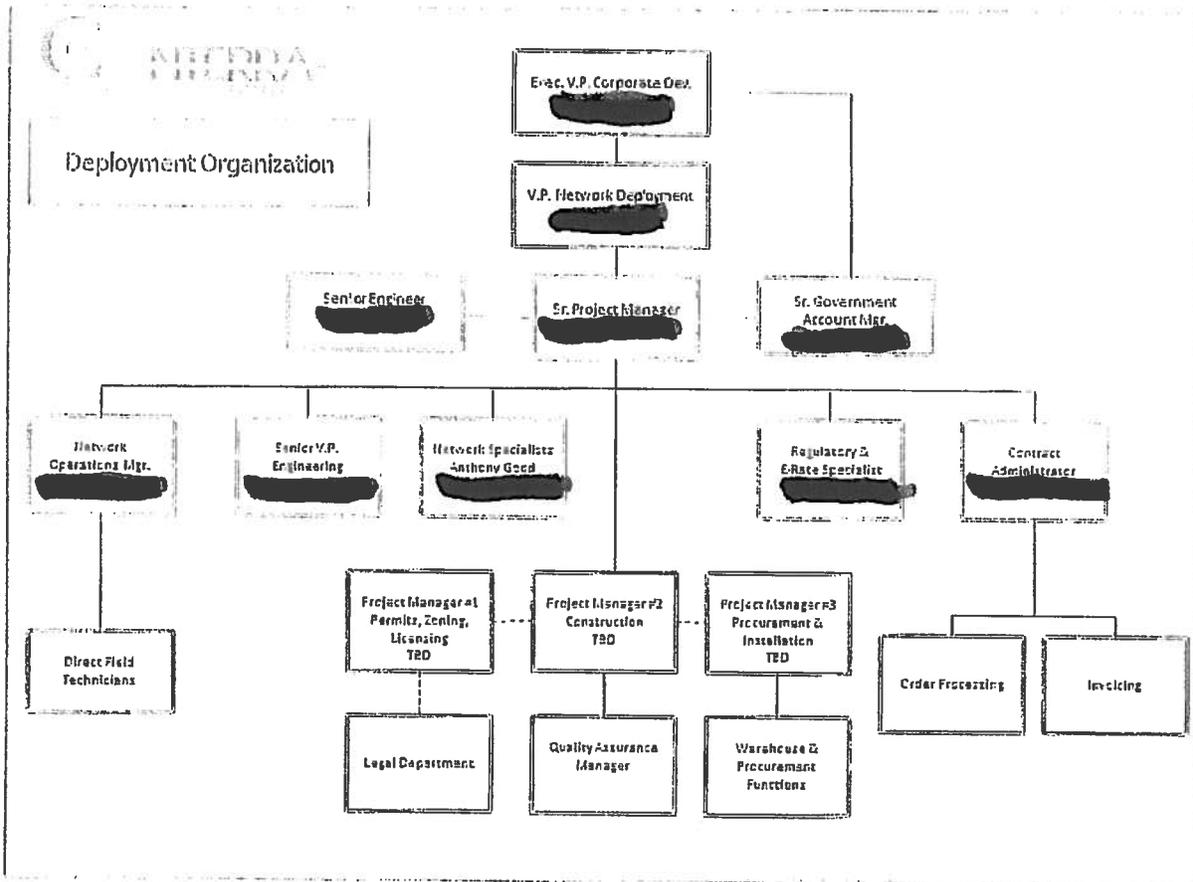
[REDACTED] has over 25 years experience with high technology and communications companies specializing in management of complex business relationships, project management, regulatory issues, joint venture formation, competitive analysis and business development.

Telecom Experience: 25+ Years

[REDACTED]
Customer Service Manager

[REDACTED] the responsible for the operations and maintenance of Conterra's nationwide broadband and backhaul networks. His career has included 20 years of operational experience for major carriers and competitive local exchange carriers (CLEC) such as MCI, KMC, Telcove and Level 3. While at KMC and Telcove, [REDACTED] was responsible for the operation of 18 markets and 35 direct personnel. [REDACTED] has been responsible for all aspects of Conterra's telecommunications operations including, Inside and Outside Fiber engineering and installation, Municipal Approvals, Central Office Installation and Maintenance as well as all Field Service activities.

Telecom Experience: 20+ Years



*Winchelsea Schools and City
Deployment/ Program Management
Organization Chart*

- d. List the outside services to be used. Describe the anticipated scope of work by sub-consultants and how they will be coordinated. Specific names of sub-consultants are not required, but preferred at this time. The intent of this section is to ascertain what outside services the firm will require.

Conterra Construction Partners

Conterra utilizes an extensive pre-qualification process for all contractors involved in our projects. Qualifications including, but not limited to, knowledge of the specific task(s) to be supported, past work history, current activity, references, financial stability and customer satisfaction are among the many items reviewed and evaluated. All sub-contractors are appropriately licensed, insured and bonded.

Conterra has [REDACTED] a wholly owned subsidiary of [REDACTED] Inc. to provide fiber construction services of this type for Conterra. [REDACTED] construction has tremendous experience deploying fiber optical networks for government entities, including major K-12 networks.

[REDACTED] has been a strong and viable company since its inception [REDACTED] It is a publically traded company with annual revenues exceeding \$2.6 billion. [REDACTED] They are a publicly traded company with the NASDAQ Symbol [REDACTED]

In preparation for an on-time delivery of network service, Conterra Broadband [REDACTED] have completed a design/engineering study of the proposed Wide Area Network that includes but not limited to the following:

1. Labor, materials and equipment
2. All federal, state and local zoning and permitting requirements and associated costs
3. All inspection fees, material testing and surveying
4. Installation of infrastructure of conduit, aerial strand fiber cabling, OSP route engineering
5. Building entries, fiber splicing and testing
6. Erosion control, SWMP and roadway sweeping
7. Electronics, electrical work, patch panel

- e. Firm shall confirm in writing that they are not currently on any debarment or suspension list of any local, state or federal government. Any firm found to be listed shall be rejected as non-responsive to this RFP.

Conterra Broadband Services, LLC certifies that it is not disbarred or suspended from any local, state or federal government.

- f. Furnish a detailed background of your company's knowledge and experience in the installation of a network communication system, in particular a local government wide area network.

Conterra Broadband Services, LLC ("Conterra"), d.b.a. **Conterra Fiber Solutions**, is a national provider of facilities-based broadband services for K-12, healthcare and government entities, telecommunications carriers, and select enterprises that require bandwidth intensive, carrier-grade data, video and voice transport services. Conterra and its subsidiaries currently operate in [REDACTED] and provide wide area networking services to [REDACTED]. We have built and own more [REDACTED] transport in support of our broadband services.

We specialize in providing managed optical solutions for multi-site K-12 and government wide area networks that include the system design, engineering, deployment, service, maintenance and on-going monitoring of the network.



Our Virginia K-12 E-Rate WANs have included: Bedford, Powhatan, Sussex, Fluvanna, Pulaski Hanover, Essex and Mathews. Conterra also provides broadband service to several Fluvanna County government entities.

[REDACTED]

- g. Provide a detailed description of the methodology and understanding of the project applications, equipment, software, hardware and systems being offered or required for the complete, turn-key solution.

