

REGULAR MEETING

NOVEMBER 23, 2004

At a regular meeting of Council held this evening at 7:30 p.m., there were present: City Manager Roger Baker; Assistant City Manager Kurt Hodgen; Vice-Mayor Rodney L. Eagle; Council Members Charles R. Chenault; Council Member Hugh J. Lantz; George W. Pace; City Clerk Yvonne “Bonnie” Ryan, CMC/MMCA, and Chief of Police Donald Harper. Absent: Mayor Larry M. Rogers; and City Attorney Earl Q. Thumma, Jr.

Council Member Pace gave the invocation and Vice-Mayor Eagle led everyone in the Pledge of Allegiance.

Bucky Berry, a resident of Harrisonburg, asked that the 911 tax not be increased on telephones to help pay for a new radio system.

Arlin Raney, a resident of Harrisonburg, said arresting members of a gang is wrong and it is more helpful to provide a place for youth to go after school.

Council Member Lantz offered a motion to approve the consent agenda, including approval of the minutes and the second reading of a Supplemental Appropriation for the Police Department, and amending and re-enacting Title 14, Chapter 1 (taxicabs) of the Harrisonburg City Code. The motion also included scheduling a public hearing on December 14, 2004 to review the Capital Improvements Program (CIP) FY 2005-2006 through FY 2009-2010. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

The next item of business was a request by the Harrisonburg Redevelopment & Housing Authority. Michael Wong, Executive Director of HRHA, said that the authority has been successful in obtaining an EDGE loan as authorized by a previous Resolution. In order to utilize the EDGE loan the existing Bridge Loan must be prepaid and a new loan created to help pay for exceeded costs associated with rock removal. Also, the City will sell the Historic Component to Lucy F. Simms, L.P. and enter into a partnership to utilize the Historic Component as a community education center. Funding for the Simms project includes the City, Boys/Girls Club, Arc Op Shop and historical tax credits.

**RESOLUTION AUTHORIZING THE HARRISONBURG REDEVELOPMENT AND HOUSING AUTHORITY TO OBTAIN EDGE LOAN FINANCING, AGREEING TO**

**PROVIDE CITY DONATIONS TO CERTAIN CHARITABLE ORGANIZATIONS, AND AUTHORIZING THE BORROWING OF \$400,000 IN EDGE LOAN FUNDS**

**WHEREAS, the City of Harrisonburg, Virginia (the “City”), in cooperation with the Harrisonburg Redevelopment and Housing Authority (the “Authority”) has decided to assist in the construction and renovation of the Lucy F. Simms Continuing Education Center (the “Simms Center”); and,**

**WHEREAS, the Simms Center will be utilized as an education center in order to promote life-long learning and to enhance the health, safety and welfare of the citizens of the City of Harrisonburg and Rockingham County. A portion of the Simms Center known as the Historic Component shall be sold to Lucy F. Simms, L.P. pursuant to another City resolution. The new construction portion of the Simms Center (the “New Construction”) will be retained by the City; and,**

**WHEREAS, on June 22, 2004 the City passed a resolution entitled “Resolution Authorizing the Harrisonburg Redevelopment and Housing Authority to Obtain Financing in Order to Retire a Portion of City Debt and Other Matters Concerning the Lucy F. Simms Continuing Educations Center” (the “Resolution”), a copy of which is attached to this resolution (Exhibit A); and,**

**WHEREAS, the Resolution authorized the Authority to borrow \$2,700,000 (the “Bridge Loan”) from SunTrust Bank (the “Bank”) and to lend \$1,500,000 to the Boys & Girls Club of Harrisonburg and Rockingham County (the “Boys & Girls Club”), \$500,000 to the Harrisonburg-Rockingham Association for Retarded Children, Inc. (the “ARC”) and \$700,000 to Lucy F. Simms, L.P. (the “Partnership”), (collectively the “Borrowers”) for the reasons set forth in the Resolution; and,**

**WHEREAS, the Resolution provided that the City would guaranty the repayment of the Bridge Loan to the Authority, and authorized the Authority to apply for an Economic Development and Growth Enhancement loan (the “EDGE Loan”) which would provide a lower interest rate, 2.5%, than that of the Bridge Loan, 3.85%; and,**

**WHEREAS, the Authority has been successful in obtaining the EDGE Loan as authorized by the Resolution through SunTrust Bank; and,**

**WHEREAS, in order to utilize the EDGE Loan, the existing Bridge Loan financing authorized by the Resolution must be prepaid and a new loan utilizing the EDGE subsidy put into place; and,**

**WHEREAS, rock removal costs on the New Construction have exceeded \$400,000, which costs must be paid; and,**

**WHEREAS, Lucy F. Simms, L.P. (the “Limited Partnership”) will require a \$300,000 loan, instead of the \$700,000 authorized by the Resolution, leaving \$400,000 in**

**EDGE Loan funds which may be utilized to fund rock removal costs on the New Construction; and,**

**WHEREAS, substantially final forms of the following documents have been presented at this meeting: (a) Authority Note to SunTrust Bank, (b) City Guaranty Agreement, (c) Boys & Girls Club Modification Agreement, (d) ARC Modification Agreement, (e) Lucy F. Simms, L.P. Note to the Authority and (f) City Note to the Authority, (collectively the “EDGE Loan Documents”).**

**WHEREAS, the Boys & Girls Club and the ARC provide charitable services to the residents of the City of Harrisonburg and Rockingham County; and,**

