

The Franklin City Council held a regular meeting on Monday, August 25, 2008 at 7:00 p.m. in Council Chambers, 207 W. Second Avenue.

Council members in attendance: Mayor James P. Council, III, Vice Mayor Raystine Johnson, Barry Cheatham, Benny Burgess, Rosa Lawrence and Mark Fetherolf. ABSENT: Mary Hilliard.

Staff in attendance: June D. Fleming, Interim City Manager, H. Taylor Williams, IV, City Attorney, Andy Rose, Director of Finance, Phil Hardison, Chief of Police, Carolyn Joyner, Personnel Manager, Sheryl Frazier, Director of FRHA, Chad Edwards, Deputy Director of Public Works, Vince Holt, Director of Emergency Services, Beth Reavis, Director of Social Services, Donald Goodwin, Director of Community Development, Amanda Jarratt, City Planner, Frank Davis, Director of Parks and Recreation, Dexter Trump, Director of Power & Light, Andy Ritter, IT Director and Erin Turner, Executive Assistant.

Others in attendance: Dinah Babb, Treasurer, Dan Howe, Downtown Franklin Association Director and Brenda Rickman, Commissioner of the Revenue.

Invocation

Councilwoman Lawrence offered the invocation.

Introduction of New Employees

Taylor Williams, City Attorney, introduced Andy Ritter as the City's new Network and Systems Administrator.

Riverwood Estates

The Mayor allowed Greg Dodd and Mark Urben to speak with regard to the proposed Subdivision Ordinance changes as they had an emergency and could not stay for that portion of the agenda.

Mr. Dodd stated that he was pleased to see the City working to update the Subdivision Ordinance. Mr. Dodd recommended that the City have an agreement in place with the current developers before going forward. Mr. Urben stated that he has invested \$8 million in the City of Franklin and 99.9% of his project was complete. He further stated that he has done everything the City has asked of him, but was not getting anything in return. All he is requesting is the building permits, but he did not believe that proposed Subdivision Agreement was fair at all to him.

Citizens' Time

No one wished to speak.

Approval of Minutes of the August 11, 2008 Council meeting

On motion made by Mr. Cheatham and seconded by Mr. Burgess, it was RESOLVED that the minutes for the August 11, 2008 meeting were approved with a change that under the Old/New Business section, Taylor Williams thanked Mr. Crum for bringing the matter to *Council's* attention. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence and Mr. Fetherolf. ABSTAIN: Mr. Council. ABSENT: Mrs. Hilliard.

Financial Matters

1. Budget Amendment 2008-51, 2009-03, 2009-04, 2009-05, 2009-06.

BUDGET AMENDMENT 2008-51

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRANKLIN, VIRGINIA that the 2007-2008 City Budget is hereby amended to recognize additional revenues and to appropriate such revenues for new uses

<u>REVENUE</u>	<u>EDUCATION FUND</u>	2007-2008 Budget	Amended Budget	Increase (Decrease)
250 18990 1502	Rental Income	\$2,200.00	\$720.00	(\$1,480.00)
250 18990 1601	School Tuition and Fees	\$10,000.00	\$4,610.00	(\$5,390.00)
250 18990 1602	Special Fees	\$4,000.00	\$9,765.00	\$5,765.00
250 18990 1700	Rebates and Refunds	\$75,000.00	\$118,269.00	\$43,269.00
250 18990 1802	Miscellaneous Recoveries	\$0.00	\$6,124.00	\$6,124.00
250 18990 1701	Universal Services Fund	\$64,400.00	\$58,612.00	(\$5,788.00)
250 18990 1702	Sale of Equipment	\$0.00	\$1,690.00	\$1,690.00
250 24000 0201	State Sales Tax	\$1,217,624.00	\$1,153,503.00	(\$64,121.00)
250 24000 0219	Lottery	\$0.00	\$101,813.00	\$101,813.00
250 24000 0202	Basic Aid	\$7,960,033.00	\$7,634,336.00	(\$325,697.00)
250 24000 0203	Other Funds State	\$0.00	\$241.00	\$241.00
250 24000 0217	Adult Basic Education-State	\$0.00	\$12,626.00	\$12,626.00
250 33010 0217	Adult Basic Education-Fed	\$5,000.00	\$0.00	(\$5,000.00)
250 24000 0232	Mentor Teacher Program	\$1,558.00	\$0.00	(\$1,558.00)
250 24000 0252	State Technology Fund	\$0.00	\$128,000.00	\$128,000.00
250 33010 0254	Hard To Staff Pilot	\$2,806.00	\$0.00	(\$2,806.00)
250 41050 1000	Carry Over	\$466,771.00	\$437,771.00	(\$29,000.00)
TOTAL				(\$141,312.00)
<u>EXPENSES</u>	<u>EDUCATION FUND</u>			
250 60000 0001	Instruction	\$10,479,838.00	\$10,160,777.00	(\$319,061.00)
250 60000 0002	Admin/Att/Health	\$1,093,791.00	\$997,304.00	(\$96,487.00)
250 60000 0003	Pupil Transportation	\$543,786.00	\$669,011.00	\$125,225.00
250 60000 0004	Operation & Maintenance	\$1,402,094.00	\$1,466,801.00	\$64,707.00

250 60000 0030	Enterprise Fund	\$2,153.00	\$3,822.00	\$1,669.00
250 60000 0011	Technology	\$734,916.00	\$817,551.00	<u>\$82,635.00</u>
TOTAL				(\$141,312.00)

***End of Year Adjustments as per attached request.**

BUDGET AMENDMENT 2009-03

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRANKLIN, VIRGINIA that the 2008-2009 City Budget is hereby amended to recognize additional revenues and to appropriate such revenues for new uses.

	2008-2009 BUDGET	AMENDED BUDGET	INCREASE (DECREASE)
100 GENERAL FUND			
<u>REVENUE</u>			
100 18990 0023			
EMT Instructor Site Test Fees	\$0.00	\$720.00	\$720.00
100 24040 0004			
Fire Grant Test Site Instructors	\$0.00	\$860.00	<u>\$860.00</u>
TOTAL			\$1,580.00
<u>EXPENDITURES</u>			
100 32100 2860			
EMT Site Test Instructors	\$0.00	\$1,580.00	<u>\$1,580.00</u>
TOTAL			\$1,580.00

***Reimbursement from the State Dept. of Health and the Tidewater EMS Council for EMT testing.**

BUDGET AMENDMENT 2009-04

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRANKLIN, VIRGINIA that the 2008-2009 City Budget is hereby amended to recognize additional revenues and to appropriate such revenues for new uses.

	2008-2009 BUDGET	AMENDED BUDGET	INCREASE (DECREASE)
220 FOUNDATION GRANTS			
<u>REVENUE</u>			
220 18990 3003			
Donations Atkinson Park	\$0.00	\$2,500.00	<u>\$2,500.00</u>
TOTAL			\$2,500.00

<u>EXPENDITURES</u>			
220 71300 8222			
Camp Grant – Atkinson Park	\$0.00	\$2,500.00	<u>\$2,500.00</u>
TOTAL			\$2,500.00

***Donation received August 11, 2008 for Atkinson Park.**

BUDGET AMENDMENT 2009-05

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRANKLIN, VIRGINIA that the 2008-2009 City Budget is hereby amended to recognize additional revenues and to appropriate such revenues for new uses.