The Offering for Winchester Public Schools and Winchester City

Leased managed [redacted] Conterra has proposed to build a [redacted] [redacted] Highlights of the offering are:

- o E-Rate eligible Priority 1 Layer 2 managed Ethernet services.
- o [redacted]
- o The hand-off will be a [redacted] connection
- o Bandwidth wire-speed of [redacted] to each location.
- o The Ethernet service can be easily upgraded to [redacted] with the District's future requirements.
- o The Service Level Availability on the network is a minimum [redacted]

Note: The service will be delivered over [redacted]
[redacted] All circuits will terminate at [redacted]
[redacted]. This will
ensure all entities receive the [redacted]

We have designed the network with two separate aggregation points; one each for the city and school district. [redacted] at each school or city location.

The offering is a [redacted] [redacted] Network complexity is significantly reduced with a Conterra fiber network. There are no [redacted] and there are fewer devices to manage and less of a chance that something will fail or have a security breach. Repair and maintenance is included with every contract. Moves, additions and changes are deployed quickly and economically on the private network. Conterra engineers its network availability to be a minimum of [redacted]

Turn-Key Network:

- o Professional Design, Network Engineering, Deployment, Systems Integration and Project Management
- o Turn-up, Testing and Training
- o Includes all equipment racks, digital equipment, data cabling, and associated termination equipment as required
- o Network Operations and Command and Control Monitoring
- o On-site Maintenance for the Term of the Contract

In preparation for our bid submission and award of contract, Conterra has conducted a thorough on-site route engineering and construction survey for this project that includes but not limited to labor, equipment and material required, city, local and state permits, installation of conduit, aerial strand and fiber optical cable, building entries, fiber slicing and complete network testing. In addition, we have made inclusions in the project for all state and local inspections, erosion control and electrical work. Our extensive pre-proposal design and engineering preparation allows Conterra to hit the ground running after contract award



Conterra Customer Support

- Network Operations Center (NOC) located in Charlotte, NC with backup in Lancaster, PA
- 24 hours a day, 7 days a week, 365 days a year customer support
- Local Conterra field technicians and engineering support
- 4 hour guaranteed on-site repair
- 99.99% network end-to-end service level availability
- Web based portal allows district personnel to monitor key network metrics such as bandwidth, latency, and jitter measurements

- h. Acknowledgment that a detailed "as-built" network diagram will be provided to Schools and City. The diagram and any supporting documentation shall show physical network connections down to the jack, patch panel, and switch port level as it relates specifically to the Schools/City locations. This documentation shall also show the technology used for network traffic transport, technology used to secure network traffic in transit, and any redundant paths to the Internet.**

Conterra has provided both physical and logical diagrams of the preliminary network designs. Final "as built" drawings will be provided to the Schools and City. Please see Appendices for Examples of Construction Drawings.

Winchester Public Schools City of Winchester Network Designs

1. Option A: City and/or School Networks

- o [REDACTED] wireline speed to all sites.
- o [REDACTED] wireline speed to all sites.

2. Option B: City + Firehouses

- o [REDACTED] wireline speed to all sites.
- o [REDACTED] wireline speed to all site

3. Option C: City + Schools

- o [REDACTED] wireline speed to all sites.
- o [REDACTED] wireline speed to all site

4. Option D: City + Schools + Firehouses

- o [REDACTED] wireline speed to all sites.
- o [REDACTED] wireline speed to all site

Conterra WAN to Customer LAN Physical

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

Conferro WAN to Customer LAN Physical

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Conterra WAN to C. Jomer LAN Physical

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Conterra WAN to Customer LAN Physical

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

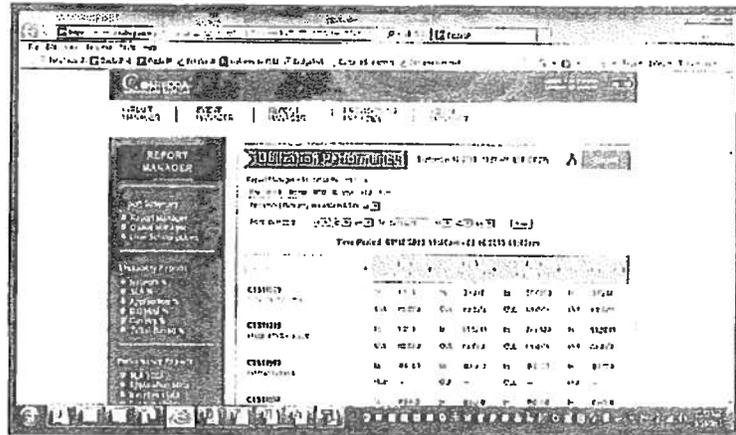
- i. The proposal should include a description of how the vendor will monitor service and performance and make associated reports of usage available to the Schools and City.

Customer Web Monitoring Application

Conterra provides strategically [REDACTED] We will supply [REDACTED] which periodically collects [REDACTED] P is an easy-to-use intuitive reporting interface which provides data for any time period in both graphical and tabular data formats. The application enables users the ability to select, analyze and view data, as you like. Based upon custom profiles and reporting, you can easily define screens and develop graphic analysis.

Performance information is presented in a customizable web portal which provides easy-to-read visualization of circuits, performance graphs, traffic analysis and tabular data suitable for download and analysis in programs such as Excel. Conterra can provide the requested reports on a monthly basis.

See Appendices for more Actual Report Examples.



Example: Bandwidth Utilization Reports

- j. Complete and return Appendix C: Pricing. Appendix C will be the sole vehicle for determination of price. In addition, provide itemized pricing for Schools and City by site as part of proposal document. Separate pricing and agreement documents shall be provided for the Schools and the City. Provide an itemized listing of all unit cost prices for your proposed system, including but not limited to: software, hardware, licenses, installation, implementation, conversion, peripherals, and training required to implement your solution. Ensure any additional unit costs for goods or services are incorporated within your pricing proposal. Outline all recurring fees, fixed rates, processing fees and hourly rates to be used to complete the Scope of Services. Extra charges and fees will not be looked at favorably so ensure accurate rates. Monthly Service Price: Provide your firm's monthly service rate and any monthly recurring rates that will apply. No extra charges will be allowed.

Conterra has proposed an all inclusive leased "managed" service. All proposed services are 100% E-Rate eligible as Priority 1 services. [REDACTED] We only charge a Monthly Recurring Charge for our services. Our cost proposals are based on [REDACTED]

All of the quoted unit cost prices for your proposed system, include but are not limited to: software, hardware, licenses, installation, implementation, conversion, peripherals, and training required to implement your solution

Pricing Options

Option A: City and/or School Networks

- o [REDACTED] wireline speed to all sites.
- o [REDACTED] wireline speed to all sites.

Option B: City + Firehouses

- o [REDACTED] wireline speed to all sites.
- o [REDACTED] wireline speed to all sites

Option C: City + Schools

- o [REDACTED] wireline speed to all sites.
- o [REDACTED] wireline speed to all sites

Option D: City + Schools + Firehouses

- o [REDACTED] wireline speed to all sites.
- o [REDACTED] wireline speed to all sites.

This Conterra architecture is compatible with all network security devices and firewalls and will allow utilization of your existing base firewall technology, intrusion detection or other ancillary network security.

All fiber installation will be installed and tested in accordance with industry-standard practices, including but not limited to the standards promulgated in the National Electrical Safety Code, IEEE C-2, NFPA 70, TIA-758-A, all as amended. Installation will meet all local building and electrical codes.