**WHEREAS, pursuant to Code of Virginia section 15.2-953, the City wishes to assist the Boys and Girls Club and the ARC in their good works through donations to such organizations in order to enhance the health, safety and welfare of the citizens of the City of Harrisonburg and Rockingham County; and,**

**WHEREAS, substantially final forms of the Donation Agreement to the Boys & Girls Club and the Donation Agreement to the ARC (collectively the “Donation Agreements”) have been presented to this meeting.**

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Harrisonburg, Virginia, that:**

**1. The City approves the foregoing recitals, which are incorporated in, and deemed a part of, this Resolution as if fully set forth herein.**

**2. The City approves of the EDGE Loan Documents as described in this resolution, which shall be in substantially the form submitted to this meeting, with such changes as may be approved by the City Manager or the Mayor.**

**3. The City authorizes the Authority to pay off the Bridge Loan and to obtain the EDGE Loan from SunTrust Bank in the maximum amount of \$2,700,000 and to lend it to the Borrowers in the amounts set forth in paragraphs 4 and 5. The maximum interest rate on the EDGE Loan will be 2.5% per annum, and the term shall be two years.**

**4. The City’s full faith and credit is irrevocably pledged to the guarantee of repayment of the EDGE Loan by the Borrowers to the Authority up to the following amounts:**

<b>A)</b>	<b>Boys &amp; Girls Club</b>	<b>\$ 1,500,000</b>
<b>B)</b>	<b>ARC</b>	<b>\$500,000</b>
<b>C)</b>	<b>Limited Partnership</b>	<b>\$300,000</b>
	<b>Total City Guarantee:</b>	<b>\$ 2,300,000</b>

5. The City authorizes and agrees to borrow \$400,000 in EDGE Loan proceeds from the Authority, and agrees to utilize such proceeds to pay for rock removal costs incurred in developing the New Construction. The City's full faith and credit is irrevocably pledged to the repayment of the City's debt to the Authority. The maximum interest rate on the loan will be 2.5% per annum, and the term of the loan is two years.

6. The City Manager and Mayor, either of whom may act, are hereby authorized and directed to execute the City Guaranty Agreement and the City Note to the Authority as described in this resolution, which shall be in substantially the form submitted to this meeting, with such changes as may be approved by the City Manager or the Mayor. The City Manager and Mayor are also authorized to take such other actions as are necessary to fulfill the City's commitments set forth in this resolution.

7. Pursuant to Code of Virginia section 15.2-953, in order to assist the Boys and Girls Club and the ARC in their good works, and in order to enhance the health, safety and welfare of the citizens of the City of Harrisonburg and Rockingham County, the City agrees to donate monies to the Boys & Girls Club and ARC over time in the amounts set forth in the Donation Agreements.

8. The City Manager and Mayor, either of whom may act, are hereby authorized and directed to execute the Donation Agreement to the Boys & Girls Club and the Donation Agreement to the ARC as described in this resolution, which shall be in substantially the form submitted to this meeting, with such changes as may be approved by the City Manager or the Mayor. The City Manager and Mayor are also authorized to take such other actions as are necessary to fulfill the City's commitments set forth in this resolution

9. The resolutions passed by the City Council on March 25, July 22, September 23, November 11 and November 25 of 2003 and June 22 of 2004 shall continue in full force and effect, as modified by this resolution.

**This Resolution shall take effect immediately upon its adoption.**

**READ AND ADOPTED: November 23, 2004**

**CERTIFICATE**

**Record of the roll-call vote by the City Council of the City of Harrisonburg, Virginia, upon reading of a resolution titled "RESOLUTION AUTHORIZING THE HARRISONBURG REDEVELOPMENT AND HOUSING AUTHORITY TO OBTAIN FINANCING IN ORDER TO RETIRE A PORTION OF THE CITY DEBT AND OTHER MATTERS CONCERNING THE LUCY F. SIMMS CONTINUING EDUCATION CENTER," taken at a regular meeting of the City council held on November 23, 2004.**

	AYE	NAY	ABSTAIN	ABSENT
Larry M. Rogers, Mayor				X
Rodney Eagle, Vice-Mayor	X			
Charles R. Chenault	X			
Hugh J. Lantz	X			
George Pace	X			

Dated: November 23, 2004

(SEAL)

\_\_\_\_\_  
Vice-Mayor, City of Harrisonburg, Virginia

ATTEST: \_\_\_\_\_  
Clerk, City Council of the City of  
Harrisonburg, Virginia

The undersigned Clerk of the City Council of the City of Harrisonburg, Virginia (the "City Council") hereby certifies that the foregoing is a true, correct and complete copy of a Resolution adopted by the City Council at its meeting duly called and held on November 23, 2004, in accordance with law, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect as of the date hereof.