	2008-2009 BUDGET	AMENDED BUDGET	INCREASE (DECREASE)
209 FIRE TRAINING GROUNDS			
<u>REVENUE</u>			
209 18990 2000			

Donations – Other	\$0.00	\$2,000.00	<u>\$2,000.00</u>
TOTAL			\$2,000.00

EXPENDITURES

209 32100 8101 Burn Building Repairs	\$0.00	\$2,000.00	<u>\$2,000.00</u>
TOTAL			\$2,000.00

***Donation received on August 11, 2008 from Isle of Wight County for Burn Building Repairs.**

BUDGET AMENDMENT 2009-06

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRANKLIN, VIRGINIA that the 2008-2009 City Budget is hereby amended to recognize additional revenues and to appropriate such revenues for new uses.

	2008-2009 BUDGET	AMENDED BUDGET	INCREASE (DECREASE)
100 GENERAL FUND			
<u>REVENUE</u>			
100 18990 3010 Donations Recreation	\$0.00	\$100.00	\$100.00
100 18990 3036 Donations Poplar Spring Cemetery	\$0.00	\$100.00	\$100.00
TOTAL			<u>\$200.00</u>
<u>EXPENDITURES</u>			
100 71300 6014			

Other Operating Supplies 100 71400 3190	\$200.00	\$300.00	\$100.00
Contractual Services	\$60,000.00	\$60,100.00	<u>\$100.00</u>
TOTAL			\$200.00

***Donations received for Parks and Recreation and Poplar Spring Cemtery during the month of July 2008.**

On motion made by Mr. Burgess and seconded by Mr. Cheatham, Budget Amendments 2008-51, 2009-03, 2009-04, 2009-05, 2009-06 were approved by Council. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

Consent Agenda

1. Resolution to Request Bridge Name

WHEREAS, the Honorable Richard J. Holland served the Commonwealth of Virginia, the City of Franklin and Isle of Wight County as a member of the Senate of Virginia; and

WHEREAS, the Honorable J. Paul Council, Jr. served the Commonwealth of Virginia, the City of Franklin and Isle of Wight County as a member of the House of Delegates; and

WHEREAS, the bridge over the Blackwater River on Route 58 Business connecting Isle of Wight County and the City of Franklin is currently under construction; and

WHEREAS, the City Council desires to name said bridge the Holland-Council Memorial Bridge in honor of Senator Richard J. Holland and Delegate J. Paul Council, Jr.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Franklin, Virginia requests the General Assembly's favorable consideration of naming the bridge structure on Route 58 Business the Holland-Council Memorial Bridge.

On motion made by Mr. Cheatham and seconded by Mr. Fetherolf, Council approved the Resolution to Request Bridge Name for the 2nd Avenue Bridge. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

The mayor requested that all members of Council sign the Resolution.

Teen Pregnancy Rates for the City of Franklin

Beth Reavis, Director of Social Services, addressed Council with regard to the recent publicity concerning Franklin's Teen Pregnancy Rates. Mrs. Reavis stated that the first concern is that teens could have a Franklin mailing address, but may actually live in Southampton County. She has met with David Fuller, the CEO of Southampton Memorial Hospital regarding this issue and the need for accurate statistics. Mrs. Reavis stated that the reason for concern is poverty and the odds are against teen parents for rising above the poverty level. Mrs. Reavis addressed concerns about TANF assistance and the belief that teens get pregnant in order to receive a TANF check. The statistics of cases in Franklin indicate that there is only one teen mother in the City of Franklin receiving TANF assistance. In Virginia, TANF has a lifetime limit of 60 months and if you become pregnant while on TANF for 10 consecutive months the check does not increase and that child is never eligible for TANF benefits.

Dr. Lisa McCoy, Director of the Western Tidewater Health District, explained to Council ways in which the Health Department was becoming active in order to decrease the number of teen mothers in our area. The Health Department received a grant from the Obici Foundation and has done extensive research in the past 6-8 months to determine which programs are working in other localities. There are five big issues that the Health Department is concerned about and is implementing programs to resolve. The issues are as follows: many people don't know that programs are available; the failure rate for contraceptives is higher for teenagers; teens are more likely to have more than one child within 24 months; younger siblings, cousins or friends of pregnant teens are more likely to become teen mothers as well; and parents/other adults underestimate their influence on teens.

Councilwoman Johnson clarified her comments that were published in The Virginian Pilot on this matter.

Memorandum of Agreement for the Train Depot – DFA and City of Franklin

MEMORANDUM OF AGREEMENT

***Downtown Franklin Association, Inc.
Train Depot/Visitor Center/DFA Office/Multi-Use Conference Room
(Prepared 7-15-2008/Revised 8-12-2008)***

Mrs. June Fleming, Interim City Manager
Mr. James P. Councill, III, Mayor, City of Franklin
City Council Members
Mr. H. Taylor Williams, IV, City Attorney
207 W. Second Avenue Franklin, VA. 23851

RE: Train Depot/Visitor Center/DFA Office/Multi-Use Conference Room MOA

Reference Sources:

- August 26, 2002 Agreement between The City of Franklin and the DFA
- the Letter of Agreement for Designated Communities signed by the following representatives of parties involved:
 - City of Franklin Manager – Bucky Taylor
 - DFA President – David Price
 - DFA Executive Director – Anne Williams
 - Virginia Main Street Program Mgr DHCD – Amy Yarich
- Review meeting 6/24/2008 with Bucky Taylor (Franklin City Manager), Taylor Williams (Franklin City Attorney), and Dan Howe (Executive Director Downtown Franklin Association)

The **purpose** of this memorandum of agreement (**MOA**) is to confirm the particulars of the Train Depot/Visitor Center/DFA Office/Multi-Use Conference Room with regards to the City of Franklin's (**The City**) and Downtown Franklin Association' (**DFA**) responsibilities and commitments. This MOA is not intended to replace the above referenced agreements, but to clarify the particular details of those agreements based on current circumstances. The above agreements will continue to be in effect until such time that circumstances arise that would merit additional modifications or clarifications.

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises set forth below, agree as follows:

- There will be no rent imposed on the DFA. (RE: August 26, 2002 Agreement p. 2 Item 5) –The City' s responsibility
- There will be no utilities imposed on the DFA. (RE: August 26, 2002 Agreement p. 2 Item 5) –The City' s responsibility
- The City will be responsible for the routine maintenance and janitorial requirements of the facility. The DFA will be professional in our use and respect for the facility. (RE: August 26, 2002 Agreement p. 2 Item 5) –The City' s responsibility
- The DFA will make appropriate accommodations for off-site storage until such time suitable storage can be furnished by The City or The DFA is unable to secure such storage. (RE: August 26, 2002 Agreement p. 2 Item 6)- Combined responsibility until further notice
- The DFA is authorized to control the scheduled use of the non-exclusive conference room. (RE: August 26, 2002 Agreement p. 2 Item 6)-The DFA' s responsibility
- The City will work with the DFA to provide IT services as they become available. Until such time the DFA will outsource IT services as necessary.-Combined responsibility until further notice
- The City will provide the appropriate cable & monitor system similar to City Hall lobby area for the purpose of exhibiting the peg channel and other appropriate programming that enhances the Visitor Center. (August 26, 2002 Agreement p. 2 Item 3 & p. 3 Item 4)- The City' s responsibility

- The DFA has purchased initial furniture for the entire Building with the help of a grant from Franklin/Southampton Charities. Any additional furniture required will be discussed with the City Manager and requested through proper procedures at the appropriate time.-Combined responsibility until further notice
- The DFA will recruit appropriate volunteers to staff the Visitor Center. The City will provide any assistance with existing in-kind advertising (peg channel, city clips, etc. (RE: August 26, 2002 Agreement p. 2 Item 3)
- The DFA will recruit appropriate volunteers to gather and control historical artifacts for display in the “Rotating” Museum. The City will provide any assistance with existing in-kind advertising (peg channel, city clips, etc.), in addition to in-kind services required to mount special furniture or hardware for the purpose of displaying artifacts or enhancing the conference room. (RE: August 26, 2002 Agreement p. 2 Item 3)

June Fleming
Interim Franklin City Manager

Dan Howe
Executive Director, Downtown Franklin Assoc.