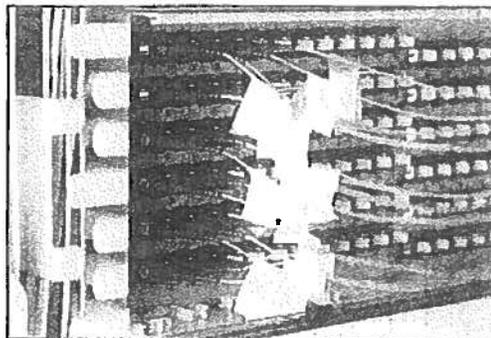
Documentation, including final site survey, engineering drawings, fiber installation specifications and "as built" drawings, will be provided in a timely fashion upon the acceptance of the final design and contract execution.

Systems Interfaces

Conterra provided hardware will interface with customer equipment.

Conterra will typically access a customer's demarcation point in their building either by pulling the delivered type of fiber through either a below grade or above ceiling level penetration. This penetration is properly weatherized and built to the applicable building codes for the structure.

The multi-mode fiber is installed from the building penetration point to the Demark through existing wire chases or existing/new conduits. The location and methods are first reviewed and approved by the applicable building code reviewing agencies and the customer. The coaxial cable is then terminated at the Demark equipment rack, properly grounded to meet all codes and tested for proper installation and performance.



All equipment including but not limited to our layer two switches, cabling, connectors, etc. necessary to provide WAN to LAN connectivity is provided by Conterra in the provisioning of its service. All installed equipment operates with the electrical capacity provided by a 20 ampere service per equipment rack.

Easy Moves, Additions and Changes

Network complexity is significantly reduced with a dedicated private fiber network. There are no active devices in the path and therefore no public switches (compared with a traditional carrier network) and there are fewer devices to manage and less of a chance that something will fail or have a security breach. Repair and maintenance is included with every contract. Moves, additions and changes are deployed quickly and economically on the private network.

Customer Promise Requirements

Conduit Path for the Conterra Fiber:

If there is not existing conduit available, then the customer is to [REDACTED]

Equipment Room:

Following are the different elements required in the equipment room:

- o Demarcation will be determined by Conterra and the customer at site survey.
- o If the fiber and/or equipment will be wall mounted, [REDACTED] The specific size will be determined after the site visit.
- o If fiber and/or equipment will be interior floor mounted rack the customer will provide adequate floor space. The relay rack should be placed in a location that would allow access on both sides for maintenance. The product solution and site survey will determine [REDACTED]
- o Specific power requirements are dependent on the product solution. Generally the [REDACTED] The specific requirement will be determined after the site visit.
- o The customer [REDACTED] The nominal temperature range is generally 55 to 85 degrees Fahrenheit. Humidity is also to be controlled. [REDACTED] meet National Electric Code requirements for plenum space.
- o [REDACTED]

4. Enclose a detailed, comprehensive project time line, including but not limited to: design/start-up phase, implementation phase, milestones, and all other time related task(s). Assume the project kick-off would begin March 2014 and develop the timeline from there. On-site "Go Live" support will be required. In your proposal, please address specifically how you will support Schools and City staff as we go live with the new system. Also indicate what support is available to Schools and City staff the first month after we go live. It is imperative that all business functions carry on as normal when we go live.

Operational Transition/Implementation Plan

[REDACTED]

During maintenance windows [REDACTED] customer employees, vendors, and carriers participate in order to have clear and consistent communications and insure cutover plans are executed correctly.

During the operational cutover period, [REDACTED]

Project Management Methodology

Conterra provides comprehensive project management capabilities that combine a powerful, proven methodology, aligned with "industry best practices" and delivered by professional Project Managers. Conterra knows project management is critical to the success of the project. Conterra's mission to deliver solutions that improve the total customer experience fosters the successful management of projects that:

4. ◊ Deliver the required functionality



- .1. • Meet the quality specifications
- .1. • Deliver on schedule

Immediately upon execution of a contract with Conterra the following project tasks will be accomplished:

1. Assignment of Project/Account Management Team: Throughout the project, the designated Conterra Project Manager will provide oversight to all project activities. He or she will work together with your representative in the coordination of the project schedule and resources. The Conterra Project Manager will also provide regular status updates to your personnel on all project activities.

2. Project Initiation: Upon execution of a Service Agreement, an initial kick-off meeting will be conducted with your Board. The project team and infrastructure will be determined, and roles and responsibilities will be identified. A baseline project plan will be developed, and processes for status reporting, issue escalation, etc., will be defined. The project plan will be a working document and will be updated regularly during the project.

Winchester Public Schools

ID	Task Name	Duration	Start	Finish
1	Mobilization/Kick Off Meeting			
2	Engineering			
3	Engineering Revisions			
4	Pole Applications (Includes MR)			
5	UG/ROW Permits			
6	Aerial Construction			
7	Underground Construction			
8	Building Site Construction			
9	Splicing and Testing			
10	Electronics and turn-up			

Administration	Engineering	Revisions	Pole Permitting	City/State/RR Permits	Aerial Const	UG Const	School Site Const	Splice/Test	Electronics/Turn-up
----------------	-------------	-----------	-----------------	-----------------------	--------------	----------	-------------------	-------------	---------------------

Project: Ocean View Implementation
Date: Wed 3/5/14

Task Split Progress
Milestone Summary Project Summary

External Tasks External Milestone Deadline

Winchester Public Schools WAN Proposed Schedule and Implementation Plan

1. **Identify all relevant stakeholders**
 - Contact Police officers
 - Contact City, County, and State ROW owners
 - Contact Federal ROW owners
 - Contact Railroad and other Private ROW owners
 - Prepare, for Project Administration:
 - Security Project Management Team
 - Prepare Vendor and potentially other key local materials
 - Academic discovery
 - Select outside vendors, O&E's, contractors and subcontractors
 - Review and prepare project architecture for formal Engineering Plan.
2. **Engineering**

Contract and prepare a final set of construction plans for the project. These plans will be prepared by a professional telecommunications engineering firm familiar with local standards and practices. These drawings will identify routing of the WAN in public and private Right of Ways. The plans will also have each school facility inside routing and construction requirements. The plans will be instrumented in the development and approval of the site drawings. Drawings will be submitted for approval in sections so that other elements of the project can be developed.
3. **Engineering Revisions**

When any engineer project, the final plan does not always become the final plan. We have added this task into our schedule to inform our clients that change management is important and expected. Route changes, specification changes, delays and reconfigurations often arise in these types of projects. We anticipate modifying and amending our plans throughout the project to insure that the most critical and up to date plans are available.
4. **Role & Applications (Includes MR)**

Contract and internal to evaluate the maturity of the WAN on existing pole lines in the project footprint. This process requires every pole to be considered for new attachments and National Electric Safety Code compliance. This process can require a great deal of planning and third party involvement. While this process may require a lot of time and delay, it is typically faster and less expensive to make the network on poles than excavating in an urban environment. Our competitive pricing reflects our commitment to an solid deployment.
5. **UGROW Permits**

Contract and to survey much of the WAN underground through various Right of Ways. This process will require a great deal of site specific permits to meet the Local/State/Federal and private requirements. We have a dedicated staff that will submit the proper documentation to the respective authority to obtain the various permits. Some permits, especially railroad crossings, water crossings and driveway crossings can be difficult to obtain. We have a great deal of experience obtaining the proper permits. The correct paperwork, permissions and follow up are critical.
3. **Aerial Construction**

Contract and deploy Aerial Construction crews on permits, because available. Contract and deploy as many local resources as possible. Utilizing these local contract and subcontracted resources typically advances the project schedule.
7. **Underground Construction**