WITNESS my hand and the seal of the City of Harrisonburg, Virginia this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Clerk, City Council of the  
City of Harrisonburg, Virginia

**RESOLUTION OF THE CITY OF HARRISONBURG,  
VIRGINIA REGARDING THE HISTORIC COMPONENT OF  
THE LUCY F. SIMMS CONTINUING EDUCATION CENTER**

WHEREAS, the City of Harrisonburg, Virginia (the "City"), in cooperation with the Harrisonburg Redevelopment and Housing Authority (the "Authority"), the Boys & Girls Club of Harrisonburg and Rockingham County (the "Boys & Girls Club"), and the Harrisonburg-Rockingham Association For Retarded Children, Inc. ("ARC") to assist in the renovation of the original, historic portion of the Lucy F. Simms Continuing Education Center (the "Historic Component"); and

WHEREAS, the City will sell the Historic Component to Lucy F. Simms, L.P. (the "Partnership") pursuant to a purchase agreement (the "City Purchase Agreement") entered into between the City and the Partnership so that the Partnership may utilize the Historic Component as a community education center in order to promote life-long

learning and to enhance the health, safety, and welfare of the citizens of the Harrisonburg/Rockingham County community; and

WHEREAS, a portion of the purchase price of the Historic Component will be paid in the form of a promissory note by the Partnership to the City (the “Partnership Note”). Payments of principal and interest will be deferred for not more than twenty years, at which time the Partnership Note will become due and payable in full. The Partnership Note will be secured by either a vendor’s lien or a first priority deed of trust conveying the Historic Component to the named trustees (the “Deed of Trust”). The remainder of the consideration paid by the Partnership to the City is set forth in the City Purchase Agreement; and

WHEREAS, the City will have the option to purchase the Historic Component back from the Limited Partnership for fair market value pursuant to an option agreement with the Limited Partnership, (the “City Purchase Option Agreement”); and

WHEREAS, the Partnership’s general partner is Lucy F. Simms, L.C. (the “General Partner”), which owns 0.009% of the Partnership units; and

WHEREAS, the General Partner has the following members with the following membership interest percentages: the Authority, 51%; the Boys & Girls Club, 32%; and the ARC, 17%.; and

WHEREAS, the Authority is the Manager of the General Partner of the Partnership and Michael G. Wong, Executive Director of the Authority, will be vested with the Authority’s powers as Manager of the General Partner and will undertake the duties of the Manager on behalf of the Authority; and

WHEREAS, the limited partners of the Partnership and their ownership interests in the Partnership are: the Local and Historic Equity Fund of Virginia I, LLC, 99.99%; (the “Fund”) and the Virginia Affordable Housing Management Corporation, .001%; and

WHEREAS, the Fund anticipates making a capital contribution in excess of \$800,000 to the Partnership in exchange for its ownership interest in the Partnership; and

WHEREAS, the Boys & Girls Club and the ARC each will enter into lease agreements with the Partnership pursuant to which each will lease separate portions of the Historic Component for a period of nineteen years; and

WHEREAS, the Boys & Girls Club will loan \$1,500,000 to the Partnership, and the Partnership will grant the Boys & Girls Club a subordinated deed of trust conveying the Historic Component to the named trustees. In lieu of loan payments, the Partnership will credit the amount of the loan payments to the rent owed by the Boys & Girls Club; and

WHEREAS, the ARC will loan \$500,000 to the Partnership, and the Partnership will grant the ARC a subordinated deed of trust conveying the Historic Component to the

named trustees. In lieu of loan payments, the Partnership will credit the amount of the loan payments to the rent owed by the ARC; and

WHEREAS, the City also will lease space in the Historic Component pursuant to a lease agreement (the “City Lease Agreement”) with the Partnership. The Authority, Harrisonburg City School Board, and other entities or persons also may lease space in the Historic Component; and

WHEREAS, in order to induce the Fund to make its capital contribution to the Partnership, the City will guarantee the performance of the General Partner’s obligations under the Lucy F. Simms, L.P. Limited Partnership Agreement and will provide such other guarantees to the Fund all as set forth in a guarantee agreement (the “City Guarantee”) that the City will execute in favor of the Fund; and

WHEREAS, substantially final forms of the following documents have been presented at this meeting: (a) Operating Agreement of Lucy F. Simms, L.C., (b) Lucy F. Simms, L.P., Limited Partnership Agreement and (c) consent resolution of Lucy F. Simms, L.C.; and

WHEREAS, substantially final forms of the following documents also have been presented at this meeting: (a) Simms Guaranty Agreement, (b) City Lease Agreement, (c) Incumbency Certificate of the City, (d) Affidavit regarding pending actions of the City, (e) deed conveying the Historic Portion from the City to Lucy F. Simms, L.P., (f) Partnership Note, (g) Deed of Trust, (h) Cross Easement Agreement, (i) Assignment Agreement, (j) City Purchase Agreement, (k) City Purchase Option Agreement, and (l) Settlement Statement (collectively, the “City Historic Component Documents.”

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Harrisonburg, Virginia that:

1. The City approves the foregoing recitals, which are incorporated in, and deemed a part of, this Resolution as if fully set forth herein.
2. The City’s full faith and credit is irrevocably pledged to the guarantees set forth in the City Guaranty.
3. The City approves the signing of the City Historic Component Documents, and authorizes and directs the City Manager, Mayor or Vice-Mayor, any of whom may act, to execute and deliver the City Historic Component Documents in substantially the form submitted to the City, with such changes and additions as may be approved by the City Manager, Mayor or Vice-Mayor.
4. The City authorizes and directs the City Manager, Mayor and Vice-Mayor, any of whom may act, to take all actions necessary to perform the tasks and achieve the objectives set forth in this resolution. Such authorization and direction includes but is not limited to: (a) effectuating the sale of the Historic Component from the City to the

Partnership, (b) taking such actions as are necessary to ensure that the City Guarantee is executed and enforceable, (c) accepting the Partnership Note as payment to the City for the Historic Component, (d) entering into the City Lease Agreement with the Partnership, (e) taking such actions and signing such documents as are needed to transfer the City's warranties and rights under the City's agreements with Lantz Construction Company and with the Troyer Group, Inc. with respect to the Historic Component, including any rights under any performance bonds or insurance agreements, to the Partnership, and (f) taking such actions as are necessary to transfer any building or other permits, including zoning or subdivision approval, to the Partnership.

