



CITY OF SPARTANBURG

SOUTH CAROLINA

CITY COUNCIL AGENDA

**City Council Meeting
City Council Chambers
145 West Broad Street
Spartanburg, SC
Monday, February 23, 2015
5:30 p.m.**

- I. Moment of Silence**
- II. Pledge of Allegiance**
- III. Approval of the Minutes of the February 9, 2015 City Council Meeting**
- IV. Approval of Agenda of the February 23, 2015 City Council Meeting**
- V. Public Comment**
*Citizen Appearance forms are available at the door and should be submitted to the City Clerk
- VI. March 31, 2015 Special Election Update**
Presenter: Henry Lave, Director of Voter Registration and Elections
- VII. Recognition of Fleet Maintenance Retiree Michael Thompson**
Presenter: Mayor Junie White
- VIII. Ordinance**
 - A. Authorizing the City of Spartanburg, South Carolina, to Execute and Deliver an Equipment Lease Purchase Agreement, 2015, in an Amount Not Exceeding \$2,625,000 Between the City and the Lessor Thereof to Defray the Cost of Acquiring Certain Equipment; and Other Matters Relating Thereto (First Reading)**
Presenter: Dennis Locke, Finance Director
 - B. Approving a Development Agreement Between the City of Spartanburg and OTO Development (First Reading)**
Presenter: Ed Memmott, City Manager

IX. Consent

- A. To Authorize the Designation of the Police Chief as the Chief Executive Officer of the Police Department and the Fire Chief as the Chief Executive Officer of the Fire Department by Amending the Code of the City of Spartanburg 1988, by Deleting Chapter 7A, “Public Safety and Police Protection”, and by Adding to Chapter 2, “Administration,” Article IV, “Officers and Employees,” A new Section 2-89, “Police Department” and Section 2-90, “Fire Department” (Second Reading)**
Presenter: Ed Memmott, City Manager

X. Other Business

- A. Boards and Commissions – Consideration of Accommodations Tax Advisory Committee Applicant**
Presenter: Connie McIntyre, City Clerk

XI. City Council Updates

XII. Adjournment

** City Code Sec. 2-57. Citizen Appearance. Any citizen of the City of Spartanburg may speak at a regular meeting on any matter pertaining to City Services and operations germane to items within the purview and authority of City Council, except personnel matters, by signing a Citizen’s Appearance form prior to the meeting stating the subject and purpose for speaking. No item considered by Council within the past twelve (12) months may be added as an agenda item other than by decision of City Council. The forms may be obtained from the Clerk and maintained by the same. Each person who gives notice may speak at the designated time and will be limited to a two (2) minute presentation.*



**City Council Meeting
City Council Chambers
145 West Broad Street
Spartanburg, SC
Monday, February 9, 2015
5:30 p.m.**

**(These minutes are subject to approval at the
February 23, 2015 City Council meeting.)**

City Council met this date with the following members present: Mayor Junie White, Mayor pro tem Erica Brown, Councilmembers Jan Scalisi, Robert Reeder, Jerome Rice, and Sterling Anderson. City Manager Ed Memmott and Attorney Spencer King were also in attendance. City Attorney Cathy McCabe was absent due to a death in her family. Notice of the meeting was posted with the Media 24 hours in advance according to the Freedom of Information Act. All City Council meetings are recorded for a complete transcript.

- I. Moment of Silence - observed**
- II. Pledge of Allegiance –** Several Boy Scouts from various troops led everyone in the Pledge of Allegiance.
- III. Approval of the Minutes of the January 26, 2015 City Council Meeting –**
Councilmember Rice made a motion to approve the minutes as received. Mayor pro tem Brown seconded the motion, which carried unanimously 6 to 0.
- IV. Approval of Agenda of the February 9, 2015 City Council Meeting –**
Councilmember Reeder made a motion to approve agenda as received. Councilmember Rice seconded the motion, which carried unanimously 6 to 0.
- V. Public Comment -**
*Citizen Appearance forms are available at the door and should be submitted to the City Clerk **Jimmy Gibbs**, 9855 Warren Abernathy Hwy, Spartanburg, SC, came forward to address concerns regarding hotel economic development in downtown Spartanburg.
Andrew Cajka, 209 Spaulding Farm Rd., Spartanburg, SC, came forward to address concerns regarding hotel economic development in downtown Spartanburg.
Council received the comments as information.
- VI. Ordinance**
 - A. To Authorize the Designation of the Police Chief as the Chief Executive Officer of the Police Department and the Fire Chief as the Chief Executive Officer of the Fire Department by Amending the Code of the City of Spartanburg 1988, by Deleting Chapter 7A, “Public Safety and Police**

Protection”, and by Adding to Chapter 2, “Administration,” Article IV, “Officers and Employees,” A new Section 2-89, “Police Department” and Section 2-90, “Fire Department” (First Reading)

Presenter: Ed Memmott, City Manager

Mr. Memmott presented the item to City Council as follows:

“Staff is asking Council to approve an Ordinance that will formally amend the City Code to reflect current organizational structure of the Police and Fire Departments. This is a “housekeeping” measure to eliminate what are now obsolete references in City Code.

ACTION REQUESTED: First Reading Approval of an Ordinance to formally adopt separate Police and Fire organizational structure and to make changes in City Code necessary to delete obsolete references.”

Councilmember Anderson made a motion to approve the ordinance as requested on first reading. Councilmember Reeder seconded the motion, which carried unanimously 6 to 0.

VII. Other Business

A. Boards and Commissions – Consideration of Accommodations Tax Advisory Committee Applicant

Presenter: Connie McIntyre, City Clerk

Ms. McIntyre presented applicant Crystal Thomas for consideration for the Accommodations Tax Advisory Committee.