Contract and deploy Underground Construction crews as permits become available. Contract and deploy as many local resources as possible. Utilizing these local contract and subcontracted resources typically advances the project schedule.
3. **Building Site Construction**

Contract and perform the installation of equipment including on school properties. We anticipate multiple site visits and coordination with facilities managers to determine the best install method to deliver the fiber to the edge. We will construct our pathways to meet local fire code and National Electric Safety Code. All contracts shall not conflict themselves in a professional and efficient manner.
9. **Splicing and Testing**

Contract and splice and test network as it becomes available, or in the order the client requires. We will have all network fiber OTDR tested and accepted by the customer prior to deploying any electronics.
 - All splicing will be by the fusion method. Each splice of each fiber shall be individually accepted for splice loss not to exceed .05 dB using a properly calibrated profile alignment back-scattering machine. OTDR (Optical Time Domain Reflectometer) readings prior to and after splicing in operation must be made at both 1310 nm and 1550 nm in both directions, to assure the possibility of crosstalk resulting due to back scattering.
 - The splices will be made with approximately 100 feet of stock cable on each side of the case for future maintenance and to facilitate splicing in a protected environment. Splice shall be stored so that the maximum-bending radius of 13 times the cable diameter is not violated.
 - Contractor shall not permit a cable bending radii at the splice location less than the radii recommended by the cable manufacturer in order to prevent attenuation at 1200 and 1550 nm wavelengths. Notwithstanding the above, cable bends shall not be less than 15 times the outside diameter of the cable.
10. **Electronics and turn-up**
 - Confirm with customer the design requirements for the network. The design is used to create an order list of select cables that will be used on the project.
 - Order electronics if not already in inventory.
 - Gather current configuration of customer network. Work with customer to finalize the configuration that will work for the new circuit.
 - Configure Customer switches as much as possible prior to shipment.
 - Ship electronics to customer.
 - Install electronics in the order that meets the customer needs and time flows.
 - Test and turn over circuit.

- m. Define your firm's ability to provide account management, network maintenance and technical support. Please advise the following, but answers do not need to be limited to: service plans, your technician credentials, support hours, best method of contact, quality assurance, call and response tracking, frequency and scheduling of software updates, resource library and training materials, and training classes for software updates or new employees. Please include a copy of the vendor's applicable service level agreement (SLA) with respect to both account management and network maintenance and technical support.

Customer Service

Conterra provides proactive preventive maintenance and on-site troubleshooting and service restoration with its team of company field service engineers strategically located to provide maintenance and support of our networks. We use company trained and certified employees to maintain and repair our wide area networks. They insure that our Service Level Agreements are always met and surpassed.

Network Performance Benchmarks

- " Availability Commitment – Conterra guarantees to maintain service availability for the customer at a minimum of [REDACTED]
- " Latency Commitment – Each link is engineered to have less [REDACTED] latency.
- " Jitter Commitment: [REDACTED]
- " Bit-Error Rate Commitment – Conterra's bit-error rate, between designated end-points, results in an industry standard acceptance of [REDACTED]

Network Operations Center

Conterra supports its customers with a state-of-the-art Network Operations Center (NOC) located in the Conterra Broadband Services Corporate Offices in Charlotte, NC and Lancaster, PA that proactively monitors all networks **24 hours a day, 7 days a week and 365 days a year**, to ensure carrier-grade performance.

Through the NOC, Conterra analysts monitor and interface directly with all switch sites and any individual alarms generated from an individual site. The NOC also has a direct access terminal into each of the networks through which technicians can monitor activities, change translations, run diagnostic tests, remove and restore hardware, etc.

The NOC maintains a staff of engineers and technicians that are trained in an array of networks, elements, and technologies in the Conterra network (Ethernet, Sonet, TDM, Internet Access, VoIP, Firewalls, etc.). Conterra engineers have earned many industry certifications, including: CCIE (Cisco Certified Internetwork Expert), Cisco Certified Network Associate (CCNA), Cisco Certified Network Professional (CCNP), Microsoft Certified Systems Engineer (MCSE), A+, Network+, and other certifications in specific vendor equipment.

The Conterra NOC provides the following management functions:

- *Continuous Network Monitoring 24 X 7 X 365* of all critical components delivering proactive monitoring, notification, web-based reporting and automated service restoration of the network.
- *Configuration Management* provides remote automatic configuration of networks and manages any changes or upgrades to the network.
- *Fault Management* contains functions for acquisition, presentation, and storage of alarms and events from the network.
- *Security Management* handles security within the NOC accessing control over the network elements.
- *Performance Monitoring* of all network metrics.

Conterra Customer Call Handling

The Conterra Network Operations Center ("NOC") provides proactive support for all customers through a professionally staffed help desk; 24 X 7 X 365.

We can be reached two ways:

- The toll-free Conterra NOC number is 800-634-1374.
- Through our web portal at WWW.CONTERRA.COM.

Conterra's systems and personnel are positioned to deliver a **rapid response** to any service affecting situation by virtue of the following means.

I) Performance Monitoring

- a. Network elements and network segments are monitored continuously and logged on a 15 minute interval
- b. Network performance is tracked to detect performance deterioration
- c. Performance metrics are continuously monitored and exceeded thresholds are logged and escalated
- d. SLA criteria are reviewed to assure performance

II) Fault Detection

- a. All system faults are logged in a reporting system and analyzed for systemic issues
- b. All detected faults generate review flags for NOC members and field personnel. These flags are categorized and prioritized as "Critical", "Major", and "Minor"
- c. If the issue is "Critical" or "Major", a Conterra trouble ticket is opened. "Minor" issues are reviewed by management to determine the need for a trouble ticket

III) Fault Isolation

- a. The Network Management System and NOC personnel analyze all customer affecting faults within seconds of alarms to isolate the location of the fault (e.g. which network segment has an issue)
- b. NOC personnel perform first level diagnostics on the network segments and elements to further isolate the issues to a component level when possible.

- c. When first level diagnostics are not conclusive, the NOC manager dispatches field personnel for further fault isolation and coordinates additional diagnostics with our customers.
- d. When diagnostics in the field are inconclusive, the fault is escalated to a 7x24x365 vendor hot line

IV) Fault Remediation

- a. After the fault is isolated, the NOC technician coordinates with field personnel and the customer to remediate issues including network element reboots and replacements
- b. All replaced equipment is tested by Conterra and our vendors for root cause analysis
- c. If the issue is related to a vendor's hardware or software, a trouble ticket is opened with the vendor
- d. After root cause is determined the Conterra trouble ticket is closed and all related vendor trouble tickets are close

Service Notification and Escalation Procedures

Conterra is committed to providing superlative customer support. Our policy for network trouble calls ensures that problems are solved within short time frames so our customers enjoy full services at all times. However, in the day-to-day management of running an extensive network temporary loss of service occasionally occurs. With Conterra Escalation Policy, problems are resolved as quickly as possible.

1. Initial Call Received from Customer

When a customer contacts the Network Operations Center (NOC) a NOC specialist gathers the details of the problem or request and opens a trouble ticket. Many problems are resolved at this stage, while the customer is still on the phone. If the problem is complex or involves a carrier outage, the customer is given a trouble ticket reference number and an explanation of what action is being taken.

2. Automatic Notification

When a problem is automatically detected by our systems, a NOC specialist gathers the details of the problem and if required, opens a trouble ticket. If the problem is complex or involves a carrier outage, the customer is notified within 10 minutes by e-mail and/or pager and given a trouble ticket reference number and an explanation of what action is being taken.