June Fleming, Interim City Manager, stated that she has met with staff and recommended the Memorandum of Agreement for approval.

On motion made by Mr. Cheatham and seconded by Mr. Fetherolf, the Memorandum of Agreement was unanimously approved by Council. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

HOME Program Request

Sheryl Frazier, Director of the Franklin Redevelopment and Housing Authority, stated that the Board of Commissioners for FRHA met on July 23, 2008 and approved the HOME Program. FRHA is requesting that under Limits of Assistance, that the Franklin City Council approve the waiving of permit fees, water and sewer tap fees and providing of title examination and document preparation by the City Attorney through in-kind matching assistance.

Thomas Council stated that there is a shortage of 1-2 bedroom homes on the south side. Mr. Council would like the City Council to direct the Planning Commission to define “affordability” on the south side.

On motion made by Ms. Johnson and seconded by Mr. Burgess, the FRHA request for in-kind services and the waiver of fees was unanimously approved by Council. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

Mutual Aid Agreement between the Navy Region Mid-Atlantic and the City of Franklin

MUTUAL AID AGREEMENT
BETWEEN
PROGRAM DIRECTOR, REGIONAL PUBLIC SAFETY
NAVY REGION MID-ATLANTIC
1510 GILBERT STREET, NORFOLK VA 23511
AND
CITY OF FRANKLIN, VIRGINIA
207 WEST SECOND AVENUE, FRANKLIN, VA 23851
FOR THE PROVISION OF FIRE FIGHTING ASSISTANCE

THIS MUTUAL AID AGREEMENT (hereinafter, the "Agreement") is made and entered into this 25th day of August, 2008 by and between Program Director, Regional Public Safety, Navy Region Mid-Atlantic (hereinafter, "Navy"), and the "City Manager" for fire fighting assistance (hereinafter, "City").

WITNESSETH:

WHEREAS, each of the Parties hereto maintains equipment and personnel for the suppression of fires, and response to hazardous materials incidents occurring within areas under their respective jurisdictions, and

WHEREAS, as set forth in 42 U.S.C. 1856 the term 'fire protection' includes personal services and equipment required for fire prevention, the protection of life and property from fire, fire fighting, and emergency medical services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue events involving vehicular and water mishaps, and trench, building, and confined space extractions.

WHEREAS, the Parties hereto desire to augment the fire protection, and hazardous material response capabilities available in their respective jurisdictions by entering into this Agreement, and

WHEREAS, the lands or districts comprising the respective jurisdictions of the Parties are adjacent or contiguous to one another such that the rendering of mutual assistance between the Parties in response to a fire, emergency medical event or hazardous material incident is feasible, and

WHEREAS, it is the policy of the Department of the Navy and the Program Director, Regional Public Safety, Navy Region Mid Atlantic, to enter into Mutual Aid Agreements with non-Federal Fire Departments located in the vicinity of a Naval installation, whenever practicable, and

WHEREAS, the Parties have mutually concluded that it is desirable, practicable, and beneficial for the Parties to enter into this Agreement to memorialize their willingness

and ability to render assistance to one another, in order to enhance the safety and security of the civilian community and outlying installations and facilities.

NOW, THEREFORE, BE IT AGREED THAT:

1. The authority to enter into this Agreement is set forth in 42 U.S.C. 1856a, and 15 U.S.C. 2210, and the regulations implementing same at 44 Code of Federal Regulations Part 151.
2. The rendering of assistance from one Party to the other under the terms of this Agreement shall be accomplished in accordance with detailed operational plans and procedures, which shall be developed by each of the Parties. The technical heads of each Party's Fire Departments shall work together to implement such plans and procedures in a manner compatible with the operational authorities of each.
3. The senior officer of a Fire Department belonging to a Party to this Agreement, or the senior officer of such Fire Department actually present at a fire, or hazardous material incident, may request fire fighting assistance under the terms of this Agreement from the other Party's Fire Department, whenever he/she deems it necessary to make such a request. The senior officer on duty of the Fire Department receiving a request for assistance shall forthwith take the following action:
 - a. Immediately determine if the requested apparatus and personnel are available to respond to the call for assistance.
 - b. In accordance with the terms of this Agreement, forthwith dispatch such apparatus and personnel, along with instructions as to their mission, use and deployment, in quantities and amounts as in the judgment of the senior officer receiving the call can be provided to the requesting Fire Department without jeopardizing the mission of the Fire Department providing such resources.
4. The rendering of assistance under the terms of this Agreement shall not be mandatory; however, the Party receiving a request for assistance shall endeavor to immediately inform the requesting Party if the requested assistance cannot be provided and, if assistance can be provided, the quantity of such resources as may be dispatched in response to such request. Neither Party shall hold the other Party liable or at fault for failing to respond to any request for assistance or for failing to respond to such a request in a timely manner or with less than optimum equipment and/or personnel, it being the understanding of the Parties that each is primarily and ultimately responsible for the provision of fire suppression and hazardous material incident response needed within their own jurisdictions.
5. As required by Federal law as a condition precedent to entering into this Agreement, the Parties hereby waive all claims against the other Party for compensation of any loss, damage, personal injury, or death occurring in consequence of the performance of this Agreement.

6. Each Party hereby agrees that its intent with respect to the rendering of assistance to the other Party under this Agreement is not to seek reimbursement from the Party requesting such assistance. The Parties hereby recognize that pursuant to the Section 11 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2210) and Federal regulations issued there under (Title 44 of the Code of Federal Regulations 151), the City is permitted to seek reimbursement for all or any part of its direct expenses and losses (defined as additional fire fighting costs over normal operational costs) incurred in fighting fires on property under the jurisdiction of the United States. Furthermore, under the authority of 42 U.S.C. 1856a, each Party hereby reserves the right to seek reimbursement from the other for the costs incurred by it in providing services to the other Party in response to a request for assistance.
7. The senior officer of the Fire Department requesting assistance shall normally assume full charge of the operations at the scene of the fire or other emergency. However, under procedures agreed to by the technical heads of the Fire Departments involved, a senior officer of the Fire Department furnishing the assistance may assume responsibility for the coordination of the overall operations at the scene of the fire or other emergency.
8. The officers and personnel of the Fire Departments of the Parties to this Agreement are invited and encouraged, on a reciprocal basis, to frequently visit each other's activities for guided familiarization tours (consistent with local security requirements) and, as feasible, to jointly conduct pre-fire planning inspections, drills and training.