5. The City Manager, Mayor and Vice-Mayor are also authorized to take such other actions and to execute such other documents as are necessary to achieve the purposes set forth in this Resolution.

6. The Resolutions passed by the City Council on March 25, July 22, September 23, November 11 and November 25 of 2003 and June 22 of 2004 shall continue in full force and effect, as modified by this Resolution.

This Resolution shall take effect immediately upon its adoption.

**READ AND ADOPTED: November 23, 2004**

**CERTIFICATE**

Record of the roll-call vote by the City Council of the City of Harrisonburg, Virginia, upon reading of a resolution titled "RESOLUTION OF THE CITY OF HARRISONBURG, VIRGINIA REGARDING THE HISTORIC COMPONENT OF THE LUCY F. SIMMS CONTINUING EDUCATION CENTER," taken at a regular meeting of the City Council held on November 23, 2004:

	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>Larry M. Rogers, Mayor</b>				<b>X</b>
<b>Rodney Eagle, Vice-Mayor</b>	<b>X</b>			
<b>Charles R. Chenault</b>	<b>X</b>			
<b>Hugh J. Lantz</b>	<b>X</b>			
<b>George Pace</b>	<b>X</b>			



The undersigned Clerk of the City Council of the City of Harrisonburg, Virginia (the "City Council") hereby certifies that the foregoing is a true, correct and complete copy of a Resolution adopted by the City Council at its meeting duly called and held on November 23, 2004, in accordance with law, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect as of the date hereof.

WITNESS my hand and the seal of the City of Harrisonburg, Virginia this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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Clerk, City Council of the  
City of Harrisonburg, Virginia

At 7:50 p.m., Vice-Mayor Eagle closed the regular session temporarily and called the evening public hearing to order. The following notice appeared in the Daily News-Record on Tuesday, November 9, and Tuesday, November 16, 2004.

#### NOTICE OF PUBLIC HEARING

Notice is hereby given that on Tuesday, November 23, 2004, the City Council of the City of Harrisonburg, Virginia, will conduct a public hearing in accordance with Section 15.2-2606 of the Code of Virginia of 1950, as amended, regarding the proposed borrowing by the City of up to \$400,000 and other matters as set forth in this notice. The general purpose of the proposed indebtedness is to provide funds to finance certain construction and capital improvement costs undertaken for the benefit of the Lucy F. Simms Continuing Education Center ("Simms Center") currently owned by the City and located at 620 Simms Avenue, Harrisonburg, Virginia 22802, together with related expenses. In addition, the City will consider entering into a guaranty agreement with Lucy F. Simms, L.P. guaranteeing the performance of certain obligations undertaken by Lucy F. Simms, L.C. in order to operate the Historic Component of the Simms Center for the benefit of the citizens of the City of Harrisonburg and Rockingham County. The maximum amount of the guaranty shall be \$3,000,000. The City will also consider a proposal for the City to enter into an agreement to provide donations to the Boys & Girls Club of Harrisonburg and Rockingham County and the Harrisonburg-Rockingham Association for Retarded Children, Inc. over time so that these organizations' charitable purposes can be continued pursuant to Code of Virginia 15.2-953. Finally, the City will consider a proposal to sell the Historic Component of the Simms Center to Lucy F. Simms, L.P. and to provide seller (City) financing to Lucy F. Simms L.P. to sell such property. The maximum amount of the seller financing provided shall be \$1,500,000.

The public hearing, which may be continued or adjourned, will be conducted at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, Harrisonburg, Virginia 22801. Interested persons may appear at such time and place and present their views.

Vice-Mayor Eagle called on anyone desiring to speak for or against this loan.

Bucky Berry, a resident of Harrisonburg, said he supported the project because his son could benefit from the Boys & Girls Club. There being no others desiring to be heard, the public hearing was declared closed at 7:51 p.m., and the regular session reconvened.

Council Member Pace questioned if the financing for the entire project included the gymnasium financing over a the long-term loan and whether the City was responsible for the EDGE loan of \$2.7 if no fund raising was involved?

Mr. Wong said the figure was approximately \$2.4 million if the capital campaigns are unsuccessful.

Council Member Pace questioned whether the City committed \$116,000 or \$170,000 in funding to the Boys & Girls and the ARC? “Is the City responsible for repair and maintenance expenses associated with the cost of the building?”

Jason Ham, an attorney representing HRHA, said the projected cost over five years is approximately \$175,000.

Council Member Pace asked if the City would maintain ownership of the gymnasium once the two lots in the historical building were deeded to HRHA.

Council Member Chenault questioned if the \$160,000 donation to the Boys/Girls Club and ARC was a pass through entity? “It is intended for the maintenance operation?”

Council Member Pace commented that this project will expand the space available for children who are at risk and should help with a gang enforcement program.

Michael Wong said that the new construction will allow the Boys/Girls Club to expand from 100 to 400 students served daily and allow the ARC/OP Shop to expand service delivery from 15 to 50 clients daily, provide classroom space for adult education, GED training, home ownership training and financial literacy training.