- o **First Level Escalation**

If the problem has not been resolved to the customer's satisfaction after one hour, a NOC team leader becomes involved. The NOC team leader evaluates and revises the planned approach in collaboration with the NOC specialists. If required, the NOC team leader also involves and escalates problems to the appropriate level with our field operations, engineering and our suppliers. The NOC specialist contacts the customer with a status every two hours.

- o **Second Level Escalation**

Once a trouble ticket has been open for two (2) hours, the NOC team leader escalates the situation to the Operations Manager to ensure management awareness of any serious or ongoing problems.

• **Third Level Escalation**

If a problem remains unresolved to the customer's satisfaction after three (3) hours, the details of the problem are escalated to the National Director of Operations.

• **Fourth Level Escalation**

If the problem remains unresolved to the customer's satisfaction after (4) hours, the details of the problem are escalated to the Company's President and COO.

Conterra Service Escalation Response Chart		
Response Levels	Response Entity	Contact Information
1st level	Conterra Network Operations Center	[Redacted]@conterra.com
2nd Level	[Redacted]	[Redacted]@conterra.com
3rd Level	V.P Operations	[Redacted]@conterra.com
4th Level	President and C.O.O.	[Redacted]@conterra.com

**On-Going Support
Account Management Team**

Conterra will provide a dedicated Account Management Team that will build and maintain the customer relationship and will provide answers to any customer concerns from the execution of the contract through the deployment of the network and all on-going issues. They provide strong relations and communications skills, applying technical knowledge and policies in direct support of your County.

Our Account Management Team will meet with district personnel on a quarterly basis to review the network Service Level Availability and all other strategic metrics. They will keep you abreast of industry changes and events and make recommendations on network additions, changes and upgrades. Our goal is for you to have the most cost efficient network available.

Government Accounts Specialist

[REDACTED]

[REDACTED] has over 30 years experience with high technology and communications companies specializing in management of complex business relationships, project management, regulatory issues, joint venture formation, competitive analysis and business development.

E-Rate Contracts Administrator

[REDACTED]

[REDACTED] has nine years experience with Conterra as their Contracts Administrator. She is responsible for all E-Rate contracts to include; USAC administration, filings assistance, PIA review assistance.

Project Manager

[REDACTED]

[REDACTED] has over 20 years experience in telecommunication project management, including major fiber projects, contract estimating, contract supervision, project reporting, and documentation. Mr. [REDACTED] is proficient in cost estimating, fiber optic routing, subcontractor management, and project management. He has a strong working relationship with all local municipalities and understands all requirements set forth by the local jurisdiction.

Senior Technical Manager

[REDACTED]

[REDACTED] has 30 years of telecommunications experience including fiber optical network design and engineering, experience in fiber optic routing, outside plant and building entries, construction techniques, project tracking and verification, subcontract management, cost analysis, cost estimating and project management.

USAC/E-RATE Assistance

Conterra provides a professionally trained staff to assist applicants in all facets of the E-Rate cycle including an E-Rate and Regulatory Manager to stay abreast of rules issued by USAC, the Schools and Libraries Division, the Federal Communications Commission, Federal Courts and Congress. Conterra's experience with this program and Federal and state regulation allows Conterra to move as smoothly as possible through the funding and deployment process insuring the timely and accurate filing of crucial forms.



Conterra Service Level Agreement

This document outlines the Service Level Agreement ("SLA") for Conterra Broadband Ethernet fiber-based services ("Service").

I. SLA Guarantee

<i>Service</i>	<i>Availability</i>	<i>Mean Time to Repair</i>	<i>Latency</i>	<i>Packet Loss</i>
Dedicated Ethernet Service	End-to-End 99.99%	Priority 1 Outages within 4 Hours	30ms (roundtrip)	<0.1%

II. Customer Care Center

Conterra Broadband Service's Customer Care Center may be reached two ways:

- The toll-free Conterra NOC number is 800-634-1374.
- Through our web portal at WWW.CONTERRA.COM.

III. Priority Classification

A "Service Disruption" is defined as a disruption or degradation that interferes with the ability of a Conterra network to transmit and receive traffic on Customer's dedicated circuits within the Conterra supplied Wide Area Network. The Service Disruption period begins when Customer reports a Service Disruption using Conterra's trouble ticket system by contacting Customer care, Conterra acknowledges receipt of the trouble ticket, and Conterra validates that the service is affected, The Service Disruption ends when the affected Service has been restored.

Conterra will classify Service Disruptions as follows:

<i>Priority</i>	<i>Criteria</i>
Priority 1.	<ul style="list-style-type: none"> a. Total Loss of Service other than Excluded Disruptions b. Service degradation to the point of where the Customer is unable to use the Service
Priority 2.	Depreciated Service where the Customer is

	unable to use the Service but is not prepared to release it for immediate testing
Priority 3	<ul style="list-style-type: none"> a. A service problem that does not impact Service b. A single non-circuit specific quality of Service inquiry

IV. Network Availability

"Network Availability" is calculated as the total number of minutes in a calendar month less the number of minutes that the circuit is unavailable due to a Priority 1 Outage ("Downtime"), divide by the total number of minutes in the calendar month. Downtime excludes (i) planned outages, (ii) routine maintenance, (iii) time when Conterra is unable to gain access to Customer's premise to troubleshoot, repair or replace equipment or the circuit, (iv) service problems resulting from acts or omissions of Customer, (v) Customer equipment failures, and (vi) Force Majeure Events (collectively "Excluded Disruptions").

Commitment:

Conterra's monthly Network Availability Guarantee is 99.99%.

The following table contains examples of the percentage of Network Availability translated into minutes of Downtime for the 99.99% Network Availability Guarantee:

<i>Percentage by Days per Month</i>	<i>Total Minutes/Month</i>	<i>Downtime Minutes</i>
99.99% for 31 Days	44,640	4.5
99.99% for 30 Days	43,200	4.3
99.99% for 29 Days	41,760	4.2
99.99% for 28 Days	40,320	4

V. Mean Time to Repair ("MTTR")

The MTTR measurement for a Priority 1 Outage is the cumulative length of time it takes Conterra to restore Service for a circuit in a calendar month divide by the corresponding number of trouble tickets for Priority 1 Outages opened during the calendar month for that circuit.

MTTR per calendar month is calculated as follows:

$\frac{\text{Cumulative length of time to restore Priority 1 Outage(s)}}{\text{Total number of Priority 1 Outage trouble tickets per circuit}}$

VI. Latency (On-Net)

Latency is the average roundtrip network delay, measured every 5 minutes during a calendar month, to adequately determine consistent average monthly performance level for latency for each circuit. The roundtrip delay is expressed in milliseconds (ms). For Ethernet, Conterra measures latency using a standard 64 byte ping from the District Hub site and each district location on the wide area network in roundtrip fashion.

Latency is calculated as follows:

$$\text{Latency} = \frac{\text{Sum of the roundtrip delay measurements for a circuit}}{\text{Total \# of measurements for a circuit}}$$

VII. Packet Loss (On-Net)

Packet Loss is defined as the percentage of packets that are not successfully received compared to the total packets that are sent in a calendar month. The percentage calculation is based on the packets that are transmitted from a network origination point and received at the network destination point (District Hub to Campus entities).

Packet Loss is calculated as follows:

$$\text{Packet Loss (\%)} = 100 (\%) - \text{Packets Received (\%)}$$

VIII. Network Maintenance

Maintenance Notice:

Customer understands that from time to time, Conterra will perform routine network maintenance for network improvements and preventative maintenance, which will usually be conducted within routine maintenance windows. Conterra will use reasonable efforts to provide at least 48 hours notice of such maintenance.