TRAINING:

9. Whenever either Party hosts fire protection training for its own Fire Department ("Host Department") it may, to the maximum extent practicable and subject to its sole discretion, offer to provide the same training to members of the other Party ("Guest Department").
10. The Host Department will not charge the Guest Department for any training provided under the terms of this Agreement, unless it is a cost that cannot be covered by the Host Department such as, cost per student or cost of a certificate. Further, any such training will be provided on a space available basis only.
11. The Guest Department and/or its members will be solely responsible for the payment of any and all costs necessary for the Guest Department personnel to attend any training provided by the Host Department including, but not limited to, lodging, meals and travel.
12. This Agreement is entered into voluntarily by both Parties with no obligation on the part of either to provide such training to the other or, if such training is offered to the other Party, to participate in such training.
13. The Guest Department is responsible for ensuring that its members observe all rules, regulations, and guidelines established by the Host Department for training provided

by the Host Department, as such rules, regulations and guidelines are made known to the Guest Department.

14. The Host Department reserves the right to deny training to any member of the Guest Department who does not meet the prerequisites necessary to attend the training which is offered by the Host Department under the terms of this Agreement.

Execution of this Agreement:

15. This Agreement shall become effective upon the date annotated above, and shall remain in full force and effect until cancelled by mutual agreement of the Parties, or upon the provision of at least sixty (60) days advance written notice from the Party desiring to terminate this Agreement to the other Party. Upon becoming effective, this Agreement shall supersede all previous agreements between the Parties concerning the rendering of assistance from one to the other for the purposes stated in this Agreement.

By: _____
City Manager
City of Franklin VA

R.S. BARCUS
Captain, U.S. Navy
Program Director
Regional Public Safety
Navy Region Mid-Atlantic

Vince Holt, Chief of Fire & Rescue, advised Council that this Agreement will allow for fire fighting assistance between the City and the Navy. The City can currently call the Navy for back-up and vice versa, but this Agreement will streamline the process.

On motion made by Mr. Cheatham and seconded by Mrs. Lawrence, Council authorized the Interim City Manager to execute the Mutual Aid Agreement. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

Council Procedures

Mrs. Johnson suggested that an additional change be made to the Council Procedures brochure under Public Comments on Agenda Items. She asked that the sentence under item #2 read as follows: The time may be shortened if deemed appropriate by the *Council*.

Greg McLemore stated that prior to taking a vote on any matters, Council should ask the audience if they have any questions.

Mayor Council advised Mr. McLemore that the Council meeting is not an open forum, but that citizens were allowed input. He also stated that the procedures needed to be followed.

On a motion made by Mr. Burgess and seconded by Mrs. Lawrence, the Council Procedures was approved as amended. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

Farmer's Market Operating Plan

Dan Howe, Director of Downtown Franklin Association, presented Council with his research and rough outline for creating a Marketing and Operating Plan. As part of his research, members of the Downtown Franklin Association (DFA) visited other Farmer's Markets, which included Murfreesboro, North Carolina, Suffolk, Virginia, Smithfield, VA, Roanoke Rapids, North Carolina, Lake Gaston, North Carolina and Blacksburg, Virginia. Mr. Howe explained to Council that moving the Farmer's Market downtown was not a new idea. Council approved the Downtown Flood Recovery Master Plan in 2000, which included a Farmer's Market on Main Street. In order for the plan to be adopted, several public hearings were held in which citizens could voice their opinions.

Jack Norvell, Victor Story and Patti Rabil all shared their experiences at other Farmer's Markets with Council. Every one of their visits included various goods being sold, fellowship among members of the community and several vendors anxious to sell their products at the Franklin market due to the covered pavilion.

Mr. Howe has researched the policies and procedures of several markets on the East Coast and is in the process of compiling that data into a plan that is best suited for Franklin.

Diane Tobin addressed Council with her concerns that perhaps the City would not be capable of making our market work. She stated that the seniors who drive up the market on Armory Drive are catered to and never have to get out of their cars. That courtesy would not be accessible to them at the new location. With the current recession, Mrs. Tobin does not believe that the City will be able to draw large crowds.

Forest Johnson stated that he has been a vendor at the Farmer's Market for 15 years and hasn't seen any improvements over that time span. He does not see any reason why the City can't relocate the market and improve the current conditions.

Bobby Tyler stated that Downtown Franklin needs commerce, synergy and people. A Farmer's Market will provide all of those things. There are pretty pots with crepe myrtles downtown and stamped brick at the intersections, but all of that is wasted if there aren't people there to see those things.

Ash Cutchins commented on the spelling of the Visitor's Center and Farmer's Market.

Mr. Burgess thanked the DFA members for their extensive research and presentation on the Farmer's Market.

Farmer's Market Pavilion Bids

Mayor Councill requested that Council consider the larger building with more overhang.

Mr. Burgess stated that Council needed to move forward with the project because of our commitment to the Camp Foundation. The City needs to maintain our credibility with that organization as they gave us the money in good faith that we were going to build the market downtown.

Mrs. Fleming stated that she felt confident the City could find additional funds to cover the remaining balance if Council decided to approve the larger building.

On motion made by Mr. Burgess and seconded by Mr. Fetherolf, Council awarded the bid for the 38'x67' pavilion to BELL-MKEJIA in the amount of \$82,000 which will be operated by the DFA. Further, DFA is encouraged to finalize an Operating Plan. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mr. Fetherolf and Mr. Councill. ABSTAIN: Mrs. Lawrence and Ms. Johnson. ABSENT: Mrs. Hilliard.

Clarifications to the Business Friendly Committee

Thomas Council asked that the Business Friendly Committee focus on the Housing Authority and other departments, as well as the Revitalization and Redevelopment Committee, as it relates to the south side.

Mayor Councill clarified that the Redevelopment and Revitalization Committee is not just for the south side, but for the City as a whole.

Greg McLemore requested that a home-based business owner serve on the Committee, since their business requirements are much different from that of established businesses.

Mayor Councill informed Mr. McLemore that any business owner can address their concerns with Mr. Cheatham, as all businesses have to follow the same protocol in the City.

On motion made by Mr. Fetherolf and seconded by Mr. Burgess, the motion made on July 14, 2008 to create a Business Friendly Committee be amended to state that the purpose of the Committee is to review existing business policies and practices in the City departments and recommend to City Council any policy changes or additions needed to existing policies to be more "business friendly"; and, that the Committee be composed of a chairman, who is a member of Council, the City Manager, the Director of Community Development, and six members from the business community; and, that the appointments to the committee be for 3 year terms except that the City Manager and the Director of Community Development will serve continuously; and, Barry Cheatham will serve as Chairman, June Fleming as the City Manager, Donald Goodwin as the Director of Community Development; Rosa Lawrence (a South Street Business Owner), Victor Story (a Downtown Business Owner), Stan Rich (a Downtown Retailer), Jim Hart (a Real

Estate Broker), Elliot Whitfield (a Businessman) and Thomas Jones (an Engineer); and that the terms for the committee appointments be staggered as follows: Chairman begin September 1, 2008 and end August 31, 2011; the term of Rosa Lawrence begins September 1, 2008 and ends August 31, 2010; the term of Victor Story begins September 1, 2008 and ends August 31, 2009; the term of Stan Rich begins September 1, 2008 and ends August 31, 2011; the term of Jim Hart begins September 1, 2008 and ends August 31, 2010; the term of Elliot Whitfield begins September 1, 2008 and ends August 31, 2009; the term of Thomas Jones begins September 1, 2008 and ends August 31, 2011; and, that the appointments to the Business Friendly Committee can be renewed for one successive term of three years. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Councill. ABSENT: Mrs. Hilliard.

