

## 11-23-99 Minutes

A regular meeting of the Council of the City of Bedford, Virginia, was held in the Council Hall of the Municipal Building at 7:30 p.m., November 23, 1999.

Members present: Mayor G. Michael Shelton; Councilman H. Davis Ballard; Councilman Larry D. Brookshier; Councilwoman Mary L. Flood; Councilman Ronnie C. Rice; and Councilman Robert T. Wandrei.

Members absent: Vice Mayor E. Thomas Messier.

Staff present: City Manager Craig Meadows; City Attorney W. W. Berry, IV; and Clerk of the Council Teresa W. Hatcher.

Mayor Shelton opened the meeting and led all present in saying the Pledge of Allegiance to the Flag.

Deputy Clerk of Council Debra Anderson administered the Oaths of Office to the following new police officers: Boyd L. Royer and Benjamin P. Ray.

Mayor Shelton declared that the minutes of the November 9, 1999, regular Council meeting were approved as distributed.

The City Manager reported that the Property Committee met with Craddock Cunningham on November 16 regarding the Middle School Site Plan. Craddock Cunningham is to report back by December 7 regarding cost estimates.

The City Manager reported that the City is under a special Order of Consent with the State to address some inflow and infiltration problems in the wastewater system. The estimated cost to repair the system is between 4.5 and 5 million dollars. The City applied to the State of Virginia for low interest loan funding and has received notification that the City received approval of 4.6 million dollars of funding for this project at zero percent financing.

The City Manager asked members of Council to return their "Statement of Economic Interests" to the City Manager's office by December 15.

Councilman Rice indicated he has heard a lot of concerns recently regarding the leaf pickup on Oakwood Street.

Councilman Rice suggested that Council prepare a resolution or letter of appreciation for the City employees who went to Franklin, Virginia, to help following the hurricane that hit that area of the state. The employees were: Roger Ruff, John Hensley, and Glen Bowyer.

Councilman Wandrei expressed his concern regarding items being disposed of at the dumpster on Orange Street and suggested that something be done about cleaning up that area.

Councilman Ballard asked that Council add appointment of members to the Keep Bedford Beautiful Commission to the Consent Agenda.

Councilman Ballard expressed his concern about the request by Main Street, Inc., to erect a tent in Market Square and the length of time the parking lot will be closed.

On motion by Councilman Rice, seconded by Councilwoman Flood, voted upon and carried unanimously, the following item was added to the Consent Agenda: Additional Request to Block Streets for Celebration 2000.

The Consent Agenda consisted of the following items:

Grant the additional request by Bedford Main Street, Inc., and the Bedford City Recreation Department to block the City parking lot on Market Street to install a tent for Celebration 2000. The tent will be put up at noon, Friday, December 31, and taken down Tuesday morning, January 4. It is also requested that East Depot Street to Court Street be closed.

Appointment of Jane Rakos to the Keep Bedford Beautiful Commission (KBBC) to fill the vacancy on the Commission and appointment of Lynn Scott to fill the unexpired term of the late Louise Robertson on the KBBC

On motion by Councilman Rice, seconded by Councilwoman Flood, voted upon and carried, the Consent Agenda was adopted.

The City Manager reported that because of the favorable financing the City has been able to secure from Crestar Bank, it is requested that Council consider an additional appropriation of \$38,551.00 which would fully fund the purchase of the Pump Truck for the Fire Department and allow this to be included in the Lease Purchase package.

The City Manager stated another piece of equipment that appears would be prudent to include in this financing package is a backhoe in the Electric Department (\$66,305.)

It was determined that funds for the lease payment for the backhoe are already appropriated and these funds would be part of the financing arrangement under the lease purchase agreement.

Councilman Brookshier moved that Council appropriate \$38,551.00 from the unappropriated contingency to Account No. 103233.4390 for the purchase of a fire truck. The motion was seconded by Councilman Ballard.

Discussion ensued. Councilman Brookshier stated the Finance Committee met and endorsed the appropriation for the fire truck and the backhoe, plus the lease agreement.

The motion was then voted upon and carried unanimously by the following roll call vote:

Councilman Ballard                      aye

Councilman Brookshier	aye
Councilwoman Flood	aye
Vice Mayor Messier	absent
Councilman Rice	aye
Councilman Wandrei	aye
Mayor Shelton	aye

An Equipment Lease Purchase Agreement has been prepared between the City of Bedford and Crestar Bank providing for financing of the acquisition of certain equipment for the City.

The City Manager stated the Lease Agreement shall provide for the Bank to provide financing for the equipment and to lease the equipment to the City for a cost not to exceed \$744,831. The term of the Lease Agreement shall expire no later than December 31, 2003, and the interest component of the rental payments due under the Lease Agreement shall be based on a rate of 4.98% per year.

Councilman Ballard moved that Council adopt the resolution regarding the Lease Purchase Agreement with Crestar Bank. The motion was seconded by Councilman Wandrei.

Discussion ensued.