IX. Service Credits

Any SLA credits will be calculated based on a percentage of the Service Charges for the Service that was affected by the Service Disruption. All credits must be (a) requested by the Customer within 30 days of a Service Disruption by calling the Customer Care Center and opening a trouble ticket and (b) confirmed by Conterra engineering support teams as associated with the trouble ticket and as failing to meet the Network Availability and/or MTTR targets. The credits described in this SLA will constitute Customer's sole and exclusive remedies, and Conterra's sole and exclusive liabilities, with respect to Contreras failure to meet any service level commitments outlined herein.

Network Viability Credits

In the event that Network Availability is less than 99.99% in any calendar month, then upon Customer's compliance with this SLA, Customer will receive a credit equal to the percentage of the applicable monthly service charges set forth in the table below, to be applied against any amounts otherwise due Customer to Conterra.

Network Availability	Monthly Credit (% of Service Charges)
<99.99%	30%

Meantime to Restore Credits

In the event that MTTR for Priority 1 Outage averages greater than 03:59:59 hours, then upon Customer's compliance with this SLA, Customer will receive a credit as set forth below; to be applied as a credit or set-off against any amounts otherwise due by Customer to Conterra.

MTTR	Monthly Credit (% of Service Charges)
>4 hours<7.59.59 hours	4%
>8 hours	10%

- n. Contract documents should be submitted for review with the bid. Separate contract documents should be submitted for Schools and City. The Schools are under time constraints related to qualifying for Universal Service funds and, upon approval of the school board, desires to move quickly to secure services.**

Our executed Service Level Agreements for the schools and the city are found in the Appendices Section. Please execute and return.

- o. Provide your most favorable warranty and guarantee documentation.**

Conterra provides a turn-key service that contains all warranties of its service and infrastructure during the term of the contract.

- p. Verify that required insurance coverage is available (*insurance certificates need not be submitted until the award stage*).**

Our up to date Insurance Certificates can be found in the Appendices Section.

APPENDICES

- A. Service Contract Agreement
- B. Conterra RFP Exceptions
- C. Conterra Construction Overview
- D. Web Monitoring Application
- E. Customer Training and Orientation
- F. Company Safety Overview
- G. Accedian Network Interface Overview
- H. Insurance Certification
- I. Audited Financials

B-2014-26

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: May 27, 2014 CUT OFF DATE:

RESOLUTION X ORDINANCE PUBLIC HEARING

ITEM TITLE:

VRS Employer Contribution Rates in accordance with the 2014 Appropriations Act Item 468 H

STAFF RECOMMENDATION:

Recommend adoption of the certified rate of 11.90% and 8.72% for City Schools

PUBLIC NOTICE AND HEARING:

N/A

ADVISORY BOARD RECOMMENDATION:

N/A

FUNDING DATA:

The rate of 11.90% was used in the budget for FY 2015 and 8.72 % for City Schools

INSURANCE:

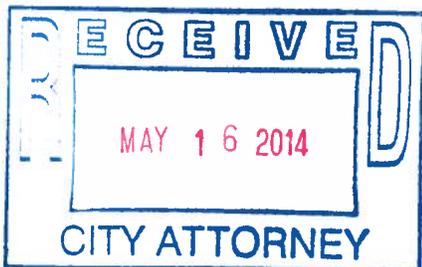
No liability assumed.

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.

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Interim Human Resources Director, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: [Signature] Date: 5-14-14

Mary Blowe, Finance Director



APPROVED AS TO FORM:

CITY ATTORNEY

5/16/2014

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Mary Blowe, Finance Director
Date: May 20, 2014
Re: VRS Rate certification

THE ISSUE: VRS offers two different rates for localities to choose from regarding the funding of our retirement pool. There are two resolutions, one for general government and the other for schools employees.

RELATIONSHIP TO STRATEGIC PLAN: With this change, we can work with our community to create a high performing organization.

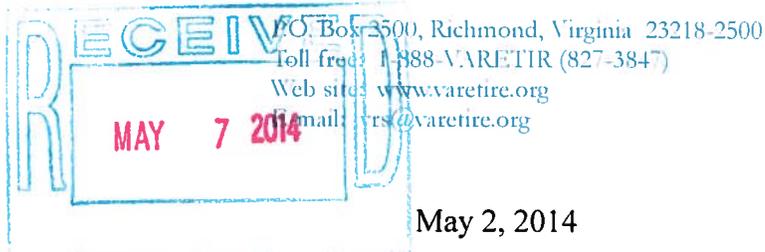
BACKGROUND: The City of Winchester has a desire to contribute as fully as possible to the VRS fund to ensure we have enough funds to pay our retirement costs in the future. Historically, we have gone with the VRS certified rates in order to lower our Other Post Employment Benefit (OPEB) costs. It is in my opinion to be more responsible to fully fund our retirement benefits.

BUDGET IMPACT: The 11.90% rate has already been factored into our FY 2015 budget, so no new impact. The schools have also properly budgeted at their rate of 8.72%.

OPTIONS: The City and Schools other option is to use the alternate rate. If this rate is utilized, please be aware of the following consequences:

- Fewer assets available for benefits
- Lower funded ratio with the next actuarial valuation is performed and in turn a higher calculated contribution rate.
- Require that we include the Net Pension Obligation (NPO) under the Governmental Accounting Standards Board (GASB) in our financial Statements.

RECOMMENDATIONS: Staff recommends the adoption of the 11.90% rate certified for the City and the rate of 8.72% for City Schools by the VRS Board of Trustees for the FY 2015-2016 biennium.



CITY OF WINCHESTER – 55222

Language in the 2013 Appropriations Act, Item 468(H), allowed localities to make an election regarding their employer contribution rate every biennium. You have the opportunity again this year to select which employer contribution rate your locality will pay, beginning July 1, 2014.

Included with this letter is the employer contribution resolution your local governing body will need to pass and then send in to communicate to VRS their election decision.

Employer Retirement Contribution Rate Election

By no later than July 1, 2014, your local governing body must approve one of the following employer contribution rate options for the defined benefit retirement plan in the biennium beginning July 1, 2014:

- 11.90% – the rate certified by the VRS Board of Trustees for the FY 2015-2016 biennium; or
- 9.52% – the alternate rate, which is the higher of the rate certified by the VRS Board for FY 2012 or 80 percent of the VRS Board-certified rate for FY 2015-2016.

Considerations in Electing Your Contribution Rate

The intent of the language in the 2013 Appropriation Act, Item 468(H) was to offer localities and schools some budget relief for the coming fiscal year with respect to the amount of their retirement contributions. However, this does not change the Board-certified rate or the recommended employer contribution rate. Therefore, if you are considering using the Alternate Rate, please be aware that doing so will:

- Reduce contributions to your employer account and the investment earnings they would have generated, which will mean there will be fewer assets available for benefits.

- Result in a lower funded ratio when the next Actuarial Valuation is performed and, thus, a higher calculated contribution rate at that time.
- Require that you include the Net Pension Obligation (NPO) under the Governmental Accounting Standards Board (GASB) Standards in your financial statements.

Deadline for Resolutions

VRS must receive your formal signed resolution for the employer retirement contribution rate election **by no later than July 10, 2014**. Please send all resolutions to Ms. ZaeAnne Sferra, Employer Coverage Coordinator at P.O. Box 2500, Richmond, VA 23218-2500.