On motion made by Mr. Fetherolf and seconded by Mrs. Lawrence, it was resolved that Council amend their previous motion. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Councill. ABSENT: Mrs. Hilliard.

On motion made by Mr. Fetherolf and seconded by Mrs. Lawrence, it was approved that the Director of the Chamber of Commerce be appointed to serve on the Business Friendly Committee. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Councill. ABSENT: Mrs. Hilliard.

Subdivision Ordinance Amendment

Amanda Jarratt explained the following proposed amendments to the Council and the proposed Subdivision Agreement and the Ancillary Subdivision Agreement.

Staff Report:

REFERENCE: Amendments to Article III and Article VI of the Subdivision Ordinance

Background

Please find attached an initiating resolution for consideration by Council with recommended changes to Article III and Article VI of the City of Franklin Subdivision Ordinance.

In addition, to the proposed Ordinance amendments staff also proposes the development and use of Subdivision Agreements for all major subdivisions within the City of Franklin. These Subdivision Agreements are legal binding documents outlining the responsibilities of both the developer and the City regarding development. Subdivision Agreements are a tool used in a variety of localities to streamline the development process. Prior to the approval of a final plat, a developer would enter into a Subdivision Agreement with the City which would accompany the required bonds. A draft Subdivision Agreement is enclosed for your review, as well as an Ancillary Subdivision Agreement for sidewalks and surface course asphalt.

Staff recommends amending Section 3-3(b) of the Subdivision Ordinance to allow the issuance of building permits in a subdivision once all of the improvements required by Article VI of the Subdivision Ordinance have been installed other than the surface course asphalt and required sidewalks.

Staff recommends amending Section 6-1(a) to reference the Subdivision Agreement as a prerequisite to submitting a final plat. In addition staff recommends amending Section 6-1(3)(b) of the ordinance to require an additional twenty-five percent (25%) of the bond amount for estimated administrative costs, inflation, and potential damage to existing roads and utilities as permitted by Section 15.2-2241 of the Code of Virginia as amended. Currently our ordinance requires an additional amount as estimated by the City Engineer. This change would allow the City greater protection against inflation and the rapid increase in cost of construction materials if the City was ever in the position to cash in a bond.

Currently our ordinance requires that along with a bond or letter of credit that the city engineer shall determine the amount of time within which the improvements required shall be constructed. Our current language allows this time to be extended by the Director of Public Works or by the Planning Commission should the Director of Public Works deny the request. Staff recommends amending Section 6-1(3)(c) to remove the extension by the director of public works and the Planning Commission. With the implementation of Subdivision Agreements this process is no longer needed.

Staff also suggests amending Section 6-2(2) and (4) to state that the installation of surface course asphalt and sidewalks may be determined by a date or circumstance as outlined in the Subdivision Agreement. The proposed subdivision agreement for surface course asphalt and sidewalk allow the installation to be delayed until a specific date agreed upon by both parties, or until 75% of home construction has been completed on the recorded lots, whichever comes first.

The proposed amendments to the Subdivision Ordinance in addition to the use of Subdivision Agreements will allow building permits to be issued within a subdivision prior to the installation of the surface course asphalt and sidewalks. By linking the installation to an agreed upon date or until 75% of the home construction has occurred whichever comes first the potential damage to the asphalt or sidewalks is limited, but the City still has assurance that the installation will occur in a timely manner. Once the sidewalk and finish asphalt is installed and accepted by the City a two year defect bond will be required from the developer in the amount of ten percent (10%) of the cost to construct those items.

Staff Recommendation

Forward this initiating resolution to the Planning Commission for their consideration and comment.

A RESOLUTION INITIATING AMENDMENTS

**TO ARTICLE III AND ARTICLE VI OF THE SUBDIVISION ORDINANCE
REGARDING THE INSTALLATION OF IMPROVEMENTS AND BONDING
REQUIREMENTS**

WHEREAS, the City Council finds that the public necessity, convenience, general welfare require that the text of Article III and Article VI of the Subdivision Ordinance be amended; and

WHEREAS, the City Council wishes to refer these proposed amendments to the text of the Subdivision Ordinance to the City of Franklin Planning Commission for public hearing, consideration by the Commission and recommendations of the Commission;

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby initiate the following amendments to the text of the Subdivision Ordinance:

ARTICLE III. GENERAL PROVISIONS

Sec. 3-1. Subdivider shall prepare and record plat.

Any owner of any tract of land in the City of Franklin, Virginia, who desires to subdivide the same shall cause a plat of such subdivision to be made in accordance with the regulations set forth in this ordinance and in accordance with the Code of Virginia, as amended from time to time, and shall cause a copy of said plat to be recorded in the Clerk's office of the Circuit Court of Southampton County.

Sec. 3-2. Approval of plat required.

No such subdivision plat shall be recorded unless and until it shall have been submitted to and approved by the City of Franklin Planning Commission (herein called "the commission") except that the zoning administrator may approve plats of minor subdivisions without submitting such plats to the commission, provided that such plats otherwise meet the requirements of this ordinance.

(Ord. of 9-9-2002)

Sec. 3-3. Transfers, sales and building permits.

(a) No property in a subdivision created after December 21, 1956, shall be transferred or offered for sale, nor shall a building permit be issued for a structure thereon, until a final plat of such subdivision shall have been recorded in accordance with this article.

(b) No building permit may be issued for a structure on property in a subdivision created after December 21, 1956, until the improvements required to be installed by Article VI of this ordinance have been installed by the subdivider and approved by the director of public works ~~city engineer~~, **except that installation of the surface course asphalt and the required sidewalks may be delayed as agreed upon in the Subdivision Agreement.**

ARTICLE VI. PHYSICAL IMPROVEMENTS

Sec. 6-1. Installation or guarantee of construction as prerequisite to submission of final plat.

(a) Before proceeding to prepare and submit the final plat for approval of a major subdivision, the subdivider shall **enter into a Subdivision Agreement with the City of Franklin for the improvements outlined in Section 6-2.**

In addition the subdivider shall either:

(1) Install all improvements required under these regulations; or
(2) Furnish to the city a certified check or cash escrow in the amount of the estimated costs of construction or a personal or corporate bond, with surety satisfactory to the city attorney, in an amount sufficient for and conditional upon the construction of such improvements, or a contract for the construction of such improvements and the contractor's bond, with like surety, in like amount and so conditioned **to be in effect for the length of time required for the improvements to be constructed as determined in the Subdivision Agreement;** or

(3) Furnish to the city an irrevocable letter of credit on certain designated funds from a reputable financial institution satisfactory to the city attorney to be in effect for the length of time required for the improvements to be constructed **as determined in the Subdivision Agreement** in a form which allows the city to procure the funds to complete the required improvements if the subdivider fails to construct or complete construction of those improvements.

(b) The amount of the certified check, cash escrow, bond or letter of credit referred to in section 6-1(a)(2) above shall not exceed the total of the estimated costs of construction based on unit prices for new public or private sector construction in the city **and an additional twenty five percent (25%)** for estimated administrative costs, inflation, and potential damage to existing roads or utilities **as permitted by Section 15.2-2241 of the Code of Virginia as amended as estimated by the city engineer.**

(c) In the event that a certified check, cash escrow, bond or letter of credit is given in lieu of installation of all improvements required herein, the **director of public works** city engineer shall determine the amount of time within which the improvements required herein shall be constructed by or on behalf of the subdivider, **as expressed in the Subdivision Agreement.** ~~This time may be extended for good cause shown as determined by the city engineer~~ **director of public works.** ~~In the event that the city engineer~~ **director of public works** refuses to grant the subdivider the extension requested, the subdivider may appeal this denial to the commission which may consider the request and grant the extension requested or a longer extension than the city engineer ~~has granted.~~ **and accepted by the City** within the time set ~~or any extension thereof by the city engineer~~ **Subdivision Agreement** ~~or the commission,~~ the city may proceed against the bond or proceed to construct or have constructed such improvements by use of the cash escrow, the certified check or the letter of credit.