Following further discussion and comments, Council Member Pace offered a motion to approve the Historic Component resolution. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

Council Member Lantz offered a motion to approve the EDGE loan resolution. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

Vice-Mayor Eagle presented the following resolution for Council’s consideration of approval:

**RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF HARRISONBURG, VIRGINIA  
REGARDING THE CITY’S SUPPORT FOR THE ONE COURT SQUARE PROJECT  
BEING DEVELOPED BY THE HARRISONBURG REDEVELOPMENT AND  
HOUSING AUTHORITY IN ORDER TO PROMOTE ECONOMIC DEVELOPMENT  
WITHIN THE CITY**

**WHEREAS, the Harrisonburg Redevelopment and Housing Authority (the “Authority”), in order to promote economic development in the City of Harrisonburg, Virginia (the “City”), to provide for the rehabilitation and improvement of a building in the downtown area of the City and to prevent the adverse social and economic conditions that can arise from the further deterioration of an existing facility in the downtown area, has decided to acquire, rehabilitate and improve the property located at One Court Square in the City (the “Property”);**

**WHEREAS, it is anticipated that the Authority will borrow up to \$2,000,000 for a term of no more than 20 years at an interest rate not to exceed 7.00 percent per year (the “Loan”) from one or more banks (together, the “Lender”) to provide financing for the acquisition, rehabilitation and improvement of the Property and that such loan will be documented by a loan or financing agreement, note or other similar documents (together, the “Loan Documents”);**

**WHEREAS, it is anticipated that the City will work with the Authority to operate the Property as an innovation center in which space is leased to small businesses and new businesses, particularly technology-based businesses, pursuant to leases to be negotiated between the Authority and such businesses (together, the “Leases”);**

**WHEREAS, the City Council of the City of Harrisonburg, Virginia (the “City Council”) has requested the Authority to take the actions described above for the purposes of: rehabilitating and improving the Property; preventing the adverse social and economic conditions that can arise from further deterioration of a building in the downtown area of the City; providing affordable space to house small and new businesses, which space is**

otherwise lacking in the City; creating new jobs from the rehabilitation and improvement of the Property, from the businesses leasing space in the Property, and from other ancillary and support businesses; and creating tax revenues from the businesses rehabilitating and improving the Property, from the businesses leasing space in the Property, and from other ancillary and support businesses;

WHEREAS, to encourage the rehabilitation and improvement of the Property and its development as an innovation center, the City will enter into an agreement with the Authority (the "Support Agreement") in which the City will agree that if the revenues from the Leases and other ancillary revenues received by the Authority from the leasing and operation of the Property are not sufficient to pay the costs of operating, insuring and maintaining the Property and paying the debt service and other costs due under the Loan Documents, the City has a moral, but non-binding, obligation to pay moneys to the Authority in such amounts and at such times as will allow the Authority to pay such costs and debt service in a timely manner;

WHEREAS, all payments due from the City under the Support Agreement will be subject to and conditioned upon the City Council making annual appropriations to make such payments and if such appropriations are not made, such payments will not be made; and

WHEREAS, in reliance upon the City entering into the Support Agreement, the Authority will purchase all rights to the Property from Bill V. Neff and enter into the Loan Documents with the Lender.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Harrisonburg, Virginia that:

1. The City Council approves the foregoing recitals, which are incorporated in, and deemed a part of, this Resolution as if fully set forth herein.

2. The City will have a moral, but non-binding, obligation to make payments under the Support Agreement in amounts sufficient to allow the Authority to make up any shortfalls from the revenues from the Property to pay the costs of operating, insuring and maintaining the Property and paying the debt service and other costs due under the Loan Documents. Is it expected that such payments will not exceed \$25,000 per month for a term of twenty years. The Support Agreement will provide that the City Manager or other officer charged with the responsibility for preparing the City's annual budget shall include in the budget for each fiscal year as a single appropriation an amount sufficient to cover such shortfall. Throughout the term of the Support Agreement, the City Manager or other officer charged with the responsibility for preparing the City's annual budget will be required to deliver to the Authority within 10 days after the adoption of the annual budget for each fiscal year, but not later than 10 days after the beginning of each fiscal year, a certificate stating whether such amount has been appropriated by the City Council in such budget.

3. The Support Agreement will set forth the City's responsibilities for operating, insuring and maintaining the Property and locating appropriate lessees, all subject to annual appropriation by the City Council. The City will work with the Authority and the Lender to devise a plan for such operations, insurance, maintenance and lease-up reasonably acceptable to all parties.

4. The City Council approves the signing of the Support Agreement, and authorizes and directs the City Manager, the Mayor or the Vice-Mayor, any one of whom may act, to execute and deliver the Support Agreement in such form as they shall approve as shall be necessary to accomplish the intended purposes of the Support Agreement. The execution of the Support Agreement shall be deemed to evidence such approval.

5. The City Manager, the Mayor and the Vice-Mayor are also each authorized to take such other actions and to execute such other documents as are necessary to achieve the purposes set forth in this Resolution.