If you have any questions about the information in this packet, please contact Ms. ZaeAnne Sferra, Employer Coverage Coordinator, at zsferra@varetire.org or (804) 775-3514.

Best regards.

Sincerely,



Robert P. Schultze
Director

Employer Contribution Rates for Counties, Cities,
Towns, School Divisions and Other Political Subdivisions
(In accordance with the 2014 Appropriation Act Item 468(H))

Resolution

BE IT RESOLVED, that the City of Winchester employer code 55222 does hereby acknowledge that its contribution rates effective July 1, 2014 shall be based on the higher of a) the contribution rate in effect for FY 2012, or b) eighty percent of the results of the June 30, 2013 actuarial valuation of assets and liabilities as approved by the Virginia Retirement System Board of Trustees for the 2014-16 biennium (the "Alternate Rate") provided that, at its option, the contribution rate may be based on the employer contribution rates certified by the Virginia Retirement System Board of Trustees pursuant to Virginia Code § 51.1-145(I) resulting from the June 30, 2013 actuarial value of assets and liabilities (the "Certified Rate"); and

BE IT ALSO RESOLVED, that the City of Winchester, employer 55222 does hereby certify to the Virginia Retirement System Board of Trustees that it elects to pay the following contribution rate effective July 1, 2014:

(Check only one box)

The Certified Rate of 11.90% The Alternate Rate of _____%; and

BE IT ALSO RESOLVED, that the City of Winchester employer code 55222 does hereby certify to the Virginia Retirement System Board of Trustees that it has reviewed and understands the information provided by the Virginia Retirement System outlining the potential future fiscal implications of any election made under the provisions of this resolution; and

NOW, THEREFORE, the officers of The City of Winchester employer code 55222 are hereby authorized and directed in the name of the City of Winchester to carry out the provisions of this resolution, and said officers of the City of Winchester are authorized and directed to pay over to the Treasurer of Virginia from time to time such sums as are due to be paid by the City of Winchester for this purpose.

Governing Body/School Division Chairman

CERTIFICATE

I, _____, Clerk of the City of Winchester certify that the foregoing is a true and correct copy of a resolution passed at a lawfully organized meeting of the City of Winchester held at _____, Virginia at _____ o'clock on _____, 2014. Given under my hand and seal of the City of Winchester this _____ day of _____, 2014.

Clerk

**This resolution must be passed prior to July 1, 2014 and
received by VRS no later than July 10, 2014.**

Employer Contribution Rates for Counties, Cities,
Towns, School Divisions and Other Political Subdivisions
(In accordance with the 2014 Appropriation Act Item 468(H))

Resolution

BE IT RESOLVED, that the Winchester Public Schools, employer code 5-5522 does hereby acknowledge that its contribution rates effective July 1, 2014 shall be based on the higher of a) the contribution rate in effect for FY 2012, or b) eighty percent of the results of the June 30, 2013 actuarial valuation of assets and liabilities as approved by the Virginia Retirement System Board of Trustees for the 2014-16 biennium (the "Alternate Rate") provided that, at its option, the contribution rate may be based on the employer contribution rates certified by the Virginia Retirement System Board of Trustees pursuant to Virginia Code § 51.1-145(I) resulting from the June 30, 2013 actuarial value of assets and liabilities (the "Certified Rate"); and

BE IT ALSO RESOLVED, that the Winchester Public Schools, employer 5-5522 does hereby certify to the Virginia Retirement System Board of Trustees that it elects to pay the following contribution rate effective July 1, 2014:

(Check only one box)

The Certified Rate of 8.72% The Alternate Rate of _____%; and

BE IT ALSO RESOLVED, that the Winchester Public Schools, employer code 5-5522 does hereby certify to the Virginia Retirement System Board of Trustees that it has reviewed and understands the information provided by the Virginia Retirement System outlining the potential future fiscal implications of any election made under the provisions of this resolution; and

NOW, THEREFORE, the officers of The Winchester Public Schools, employer code 5-5522 are hereby authorized and directed in the name of the Winchester Public Schools to carry out the provisions of this resolution, and said officers of the Winchester Public Schools are authorized and directed to pay over to the Treasurer of Virginia from time to time such sums as are due to be paid by the Winchester Public Schools for this purpose.

School Division Chairman

CERTIFICATE

I, _____, Clerk of the Winchester Public Schools certify that the foregoing is a true and correct copy of a resolution passed at a lawfully organized meeting of the Winchester Public Schools held at _____, Virginia at _____ o'clock on _____, 2014. Given under my hand and seal of the Winchester Public Schools this _____ day of _____, 2014.

Clerk

**This resolution must be passed prior to July 1, 2014 and
received by VRS no later than July 10, 2014.**

Local Governing Body Concurrence with School Division
Electing to Pay the VRS Board-Certified Rate

(In accordance with the 2014 Appropriation Act Item 468(H))

Resolution

BE IT RESOLVED, that the _____[Locality Name] [employer code] does hereby acknowledge that the _____[School Division Name] has made the election for its contribution rate to be based on the employer contribution rates certified by the Virginia Retirement System Board of Trustees pursuant to Virginia Code § 51.1-145(I) resulting from the June 30, 2013 actuarial value of assets and liabilities (the "Certified Rate"); and

BE IT ALSO RESOLVED, that the _____[Locality Name] [employer code] does hereby certify to the Virginia Retirement System Board of Trustees that it concurs with the election of the _____[School Division Name] to pay the Certified Rate, as required by Item 468(H) of the 2014 Appropriation Act; and

NOW, THEREFORE, the officers of _____[Locality Name] [employer code] are hereby authorized and directed in the name of the _____[Locality Name] to execute any required contract to carry out the provisions of this resolution. In execution of any such contract which may be required, the seal of the _____[Locality Name], as appropriate, shall be affixed and attested by the Clerk.

Locality Board Chairman

CERTIFICATE

I, _____, Clerk of the _____[Locality Name], certify that the foregoing is a true and correct copy of a resolution passed by the _____[Locality Name] and ratified by the _____[Locality Name] at a lawfully organized meeting of the _____[Locality Name] held at _____, Virginia at _____ o'clock on _____, 2014. Given under my hand and seal of the _____[Locality Name] this _____ day of _____, 2014.

Clerk

This resolution must be passed prior to July 1, 2014 and received by VRS no later than July 10, 2014.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: June 10, 2014 CUT OFF DATE:

RESOLUTION X ORDINANCE PUBLIC HEARING

ITEM TITLE:

Resolution to adopt a personnel action plan

STAFF RECOMMENDATION:

Adopt plan to begin hiring at certain intervals

PUBLIC NOTICE AND HEARING:

N/A

ADVISORY BOARD RECOMMENDATION:

N/A

FUNDING DATA:

Achieves necessary savings in FY 2014 and FY 2015

INSURANCE:

No liability assumed.

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. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>gw</i>	_____	<i>6/5/2014</i>
6. City Manager	<i>gy</i>	_____	<i>5/30</i>
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: *May Blawie* *5-30-14*
Date



APPROVED AS TO FORM:
[Signature] *6/5/2014*
 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Craig Gerhart, Interim City Manager
Date: June 10, 2014
Re: Action plan regarding frozen positions

THE ISSUE: City Council froze all positions at the May 20th worksession to help close a deficit created by a refund of approximately \$580,000 in sales tax revenue.

RELATIONSHIP TO STRATEGIC PLAN: With this change, we can work together to create a high performing organization.