(Ord. of 9-9-2002)

Sec. 6-2. What improvements required.

Required improvements for major subdivisions shall include the following:

(1) Iron rods not less than one-half inch in diameter and twenty four inches long shall be set flush with the finished grade at the following locations in the subdivision: at all corner and angle points in the exterior boundaries of the subdivision, at all corner and angle

points of lot lines, at all points of angle and curvature in the right-of-way lines of all streets in the subdivision and at all tangent points of street intersections.

(2) Street improvements shall be made in accordance with the City of Franklin Construction Specifications and Standards. **The installation of surface course asphalt may be determined by a date or circumstance agreed upon in the Subdivision Agreement.**

(3) Curb and gutter on both sides of each street in accordance with the City of Franklin Construction Specifications and Standards.

(4) Sidewalks shall be constructed in accordance with the City of Franklin Construction Specifications and Standards on both sides of new streets in subdivisions. In addition, all sidewalks construction shall be accessible to those with disabilities in accordance with current ADA standards. **The installation of sidewalks may be determined by a date or circumstance agreed upon in the Subdivision Agreement.**

(5) Storm sewers, drains, culverts, ditches, catch basins or any other facilities for the proper drainage and disposal of surface waters from or across all streets and adjoining properties, as approved by the Director of Public Works in accordance with the stormwater management ordinance and the City of Franklin Construction Specifications and Standards. The Director of Public Works must approve the size and grade of all drainage culverts.

(6) Street signs, of an approved design, at all street intersections.

(7) Public water supply and distribution facilities, including fire hydrants in accordance with city design standards and specifications.

(8) Public sewers and sewage disposal facilities in accordance with city design standards and specifications.

(9) Street lights in accordance with city specifications as to type design, installation and number. The subdivider of a subdivision containing four or more lots shall pay for the installation of street lights required as a result of the subdivision. In addition, the subdivider shall pay to the city a sum based on current monthly charge per light established by the city or the utility company, times the number of lights times 24 to cover two years electric service for the street lights. This sum shall be payable in cash or by certified check to the city prior to the lights being connected for service by the city or the utility company.

(10) Except as provided below, transmission, distribution and customer service utility facilities carrying or used in connection with electric power, street lights, telephone, telegraph, cable television, petroleum, gas or steam, water and sewer shall be placed below the surface of the ground in all subdivisions, except that subdivisions not requiring public extensions of electrical utilities are not required to install these extensions below the surface of the ground. All installations shall be in accord with applicable codes. Exceptions are as follows:

- a. Equipment such as electric distribution transformers, switch gear, meter pedestals, telephone pedestals, meters, service connections, bulk feeder and accepted utility practices for underground distribution;
- b. Temporary overhead facilities required for construction purposes;
- c. High tension transmission lines, 33,000 volts or more; and
- d. Repair or replacement of existing overhead facilities.

All remnants of lots below minimum size left over after subdivision of a tract shall be added to adjacent lots or otherwise disposed of rather than allowed to remain as unusable parcels.
(Ord. of 9-9-2002)

Sec. 6-3. Plans and specifications for improvements.

~~Three~~ **Eight** blue line or black line copies of plans and specifications for all improvements for major subdivisions shall be prepared by a registered engineer and submitted to the planning commission for approval prior to construction. The planning commission shall approve or disapprove the plans and specifications within 60 days of submission. If disapproved, all plans and specifications shall be returned to the subdivider with reasons for disapproval set forth in writing. In the event that no action is taken by the planning commission within 60 days, the plans and specifications shall be deemed approved.
(Ord. of 9-9-2002)

Sec. 6-4. Inspection and approval of improvements.

All improvements installed by the subdivider for major subdivisions shall be subject to inspection and approval by the city engineer prior to final acceptance by the city and release to the subdivider of any certified check, cash escrow, bond or letter of credit.
(Ord. of 9-9-2002)

Sec. 6-5. Two-year maintenance bond, etc.

When any improvements are to be dedicated to and accepted by the city for maintenance and operation by the city, the subdivider shall be required to provide a certified check, cash escrow, irrevocable letter of credit on certain designated funds in a reputable financial institution or bond with surety acceptable to the city attorney in the amount of ten percent of the total construction costs of the project to cover the costs of any defects which may occur in such improvements within two years after the date of acceptance by the city.
(Ord. of 9-9-2002)

SUBDIVISION AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between _____, party of the first part, hereinafter referred to as the "Owner", and the City of Franklin, Virginia, a municipal corporation, party of the second part, hereinafter referred to as "City".

WHEREAS, the Owner has caused to be subdivided into lots a certain tract or parcel of land situate in City known as Tax Map Number _____ as shown on a certain plat entitled _____, dated _____, made by _____, and desires to have said plat admitted to record in the Clerk's Office of the Circuit Court in Southampton City, Virginia and

WHEREAS, under the terms of an existing ordinance to regulate and insure the orderly subdivision and development of land in the City of Franklin, Virginia, known as the City

of Franklin Subdivision Ordinance, it is provided that before the final plat of subdivision is approved for recordation, all physical improvements required by Section 6-2 of said ordinance for the land so subdivided shall have been installed therein, except that in lieu of actual installation of said physical improvements, the subdivider shall enter into an agreement secured by (i) a certified check or cash escrow or (ii) a personal or corporate bond, with surety, or (iii) an irrevocable letter or credit in an amount sufficient for the construction of such improvements plus 25% for administrative costs, inflation, and potential damage to existing roads or utilities guaranteeing that the improvements will be installed within a designated length of time; and

WHEREAS, the installation of said improvements has not been completed and the Owner desires to enter into said Agreement and furnish security in one of the prescribed manners so that the aforesaid plat may be approved for recordation.

NOW THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the approval of said subdivision and the covenants and agreements herein contained, the parties hereto agree as follows:

1. The City, through its Planning Commission, does hereby authorize the necessary City officials to approve said plat of subdivision of _____ for recordation insofar as the requirements of said ordinance is concerned.
2. The Owner covenants and agrees that they will within _____ (_____) months from the date of this agreement construct and install the physical improvements as required in the approved development plan for the property set forth in the aforesaid plat and as required by the provisions of Section 6-2 of the City of Franklin Subdivision Ordinance, and will, upon the execution of this Agreement, provide the City with a security in one of the prescribed manners duly executed by the Owner and the Contractor as principals in the amount of \$_____ with surety acceptable to the City, which is the estimated cost of installing the physical improvements, and 25% for administrative costs, inflation and potential damage to existing roads or utilities conditioned upon the satisfactory performance of all the covenants and provisions of this Agreement.
3. It is mutually understood and agreed that in the event the Owner and/or Contractor fails to complete the physical improvements provided hereinabove in the time designated, the City may complete or cause the same to be completed, and the Owner, and Contractor, as principals, and/or surety shall be jointly and severally liable to pay to the City the entire cost necessary to complete said improvements.
4. It is further understood by the parties to this Agreement that in the event of default by the Owner and/or Contractor, as described above, the City may, at its option, collect the total cost for the completion of the improvements from the Owner and/or Contractor as principals and/or surety prior to the actual construction of same, which cost is to be determined by estimates prepared by the Department of Public Works. In the event the estimated cost is greater than the actual cost necessary to complete the construction, the City will refund to the

Owner and/or Contractor and/or the surety the difference; in the event the estimated cost is less than the actual cost necessary to complete the construction, the Owner and Contractor as principals, and/or the surety will furnish to the City upon demand an amount equal to the difference in cost.