6. This Resolution shall take effect immediately upon its adoption.

**READ AND ADOPTED: November 23, 2004**

**CERTIFICATE**

Record of the roll-call vote by the City Council of the City of Harrisonburg, Virginia, upon reading of a resolution titled "RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA REGARDING THE CITY'S SUPPORT FOR THE ONE COURT SQUARE PROJECT BEING DEVELOPED BY THE HARRISONBURG REDEVELOPMENT AND HOUSING AUTHORITY IN ORDER TO PROMOTE ECONOMIC DEVELOPMENT WITHIN THE CITY," taken at a regular meeting of the City Council held on November 23, 2004:

	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>Larry M. Rogers, Mayor</b>				<b>X</b>
<b>Rodney L. Eagle, Vice Mayor</b>	<b>X</b>			
<b>Charles R. Chenault</b>	<b>X</b>			
<b>Hugh J. Lantz</b>	<b>X</b>			
<b>George W. Pace</b>	<b>X</b>			

**Dated: November 23, 2004**

By: \_\_\_\_\_  
**Mayor or Vice Mayor,  
 City of Harrisonburg, Virginia**

(SEAL)

**ATTEST:**

\_\_\_\_\_  
**Clerk, City Council of the City of  
Harrisonburg, Virginia**

**The undersigned Clerk of the City Council of the City of Harrisonburg, Virginia (the “City Council”) hereby certifies that the foregoing is a true, correct and complete copy of a Resolution adopted by the City Council at its meeting duly called and held on November 23, 2004, in accordance with law, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect as of the date hereof.**

**WITNESS my hand and the seal of the City of Harrisonburg, Virginia this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.**

\_\_\_\_\_  
**Clerk, City Council of the  
City of Harrisonburg, Virginia**

Economic Developer Director Brian Shull said technology is the focus of Harrisonburg’s economic development efforts. City Council entered into a partnership with James Madison University to achieve the goal of growing jobs and creating information technology clusters in the downtown area. As part of the partnership with JMU, a new position was created and the City contracted with the university to hire Dr. Jim Barnes as the Assistant Economic Development Director for Technology. Dr. Barnes has worked with City staff to research other technology-focused communities, helped draft a technology zone ordinance, and developed an exciting plan for a new Harrisonburg Innovation Center.

Dr. Jim Barnes gave an overview of the Harrisonburg Innovation Center. He said that the Harrisonburg Innovation Center will be the first technology center in the proposed Harrisonburg Downtown Technology Zone. The key focus is to have a center that is specialized in supporting and helping information technology companies to find creative solutions to improve corporate and national well-being. The key is being able to take innovative entrepreneurship strategies and look at business assistant models and incentives packages to be able to make this operation work. The whole key to the center is growing new jobs and strengthening the economic base of Harrisonburg by clustering information technology companies together, by partnering and networking the ones inside the building as well as partnering them with other technology companies within Harrisonburg, the state or the country. At the same time as the innovation center grows, attracting more IT companies to the City, and as synergy begins to develop, we will likely find retail stores, support services, new apartments and condominiums being located in the central business district. It will also become important for HDTZ to support Harrisonburg Downtown Renaissance in creating a 24/7/365 neighborhood within the central business district. The key behind the idea is finding the right building, put the right kind of technology in it at an affordable price, and then have it be attractive and desirable for locating IT companies in the City. We believe this building is One Court Square. There will be a management team in place that will work with the City and Economic Development Office to thoroughly review all companies that wish to become members of the Innovation Center. We will look at early stage

and semi-mature type companies, not early start-up companies. We hope some of the City's start-up companies will eventually make it downtown. We also want companies that have a great likelihood for success, have the ability to have a product in place or a service in place, have already taken off and are somewhat mature, have a good management team in place, and are experiencing steady growth. Partners and sponsors gain greater exposure in the information technology market sector, while enjoying unparalleled access to an entrepreneurial community. The community benefits from a stronger economy and a diverse economic base. Harrisonburg will offer an attractive incentive package and a good business assistance model. Monthly workshops and seminars are being planned to help companies grow. Plans are to acquire One Court Square and put the technology in place and establish the Harrisonburg Downtown Technology Zone by ordinance.

Michael Wong, Executive Director of the Harrisonburg Redevelopment and Housing Authority, said that the HRHA Board of Commissioners approved the acquisition of the One Court Square building. Currently the proposal includes \$1 million for acquisition and \$1 million for renovation costs. Modifications in the resolution allow for financial support from the City without affecting the bond service limit. The City staff will assist in marketing, leasing, and property management component of the facility. HRHA will secure financing for the project and provide project management during the renovation phase.

Council Member Pace said according to the resolution, the interest rate would not exceed 7%. "Will it really exceed 6%?"

Michael Wong responded that bids received to date have all been under 6%.

Council Member Pace asked, "Has the building been inspected?"

Mr. Wong said an informal inspection has been done, and that the owner has replaced the boiler and installed a new roof.

Council Member Lantz suggested including contingencies in the contract should something unforeseen be noticed since a formal inspection has not been done.