The motion was then voted upon and carried by the following roll call vote:

Councilman Brookshier	aye
Councilwoman Flood	aye
Vice Mayor Messier	absent
Councilman Rice	aye
Councilman Wandrei	aye
Councilman Ballard	aye
Mayor Shelton	aye

The resolution follows as adopted:

**RESOLUTION APPROVING AN EQUIPMENT  
LEASE PURCHASE AGREEMENT BETWEEN THE  
CITY OF BEDFORD, VIRGINIA,  
AND CRESTAR BANK, PROVIDING FOR  
FINANCING OF THE ACQUISITION OF  
CERTAIN EQUIPMENT FOR THE  
CITY OF BEDFORD, VIRGINIA,  
AND AUTHORIZING THE EXECUTION THEREOF**

**WHEREAS**, the Director of Finance and Administration (the "Director of Finance") of the City of Bedford, Virginia (the "City"), has submitted to various banks and financial institutions a request for proposals for tax-exempt

financing of municipal vehicles and other equipment for the City (collectively, the "Equipment"), and the Director of Finance has received four proposals in response to such request; and

**WHEREAS**, the Director of Finance has advised the Council of the City (the "Council") that the proposal of Crestar Bank (the "Bank"), a copy of which is attached to this resolution (the "Proposal"), offers to provide a tax-exempt fixed rate financing to the City and has recommended its acceptance as in the best interest of the City; and

**WHEREAS**, there has been presented to this meeting a draft of an Equipment Lease Purchase Agreement between the Bank, as Lessor, and the City, as Lessee (the "Lease Agreement"), to implement such financing;

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEDFORD, VIRGINIA:**

1. The Council determines that it is in the best interest of the City to accept the Proposal and enter into the Lease Agreement.
2. The Lease Agreement shall provide for the Bank to provide the financing for the Equipment and to lease the Equipment to the City upon the following terms: (a) the cost of the Equipment shall not exceed \$744,831, (b) the term of the Lease Agreement shall expire no later than December 31, 2003, (c) the interest component of the rental payments due under the Lease Agreement (the "Rental Payments") shall be based on a rate of 4.98% per year (exclusive of any interest penalties), and (d) principal and interest components of the Rental Payments shall be payable quarterly, as provided in the Lease Agreement.
3. The City Manager is authorized and directed to execute the Lease Agreement, which shall be in substantially the form presented to this meeting, which is approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the City Manager, whose execution thereof shall constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.
4. The officers of the City are authorized and directed to execute and deliver all certificates and instruments and to take all actions necessary or desirable in connection with the execution and delivery of the Lease Agreement and the completion of the financing.
5. The Council determines that the acquisition of the Equipment and the financing of the same under the Lease Agreement are essential to the proper and efficient operation of the City and will continue to be essential to the

proper and efficient operation of the City through the fiscal year ending June 30, 2004.

6. The obligations of the City under the Lease Agreement shall be limited obligations payable solely from funds to be appropriated by the Council for such purpose and shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the City beyond any fiscal year for which the Council has lawfully appropriated from time to time. Nothing herein or in the Lease Agreement shall constitute a debt of the City within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the City.

7. The City believes that funds sufficient to make payment of all amounts payable under the Lease Agreement can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the Council hereby states its intent to make annual appropriations for future fiscal years in amounts sufficient to make all such payments and hereby recommends that future Councils do likewise during the term of the Lease Agreement. The Council directs the City Manager, or such other officer who may be charged with the responsibility for preparing the City's annual budget, to include in the budget request for each fiscal year during the term of the Lease Agreement an amount sufficient to make the payment of all amounts payable under the Lease Agreement. As soon as practicable after the submission of the City's annual budget to the Council, the City Manager is authorized and directed to deliver to the Bank evidence that a request for an amount sufficient to make the payment of all amounts payable under the Lease Agreement has been made. If at any time during any fiscal year of the City, through the fiscal year ending June 30, 2004, the amount appropriated in the City's annual budget in any such fiscal years is insufficient to pay when due the amounts payable under the Lease Agreement, the Council directs the City Manager, or such other officer who may be charged with the responsibility for preparing the City's annual budget, to submit to the Council at the next scheduled meeting, or as promptly as practicable but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

8. (a) The City covenants that it will not take or omit to take any action the taking or omission of which will cause the Lease Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations issued pursuant thereto (the "Code"), or otherwise cause interest due under the Lease Agreement to be includable in the gross income of the holder thereof under existing statutes. Without limiting the generality of the foregoing, the City shall comply with any provision of law that may require the City at any time to rebate to the United States any part of the earnings derived from the investment of the funds received under the Lease Agreement, unless the City receives an opinion of nationally recognized bond counsel that such compliance is not required to

prevent interest due under the Lease Agreement from being includable in the gross income for federal income tax purposes of the holder thereof under existing law.

(b) The City covenants that during the term of the Lease Agreement it will not use or permit the use of the Equipment other than for the purpose of performing one or more governmental or proprietary functions of the City consistent with the scope of the City's authority and will not use or permit the use of the Equipment in a trade or business of any person or entity other than the City.