5. In the event that the Owner or Contractor defaults in any of the terms of this Agreement, the City shall have the right to refuse the issuance of building permits and/or to withhold all City services in the subdivision until the default is cured.
6. It is mutually understood and agreed that if the Owner and Contractor shall faithfully execute each and all requirements of the said Subdivision Ordinance and the provisions of this Agreement, and that the City shall certify that all outstanding bills owed to the City by the Owner in regard to the above-referenced subdivision including but not limited to inspection fees have been paid in full to the City of Franklin, then the aforementioned bond shall be released by the City to the Owner and/or Contractor. In the event the fees are not paid by the Owner, the City may at its option, collect the inspection fees associated with the physical improvements from the Owner and/or Contractor as principals and/or surety.

The Owner or Contractor shall be deemed to have defaulted if the Owner or Contractor:

- (a) fails to perform or adhere to any provision or condition in this Agreement, including the time periods; or
- (b) In the judgment of the Director of Community Development, the Owner or Contractor has:
 - (1) abandoned the performance of its obligations under the Agreement; or,
 - (2) renounced or repudiated its obligations under the Agreement; or,
 - (3) clearly demonstrated through insolvency, inaction, or otherwise, including the voluntary filing of a bankruptcy that its obligations under the Agreement cannot be completed within the time allotted under the Agreement.
- (c) Failure to renew or have reissued a security instrument for the Improvements yet to be completed.

In the event of default, the Owner or Contractor shall be mailed a Notice of Default and given ten (10) days after receipt of the written notice (or such additional time as may be expressly authorized in writing by the Director of Community Development) to:

- (a) provide satisfactory evidence that no default exists;
- (b) cure the default; or
- (c) in the event curing the default reasonably requires more than ten (10) days to complete, to commence to cure immediately and diligently proceed to cure, but in no event shall such cure extend longer than sixty (60) days from the receipt of the Notice of Default. Failure of the Director of Community Development to give notice of default shall not constitute a waiver of such default unless otherwise expressly stated in writing.

If the Owner or Contractor has received notice of default:

- (a) If the default is not cured within the ten (10) days from receipt of the Notice of Default, the Owner or Contractor's right to complete the Agreement terminates

and the City will draw upon the security and use such funds to compete the obligations under the Agreement.

(b) The Owner or Contractor acknowledges and agrees that the City is under no obligation to give any notice to the Owner or Contractor of its intent to draw on the security when the Owner or Contractor is in default; or

(c) The City shall not be liable to the Owner or Contractor or to any third party for the manner that the Improvements are completed or for any delay in fulfilling the Owner or Contractor's obligations under this Agreement.

(d) The Owner or Contractor shall be liable to the City for payment of the cost of completion of the improvements, in addition to all administrative costs, regardless of whether the ultimate cost exceeds that of the security posted. The cost of completion shall include all functions, goods and services, and the design and engineering work necessary to bring the improvements into conformity with the Requirements. Administrative costs shall include the time expended by the City's staff, City Attorney, consultants, and all legal fees and costs associated with the enforcement of this Agreement.

(e) In completing the improvements, the City shall not be bound by the Owner or Contractor's plans if unforeseen conditions within the Subdivision require the City to deviate from the approved plan. Such deviations shall be reasonable with regard to costs, time, and exigency and shall be at the sole discretion of the Director of Community Development.

The Owner or Contractor recognizes that the City will suffer financial loss if the Improvements are not completed by the Completion Date. Accordingly, the Owner or Contractor agrees to pay \$100.00 per day from the date of Owner or Contractor's default through to the completion of the Improvements by the City. Both parties also recognize the difficulty, delays, expense, and damages involved in proving in a legal proceeding the actual loss suffered by the City if the Improvements are not completed on time.

The Owner or Contractor further agrees should there be a default, to waive any and all rights to assert a defense to, or challenge the validity of, this provision or the assessment of liquidated damages on the grounds that such liquidated damages are void as penalties or not reasonably related to the City's actual damages.

SECURITY AGREEMENT ATTACHED AS EXHIBIT "A"

WITNESS the following signatures and seals:

Owner

Contractor

**ANCILLARY SUBDIVISION AGREEMENT
(SIDEWALKS AND SURFACE COURSE ASPHALT)**

THIS AGREEMENT, made this _____ day of _____, 20____, by and between _____, party of the first part, hereinafter referred to as the "Owner", the City of Franklin, Virginia, a municipal corporation, party of the second part, hereinafter referred to as "City".

WHEREAS, the Owner has caused to be subdivided into lots a certain tract or parcel of land situate in City known as Tax Parcel _____ as shown on a certain plat entitled _____, dated _____, made by _____, and has previously entered into an agreement with security dated _____, _____, _____, guaranteeing the installation of physical improvements as required by Section 6-2 of the City of Franklin Subdivision Ordinance; and

WHEREAS, the construction of certain improvements, as shown on the approved development plan for the subdivision, and as required by the above-mentioned agreement and the City of Franklin Subdivision Ordinance, have not yet been completed; and

WHEREAS, said Owner desires that its original subdivision agreement and security be canceled; and

WHEREAS, said Owner is willing to execute a new agreement with security to guarantee the completion of the installation of said improvements;

NOW, THEREFORE, THIS AGREEMENT WITNESSTH: That for and in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

7. The said Owner hereby covenants and agrees that the following required improvements will be completely installed by _____, or when seventy-five percent (75%) of building permits have been issued on the recorded lots, whichever comes first, and further agrees to comply with all provisions of the City of Franklin Subdivision Ordinance as it relates to the subject development. The said Owner further agrees that it will provide the City with a security in a prescribed manner in the amount of _____ Dollars to guarantee the complete installation and approval of said improvements plus 25% for administrative costs, inflation and potential damage to existing roads or utilities for said period of time to guarantee faithful compliance with all the provisions of Section 6-2 the City of Franklin Subdivision Ordinance; should the above amount not be sufficient to complete said improvements, the Owner agrees to pay all sums necessary for completion of to the City of demand.
8. The City hereby agrees to release the Subdivision Agreement and bond heretofore entered into with the Owner dated _____, _____, _____.
9. It is mutually understood and agreed that in the event the Owner fails to complete the physical improvements provided hereinabove in the time designated, the City may complete or cause the same to be completed, and the Owner as principal and/or surety shall be jointly and severally liable to pay to the City the entire cost necessary to complete said improvements and administrative costs.
10. It is further understood by the parties to this agreement that the City may, at its option, collect the total cost for the completion of the improvements from the

principal and/or surety prior to the actual construction of same, which cost is to be determined by estimates prepared by the Department of Public Works. In the event the estimated cost is greater than the cost necessary to complete the construction, the City will refund to the Owner and/or surety the difference.