Council Member Lantz offered a motion to approve the resolution supporting HRHA purchasing One Court Square for development of Harrisonburg Innovation Center. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

Planning and Community Development Director Turner introduced a request by Rob Holmes to plat 32 single family homes on 12.56 acres of land zoned R-1, Single Family Residential with variances to section of the City's Design and Construction Standards Manual. She said the property is located near Wyndham Woods and Circle Drive. She reviewed the surrounding uses in the area. This property was originally platted in 1990. Planning Commission and City Council approved the preliminary plat. The first section consisted of lots fronting on Circle Drive and the Wyndham Woods area. Planning Commission approved the final plat in 1995. Because the original plat introduced in 1990 expired the applicant asked for an extension for the previously approved plat. However, between the time of the submittal of the preliminary plat and the final plat, the City adopted new design standards including the requirement that sidewalks be provided on one side of the streets created in the development. The applicant requested that this requirement be waived; however, Planning Commission did not recommend waiving the requirements and the request wasn't approved in 1995. The applicant is again requesting to develop this property. This proposed development is divided in two by Wyndham Woods Circle. The Nicholas Drive portion of this development is accessed on the western side of Wyndham Woods Circle and wraps back around to Circle Drive to the southwest. The dead-end street would contain 13 single-family home lots. She said that stormwater is a major issue for the west side of this development and stormwater management issues will be addressed at the site plan review stage. Currently there is natural drainage across this property beginning near Circle Drive and flowing to the west in the direction of the proposed Nicholas Drive. One of the variances requested is to allow the reduction in radii for the connection of Nicholas Drive and Circle Drive. She reviewed several concerns expressed by residents of the area. She said that Planning Commission has recommended approval of the request.

Council Member Pace asked to see a slide showing the existing power lines.

Mrs. Turner reviewed the power lines running across the rear of the properties.

Paul Rexrode, a resident of the City, said that he was not speaking against the proposal, but had a concern about the access issue to Hillandale Park. He said the community has been using this area for about 15 to 20 years. He encouraged the developer to dedicate a right-of-way to be used by foot traffic and bicycles.

Scott Nordstrom, a resident of the City, expressed several concerns with the development. He inquired whether the developer had conducted a traffic study and if increased traffic would impact the neighborhood. He questioned stormwater drainage on some of the lots. West Nile virus does exist in the Shenandoah Valley and everyone should be concerned about a standing body of water.

Following further discussion and comments, Council Member Lantz offered a motion to approve this request. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle



No - Council Member Pace

Absent – Mayor Rogers

The next item of business was authorizing the final contract for the emergency radio communication system. City Manager Baker said after negotiating with MA/COM, the City is ready to recommend proceeding with developing a final contract document, which will be presented at the December 14, 2004 meeting. He said the high estimate for the fixed equipment was \$16.7 million and the low estimate was \$15.3 million. The contract with MA/COM will be \$14.9 million. The high estimate for the non-fixed equipment was \$5.4 million and the low estimate was \$4.8 million. The contract with MA/COM will be \$4.2 million for a total of \$19.2 million. He said that he was confident the City would receive more grants before the system is completed. The cost split on the \$15 million is 50% for the City and 50% for the County. The City's share should be approximately \$7.5 million and for the non-fixed equipment the City's share is \$1.3 million. There is \$1.6 million in the Capital Projects Fund, which can purchase the non-fixed equipment. Mr. Baker said that Sun Trust Bank has offered a lease/purchase agreement at 3%. Because of previous bank qualified debt issued by the City there is only \$5.7 million left in this calendar year. Some of this financing will not close until after January 1st to take advantage of the bank qualified loan. It is requested that Council authorize the City Manager and City Attorney to finalize a contract with MA/COM, authorize the ordering of certain equipment in order for the process to begin prior to the completion of the contract, and authorize the City Manager and the City Attorney to finalize financing for the system to be presented at the December 14, 2004 meeting.

Council Member Pace questioned whether the annual payments of \$650,000 were for 15 years or 20 years?

City Manager Baker said that it is a 15-year lease.

Council Member Pace asked about the long-term obligation and requested that a representative from MA/COM provide a perspective on the City's annual operating expense for this system including power, repair and maintenance.

Jane Wargo said that she couldn't answer questions concerning electricity costs. She said that the yearly cost for the infrastructure cost had been built into the proposal and is guaranteed for five years. This expense will not take place until after one complete year of system acceptance.

Following further discussion and comments, Council Member Chenault offered a motion to authorize the City Manager to enter into a final contract negotiations with MA/COM in conjunction with Rockingham County and that the additional appropriation needed for the EOC Operation Center be approved. The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace

Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

Transportation Director Reggie Smith said that on November 16<sup>th</sup> James Madison University in conjunction with the City and Holtzman Oil Company sponsored a Biodiesel Conference at the JMU Center. Approximately 300 participants attended the conference. He said he was very impressed by the quality of the speakers, information provided, and the progress being made regarding using Biodiesel. Holtzman Oil Company has plans to organize a crusher and create a Biodiesel refinery to produce approximately 3 million gallons per year. Poultry industries, local farmers and other companies will also be involved. JMU has plans for a small refinery to use all its waste vegetable fat.

The next item of business was a request to consider adopting a “Public Tree Ordinance”. Planning and Community Development Director Turner said that the Department of Agriculture and the Shenandoah Resource Conservation and Development Council have requested the City to consider applying for designation as a “Tree City USA”. Adoption of a Public Tree Ordinance setting procedures for planting, maintaining and removing public trees is a requirement for this designation. Mrs. Turner reviewed four procedures to become a “Tree City USA”, which include spending at least \$2.00 per capita on care of trees on an annual basis, have a department that is charged with the care of the public trees, have an Arbor Day observance, and adopt a public tree ordinance. The City currently uses an informal “Tree Policy Working Group” to review these types of requests from the public and from the various City departments. This group works under a “Public Tree Policy” established in 1993. It was endorsed by City Council in 1994, but never brought back to Council for adoption as an ordinance. The adoption of the draft ordinance would formalize the existing process, including creation of a committee by Council. We have had no mechanism to replace the citizen representatives of the original committee in the past, which has caused some concern from staff that the committee had evolved into a committee of only City staff. This ordinance would resolve that concern by establishing the Committee as being officially appointed by Council. Following further discussion and comments, Council Member Chenault offered a motion to adopt this ordinance for a first reading. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