BACKGROUND: City of Winchester staff members have a desire to move our organization into our next budget year in a positive fiscal condition. City Council took a proactive approach to ensure a solid fund balance to continue important projects in the City by temporarily freezing positions, almost the only option at the end of a fiscal year. As part of our budget package we offer some suggestions to ensure enough cuts are made to cover the deficit in FY 2015 from the decrease in sales tax.

BUDGET IMPACT: The total budget impact in FY 2015 is a \$193,000 reduction in sales tax. The recommended option presents \$199,282 in offsetting reductions.

OPTIONS: City Council voted to eliminate the Assistant City Manager position as of July 1, 2014 saving \$131,000 and the remaining amount of \$62,000 will be achieved by the deferral of hiring certain positions in FY 2015. The attached spreadsheet reflects the options staff recommends.

RECOMMENDATIONS: City staff recommends the proposal to lift the hiring freeze as of July 1, 2014 for all positions and defer the hiring of certain other positions as presented to achieve the necessary savings. We also recommend lifting the hiring freeze for non-general fund positions, since there is minimal impact on the general fund. We also recommend to immediately begin allowing applications to be received through neogov. This will allow staff to have applications to review and begin to schedule interviews after July 1, 2014.

**A RESOLUTION TO ADOPT A PERSONNEL ACTION
PLAN TO BEGIN HIRING NECESSARY STAFF
POSITIONS IN THE CITY OF WINCHESTER**

WHEREAS, a significant budget deficit in sales tax created a budget gap for Council to address in FY 2014 and FY 2015; and

WHEREAS, City Council put a forth a motion to freeze positions to address this budget shortfall; and

WHEREAS, City staff has developed a plan to begin hiring necessary staff positions on a methodical basis to achieve the savings needed; and

WHEREAS, the City of Winchester is dedicated to a high level of customer service to our citizens and therefore supports the action plan.

NOW THEREFORE BE IT RESOLVED, that the Common Council of the City of Winchester, approves the personnel action plan and authorizes staff to begin hiring again at those target dates.

**City of Winchester
Current Openings as of 5/22/14**

Department	Position	Classification	Description	Number of Openings	New Hire or Replacement	Salary	Needs Justification	Status	Budget Impact	Recommendation	FY 2015 Savings
General Fund											
Human Resources	HR Director	Full-time		1	Replacement	\$ 100,000.00			\$ 127,100.00	Target hiring date October 1, 2014	\$ 31,775.00
HR/Finance	Administrative Assistant	Full-time		1	New	\$ 36,520.75			\$ 49,655.32	Hiring date on or after July 1, 2014	0
Finance	Purchasing/Risk Manager	Full-time	Manages all procurement and risk to include vehicle and city liability claims	1	Replacement	\$ 43,326.40	Staff shortage in Finance with several procurement projects that will be delayed to the City if not filled	Accepting Applications	\$ 57,958.21	Hiring date on or after July 1, 2014	0
Police	Police Officer I	Full-time	Entry level police officer	1	Replacement	\$ 39,291.20	Police Academy in July; if not staffed there will not be another academy for 6 months; positions not filled can shut down CRT operations	Interviewing candidates	\$ 53,035.26	Target hiring date July 1, 2014	0
Fire and Rescue	Executive Secretary	Full-time	Administrative Support for Fire and Rescue	1	Replacement	\$ 32,323.20	If not filled, will need to increase part-time hours for coverage to include EMS billing	Accepting Applications	\$ 44,534.30	Target hiring date October 1, 2014	\$ 11,133.58
Emergency Communication Center	Communications Specialist I	Full-time	Dispatcher for 911	2	Replacement	\$ 31,505.00	Critical to service the community 911 calls	Accepting Applications	\$ 87,072.20	Hiring date on or after July 1, 2014	
Emergency Communication Center	Communications Specialist I	Full-time	Dispatcher for 911	1	Replacement	\$ 31,505.00	Critical to service the community 911 calls	Accepting Applications	\$ 43,536.10	Target hiring date October 1, 2014	\$ 10,884.03
Emergency Management Services	Emergency Management Project Coordinator	Part-time	Support to Lynn Miller on Emergency Communications project	1	New	\$ 32,250.00	Position added to replace consultant fees at \$140 per hour for the project; this position is \$21.50 per hour with a max of 1500 hours in 12 months	Background and drug screening	\$ 44,445.00	Hiring date on or after July 1, 2014	0
Emergency Management Services	Emergency Management Technician	Full-time	Administrative Support for Emergency Management Services	1	New		Position added to help with planning, training, exercising, response, recovery, mitigation, and outreach and communications management		\$ 37,000.00	FY 2015 budget only includes funding for 3/4 year. Target hiring date for this position is October 1, 2014	0
Parks and Recreation	Maintenance Technician	Full-time	Parks maintenance	1	New	\$ 28,641.60	Position added to replace part-time staff for consistency and reliability to maintain fields and mow grass		\$ 40,042.75	Hiring date on or after July 1, 2014	0
Parks and Recreation	Parks Project Coordinator	Full-time	Oversees park projects and maintenance of over 200 acres of park property	1	Replacement	\$ 39,291.20	Oversees park maintenance staff, coordination of the World Series event and the new Turfgrass project	Accepting Applications	\$ 53,035.26	Hiring date on or after July 1, 2014	0
Zoning	Senior Code Compliance Inspector	Full-time	Enforces compliance with city zoning codes - supervises and trains code inspectors	1	Replacement	\$ 43,326.40	Person in role retiring end of May	Accepting Applications	\$ 57,958.21	Hiring date for this position is budgeted for October 1, 2014	\$ 14,489.55
Economic Redevelopment	Economic Redevelopment	Full-time		1	Replacement	\$ 100,000.00			\$ 127,100.00		
			Total General Fund Impact			\$ 421,460.00			\$ 822,472.62		\$ 68,282.15

**City of Winchester
Current Openings as of 5/22/14**

Department	Position	Classification	Description	Number of Openings	New Hire or Replacement	Salary	Needs Justification	Status	Budget Impact	Recommendation	FY 2015 Savings
Other Funds											
No General Fund Budget Impact											
Social Services	Family Services Specialist I	Full-time	Provides crisis intervention services to the community as well as after hours services for child/adult protective services	1	Replacement	\$ 41,246.40	Services for crisis intervention programs would be limited if we do not staff this position	Accepting Applications	\$ 55,420.61	Allow recruitment and hiring to begin immediately	
Water Plant	Water Treatment Operator I	Full-time	Oversee waste water plant operations to meet environmental needs	1	Replacement	\$ 29,328.00	If not filled, staff will occur overtime to support needs of the waste water plant	Accepting Applications	\$ 40,880.16	Allow recruitment and hiring to begin immediately	
Transit	Bus Driver	Part-time	Drives City buses/trolleys to include handicap transport	1	Replacement	\$ 19,185.00	If not filled, route schedules will have to be adjusted or cancelled for citizens	Accepting Applications	\$ 28,505.70	Allow recruitment and hiring to begin immediately	
Social Services	Human Services Assistant	Part-time		1	Replacement	\$ 29,328.00		Interviewing candidates	\$ 40,880.16	Allow recruitment and hiring to begin immediately	
Transit	Bus Driver	Full-time	Drives City buses/trolleys to include handicap transport	1	Replacement	\$ 26,603.20	If not filled, route schedules will have to be adjusted or cancelled for citizens	Posting	\$ 37,555.90	Allow recruitment and hiring to begin immediately	