9. Such officers of the City as may be requested are authorized and directed to execute an appropriate certificate setting forth the expected use and investment of the funds received under the Lease Agreement, and any elections such officers deem desirable regarding rebate of earnings to the United States, for purposes of complying with Section 148 of the Code. Such certificate and elections shall be in such form as may be requested by bond counsel for the City.

10. The City designates its obligations under the Lease Agreement as "qualified tax-exempt obligations" for the purpose of Section 265(b)(3) of the Code. The City represents and covenants as follows:

(a) The City will in no event designate more than \$10,000,000 of obligations as qualified tax-exempt obligations in calendar year 1999, including the obligations under the Lease Agreement, for the purpose of such Section 265(b)(3);

(b) The City, all its "subordinate entities," within the meaning of such Section 265(b)(3), and all entities which issue tax-exempt obligations on behalf of the City and its subordinate entities have not issued, in the aggregate, more than \$10,000,000 of tax-exempt obligations in calendar year 1999 (not including "private activity bonds," within the meaning of Code Section 141, other than "qualified 501(c)(3) bonds," within the meaning of Section 145 of the Code), including its obligations under the Lease Agreement;

(c) Barring circumstances unforeseen as of the date of delivery of the Lease Agreement, the City will not issue tax-exempt obligations itself or approve the issuance of tax-exempt obligations of any of such other entities if the issuance of such tax-exempt obligations would, when aggregated with all other tax-exempt obligations theretofore issued by the City and such other entities in calendar year 1999, result in the City and such other entities having issued a total of more than \$10,000,000 of tax-exempt obligations in calendar year 1999 (not including private activity bonds other than qualified 501(c)(3) bonds), including its obligations under the Lease Agreement; and

(d) The City has no reason to believe that the City and such other entities will issue tax-exempt obligations in calendar year 1999 in an aggregate amount that will exceed such \$10,000,000 limit; provided, however, that if the City receives an opinion of nationally recognized bond counsel that compliance with any covenant set forth in (a) or (c) above is not required for the obligations under the Lease Agreement to be qualified tax-exempt obligations, the City need not comply with such covenant.

11. The City represents and covenants as follows:

(a) Barring circumstances unforeseen as of the date of delivery of the Lease Agreement, the City will not issue tax-exempt obligations itself or approve the issuance of tax-exempt obligations of any of its "subordinate entities," within the meaning of Section 148(f)(4)(C) of the Code, and all entities that issue tax-exempt obligations on behalf of the City and its subordinate entities, if the issuance of such tax-exempt obligations would, when aggregated with all other tax-exempt obligations theretofore issued in calendar year 1999 by the City and such other entities, result in the City and such other entities having issued a total of more than \$5,000,000 of tax-exempt obligations in calendar year 1999 (not including private activity bonds), including its obligations under the Lease Agreement;

(b) The City has no reason to believe that the City and such other entities will issue tax-exempt obligations in calendar year 1999 in an aggregate amount that will exceed such \$5,000,000 limit; and

(c) At least 95% of the proceeds of the Lease Agreement shall be used for "local government activities" of the City within the meaning of Section 148(f)(4)(C) of the Code; provided, however, that if the City receives an opinion of nationally recognized bond counsel acceptable to the holder that compliance with any restriction set forth in (a) or (c) above will not prevent the City from having to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Lease Agreement, the City need not comply with such restriction.

12. All other actions of officers of the City in conformity with the purposes and intent of this Resolution and in furtherance of the financing are hereby ratified, approved and confirmed.

13. All resolutions or parts of resolutions in conflict herewith are repealed.

14. This Resolution shall take effect immediately.

On motion by Councilman Ballard, seconded by Councilman Brookshier, voted upon and carried by a roll call vote, Council adopted the resolution canceling the second regular meeting in December. Roll call vote follows:

Councilwoman Flood	aye
Vice Mayor Messier	absent
Councilman Rice	aye
Councilman Wandrei	aye
Councilman Ballard	aye
Councilman Brookshier	aye
Mayor Shelton	aye

The resolution follows as adopted:

### **RESOLUTION**

**WHEREAS**, Section 11 of the Charter of the City of Bedford requires that Council shall "fix the time and place of its meeting," and

**WHEREAS**, the City Code requires in Section 2-3 that meetings shall be on "the second and fourth Tuesday of each month," and

**NOW, THEREFORE, BE IT RESOLVED**, the second regular Council meeting in December is scheduled for December 28, 1999, that date being during the Holiday Season; and

**BE IT FURTHER RESOLVED**, that the City Council meeting scheduled for December 28, 1999, be and the same hereby is canceled, and that a called meeting will be held if necessary.

The City Manager recognized Teresa L. Julian, Director of Finance & Administration, for her work in putting together the lease purchase agreement.

Mayor Shelton adjourned the meeting at 8:00 p.m.