The next item of business was a request to authorize the formation of a Gang Task Force. City Manager Baker requested forming a Gang Task Force to be modeled after the RUSH program. He said that the City will receive a grant to go toward the Gang Task Force and it

hasn't been determined how much of a supplemental appropriation is needed. Council Member Chenault offered a motion to authorize the City Manager to continue negotiations to form the Gang Task Force. The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

The next item of business was a request to close Newman Avenue on December 5, 2004. Fire Chief Shifflett said the Fire Department wanted to close Newman Avenue, between Federal Alley and Main Street on Sunday, December 5<sup>th</sup> between 11:00 a.m. and 5:00 p.m., for a public fire prevention program. This program is the result of the desire of several downtown merchants to show appreciation of the Fire Department's activities at the recent Main Street Bar & Grill fire. The fire prevention program will also include public tours inside of the burned Main Street Bar & Grill building. Council Member Lantz offered a motion to approve this request. The motion was seconded by Council Member Pace, and approved with a unanimous vote of Council Members present.

Council Member Lantz offered a motion to approve the cancellation of the December 28, 2004 Council meeting. The motion was seconded by Council Member Chenault, and approved with a unanimous vote of Council Members present.

City Manager Baker presented a request for a supplemental appropriation to pay off the Bridgewater College note. He said that in 2001, the City purchased land from Bridgewater College. This land was added to the City's parkland. Appropriating funds to this year's budget will allow the City to pay off this note early and save approximately \$20,000 over the next 18 months. Council Member Chenault offered a motion to approve this request for a first reading, and that:

\$147,831.23 chge. to: 1000-31010 Amount from fund balance

\$147,831.23 approp. to: 1000-980142-49114 Bridgewater College Note

The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

City Manager Baker presented a request for a supplemental appropriation for the Fire Department. He said that these funds are from a recovered grant from FEMA to pay for the Fire Safety Trailer. Council Member Chenault offered a motion to approve this request for a first reading, and that:

\$56,626 chge. to: 1000-33536 FEMA Assistance to Firefighters grant

\$56,626 approp. to: 1000-320232-48113 Equipment

The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

Council Member Lantz said that the Deer Task Force held a meeting on November 22, 2004. He said that about 50 people attended the meeting. The Deer Task Force decided to pursue allowing bow hunters to kill deer in the Hillandale Park area in September 2005 to thin the deer herd.

At 9:50 p.m., Council Member Chenault offered a motion that Council enter a closed session for discussion and consideration of personnel and prospective candidates to be appointed to the Blue Ridge Disability Services Board, Social Services Advisory Board, Harrisonburg Board of Zoning Appeals, Harrisonburg Electric Commission, Harrisonburg Redevelopment and Housing Authority, Harrisonburg Parking Authority, Building Code Board of Appeals, Parks and Recreation Commission, and Harrisonburg Planning Commission exempt from public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Council Member Chenault  
Vice-Mayor Eagle

Absent – Mayor Rogers

At 10:25 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement which was agreed to with a unanimous recorded vote of Council: I hereby certify to the best of my knowledge and belief that (1) only public matters lawfully exempt from open meeting requirements pursuant to Chapter 21 of Title 2.1 of the Code

of Virginia, 1950, as amended, and (2) only such public business matters as were identified in the motion by which the closed session was convened, were heard, discussed or considered in the closed session by the City Council.

Council Member Chenault offered a motion to appoint Lynn A. Driver, 545 Hartman Drive, to a second term, and Michael L. Ellis, 84 Middlebrook Street, to a first term on the Parks and Recreation Commission to expire on December 31, 2008. The motion was seconded by Council Member Pace, and approved with a unanimous vote of Council Members present.

Council Member Chenault offered a motion to appoint Cheryl P. Talley, 691 Maryland Avenue, to a term on the Harrisonburg Redevelopment and Housing Authority to expire on November 29, 2005; Elroy Miller, 1604 Hillcrest Drive, to a term on the Harrisonburg Redevelopment and Housing Authority to expire on November 29, 2006; and David F. Denman, 225 Betts Road, to a term on the Harrisonburg Redevelopment and Housing Authority to expire on November 29, 2007. The motion was seconded by Council Member Pace and approved with a unanimous vote of Council Members present.

Council Member Chenault offered a motion that Kent Darrah, 682 Wyndham Woods Drive, be recommended to the Circuit Court for a first term on the Board of Zoning Appeals to expire on March 20, 2008. The motion was seconded by Council Member Pace and approved with a unanimous vote of Council Members present.

Council Member Chenault offered a motion that Steven Hottle, 267 Campbell Street, Carl Wassum, 1169 Westmoreland Drive, and Craig Miller, 2821 Osceola Springs Road, be appointed to a term on the Building Code Board of Appeals to expire on November 30, 2007. The motion was seconded by Council Member Pace and approved with a unanimous vote of Council Member present.

At 10:30 p.m., there being no further business and on motion adopted the meeting was adjourned.

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CITY CLERK

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MAYOR