11. In the event that the Owner defaults in any of the terms of this agreement, the City shall have the right to refuse the issuance of building permits and/or withhold all City services in the subdivision.
12. It is mutually understood and agreed that if the Owner shall faithfully execute each and all requirements of the said Subdivision Ordinance and the provisions of this agreement, then the aforementioned security shall be released by the City to the Owner.

The Owner or Contractor shall be deemed to have defaulted if the Owner or Contractor:

- (a) fails to perform or adhere to any provision or condition in this Agreement, including the time periods; or
- (b) In the judgment of the Director of Community Development, the Owner or Contractor has:
 - (1) abandoned the performance of its obligations under the Agreement; or,
 - (2) renounced or repudiated its obligations under the Agreement; or,
 - (3) clearly demonstrated through insolvency, inaction, or otherwise, including the voluntary filing of a bankruptcy that its obligations under the Agreement cannot be completed within the time allotted under the Agreement; or
- (c) failure to renew or have reissued a security instrument for the improvements yet to be completed.

In the event of default, the Owner or Contractor shall be mailed a Notice of Default and given ten (10) days after receipt of the written notice (or such additional time as may be expressly authorized in writing by the Director of Community Development) to:

- (a) provide satisfactory evidence that no default exists;
- (b) cure the default; or
- (c) in the event curing the default reasonably requires more than ten (10) days to complete, to commence to cure immediately and diligently proceed to cure, but in no event shall such cure extend longer than sixty (60) days from the receipt of the Notice of Default. Failure of the Director of Community Development to give notice of default shall not constitute a waiver of such default unless otherwise expressly stated in writing.

If the Owner or Contractor has received notice of default:

- (a) If the default is not cured within the ten (10) days from receipt of the Notice of Default, the Owner or Contractor's right to complete the Agreement terminates and the City will draw upon the security and use such funds to compete the obligations under the Agreement.

(b) The Owner or Contractor acknowledges and agrees that the City is under no obligation to give any notice to the Owner or Contractor of its intent to draw on the security when the Owner or Contractor is in default.

(c) The City shall not be liable to the Owner or Contractor or to any third party for the manner that the Improvements are completed or for any delay in fulfilling the Owner or Contractor's obligations under this Agreement.

(d) The Owner or Contractor shall be liable to the City for payment of the cost of completion of the improvements, in addition to all administrative costs, regardless of whether the ultimate cost exceeds that of the security posted. The cost of completion shall include all functions, goods and services, and the design and engineering work necessary to bring the improvements into conformity with the requirements of Section 6-2 of the City of Franklin Subdivision Ordinance. Administrative costs shall include the time expended by the City's staff, City Attorney, consultants, and all legal fees and costs associated with the enforcement of this Agreement.

(e) In completing the Improvements, the City shall not be bound by the Owner or Contractor's plans if unforeseen conditions within the Development require the City to deviate from the approved plan. Such deviations shall be reasonable with regard to costs, time, and exigency and shall be at the sole discretion of the Director of Community Development.

The Owner or Contractor recognizes that the City will suffer financial loss if the improvements are not completed by the Completion Date. Accordingly, the Owner or Contractor agrees to pay \$100.00 per day from the date of Owner or Contractor's default through to the completion of the Improvements by the City. Both parties also recognize the difficulty, delays, expense, and damages involved in proving in a legal proceeding the actual loss suffered by the City if the improvements are not completed on time.

The Owner or Contractor further agrees should there be a default, to waive any and all rights to assert a defense to, or challenge the validity of this provision or the assessment of liquidated damages on the grounds that such liquidated damages are void as penalties or not reasonably related to the City's actual damages.

SECURITY AGREEMENT ATTACHED AS EXHIBIT "A"

WITNESS the following signatures and seals:

Owner

Contractor

Council questioned the relationship between City staff and Mr. Urben. Amanda Jarratt and Taylor Williams explained the difficulties the City has had in an effort to reach a

resolution for Mr. Urben and Riverwood Estates. The proposed Subdivision Agreement was not acceptable to Mr. Urben.

On motion made by Ms. Johnson and seconded by Mrs. Lawrence, the proposed amendment and resolution was forwarded to the Planning Commission. The vote on this motion was as follows: AYE: Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Councill. ABSTAIN: Mr. Cheatham. ABSENT: Mrs. Hilliard.

High Street United Methodist Church Request

June Fleming and Taylor Williams recused themselves from discussion as they are both members of the congregation.

Lynne Rabil spoke to Council as a member of the High Street United Methodist Church. She stated that the church is considering relocating due to lack of room for expansion at its current location. The location they would like to build is across from the new Riverdale Elementary School on Camp Parkway. In order to build the church and meet the need for fire suppression, the church must get permission from Southampton County and the City of Franklin as per the Agreement between the City and County dated June 25, 2007 relating to water supply. The Southampton County Board of Supervisors met today and approved the request. There will be no cost to the City.

On motion made by Mr. Cheatham and seconded by Mrs. Johnson, Council approved the request of the High Street United Methodist Church which will allow them to tap into the water supply provided to Southampton County per the Agreement dated June 25, 2007 for the construction of their new church. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Councill. ABSENT: Mrs. Hilliard.

Old/New Business

Mr. Burgess provided an update on the Incubator Board. Discussion was held about possibly changing the name of the Incubator, but that was voted down. Lauren Harper was appointed as Chairperson.

Mayor Councill stated that he had spoken with Mike Johnson about a joint meeting between the City and County. The City will be the host this year and they would like to have John Smolak present in an effort to discuss joint Economic Development issues.

Vice Mayor Johnson stated that the Western Tidewater Regional Jail had hired a new Superintendent. Mr. Simmons previously served as a Lt. at the Hampton Roads Regional Jail. The jail is currently repairing the roof and appointed a new chairman, Leroy Bennett. At this time, there is no indication that there will be any requests for additional funds from the localities in the next fiscal year.

Discussion was held between Council, Brenda Rickman and Taylor Williams regarding the collection of delinquent taxes. Council encouraged staff to explore ways in which to be fair, but more aggressive in collecting the past due funds.

Closed Session

On motion made by Mr. Fetherolf and seconded by Mr. Cheatham it was unanimously RESOLVED that Council meet in closed session to discuss appointments to boards and commissions as permitted by Virginia Code Section 2.2-3711(A)(1). The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

Certification

On motion made by Ms. Johnson and seconded by Mr. Cheatham, it was unanimously RESOLVED that City Council hereby certifies that to the best of the knowledge of each member only public business matters identified in the motion which the closed meeting was convened were discussed, heard or considered. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

Appointments to the Downtown Franklin Association and the Franklin Redevelopment and Housing Authority Board

On motion made by Mr. Fetherolf and seconded by Mr. Cheatham, Rosa Lawrence was appointed to the serve on the Downtown Franklin Association to fill the seat vacated by Raystine Johnson and Anthony King was appointed to serve on the Franklin Redevelopment and Housing Authority Board to fill the seat vacated by Kent Pope. Both terms are effective immediately and Mr. King's term ends on December 31, 2008. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

Adjournment

There being no further business, on motion duly made, seconded and unanimously adopted the meeting was adjourned at 11:00 P.M. The vote on this motion was as follows: AYE: Mr. Cheatham, Mr. Burgess, Mrs. Lawrence, Ms. Johnson, Mr. Fetherolf and Mr. Council. ABSENT: Mrs. Hilliard.

Mayor

Clerk to City Council