Mayor pro tem Brown made a motion to waive the rules and appoint Crystal Thomas to the Accommodations Tax Advisory Committee. Councilmember Scalisi seconded the motion, which carried unanimously 6 to 0.

VIII. City Council Updates –

Councilmember Rice invited everyone to make a point of visiting the Highland Avenue area where the new activity center was being built. He shared he thought everyone would be very pleased at the progress.

Councilmember Anderson mentioned that “dirt was moving” at the Texas Road House Restaurant location. He also mention that he has attended the SPATS meeting that morning, where several road projects were discussed.

Councilmember Scalisi commended on several projects happening in the downtown area; the Wall Street festival area, the opening of “Health in Hand Juice Bar”. She commented she was very impressed with the generosity of members of the Spartanburg community for the Northside Initiative with the \$7.5 million donation of the Mary Black Foundation, the Romill Foundation, and the Bernet Family. She added that she felt the commitment of so many to this project would positively affect our community in many areas.

She also expressed her excitement that the Carolina Panthers had renewed their commitment to continue to hold summer camp at Wofford College.

Councilmember Reeder echoed Councilmember Scalisi’s comments regarding the Carolina Panthers. He added that the team holding summer camp in Spartanburg was a great economic impact for our City.

He share that he had participated in a panel discussion at Bunton Institutional CME CHR for the Martin Luther King Day events, adding that the questions from the young people present were very enlightening. He added that Deputy Chief Kindall was also on the panel.

Councilmember Brown repeated that the generous gift from the Mary Black Foundation, the Romill Foundation, and the Barnet Family for the Northside Initiative was spectacular to witness. She shared that on February 11 at 4:30, USC Upstate would open Upstate Gallery on Main at 172 E. Main Street. She added that students would display artwork as well as create artwork on site. She reminded everyone of the Winter Jazz Ensemble at the Chapman Cultural Center on February 27 at 7:00 p.m.

IX. Executive Session to Discuss Potential Downtown Economic Development Projects

Councilmember Reeder made a motion to adjourn to Executive Session for the stated reason. Mayor pro tem Brown seconded the motion, which carried unanimously 6 to 0. Council adjourned to Executive Session at 5:55 p.m.

Council reconvened to regular session at 7:31 p.m. Mayor White stated that discussion was held with no decisions made.

X. Adjournment – Councilmember Reeder made a motion to adjourn the meeting.

Councilmember Rice seconded the motion, which carried unanimously 6 to 0. The meeting adjourned at 7:32 p.m.



Connie S. McIntyre, City Clerk



REQUEST FOR CITY COUNCIL ACTION

TO: Ed Memmott, City Manager
FROM: Dennis R. Locke, Finance Director
SUBJECT: Capital Lease Financing
DATE: February 18, 2015

BACKGROUND:

As part of our ongoing efforts to equip staff with the resources they need at the lowest possible cost over the long term, the City is committed to maintaining an annual equipment replacement schedule. Funds are appropriated through the annual budget into the equipment replacement fund from which these purchases and then made throughout the year.

Due in part to very low interest rates in recent years, staff has determined that the City could strengthen its financial position by bundling and leasing the major purchases within a master lease. This mechanism spreads the cost of these purchases over several years. The proposed action is to authorize this year's lease program.

ACTION REQUESTED:

Staff is recommending the replacement of 14 Police Vehicles, 4 Vehicles - Fire Department (including 75 ft. Aerial Ladder), 3 Vehicles and 3 various pieces of equipment for Grounds Maintenance, 1 Vehicle and 2 various pieces of equipment – Street Maintenance, 1 Clamshell and 1 Truck Rear Loader – Solid Waste, 1 Vehicle – Procurement & Property, 1 Vehicle Property Maintenance Inspections, 1 Vehicle – Parks & Recreation

It is staff's recommendation that we use a capital lease to finance these purchases. If approved, we would accept bids from various financial institutions. The source of repayment would be the Equipment Replacement Fund.

BUDGET & FINANCIAL DATA:

The total will not exceed \$2,625,000 inclusive of closing costs. This amount may be reduced pending final review of acquisition specifications.

ORDINANCE NO. 12-604.4-3.16.15

AUTHORIZING THE CITY OF SPARTANBURG, SOUTH CAROLINA, TO EXECUTE AND DELIVER AN EQUIPMENT LEASE PURCHASE AGREEMENT, 2015, IN AN AMOUNT NOT EXCEEDING \$2,625,000 BETWEEN THE CITY AND THE LESSOR THEREOF TO DEFRAY THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE MAYOR AND MEMBERS OF COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA, IN COUNCIL ASSEMBLED, AS FOLLOWS:

SECTION 1. Findings and Determinations. The City Council (the "Council") of the City of Spartanburg, South Carolina, hereby finds and determines:

(a) The City of Spartanburg, South Carolina (the "City"), is an incorporated municipality located in Spartanburg County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and the laws of this State.

(b) Section 5-7-40 of the Code of Laws of South Carolina, 1976, as amended (the "S.C. Code"), empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property.

(c) The City desires to enter into a lease-purchase agreement (the "Lease Agreement") with a bank or other financial institution selected by the City Manager for the purpose of financing the acquisition of equipment to replace the equipment set forth on Exhibit A hereto (the "Equipment").

(d) The Lease Agreement will not constitute a "financing agreement" and the Equipment will not constitute an "asset" as such terms are defined in Section 11-27-110 of the S.C. Code. Thus, the amount of the Lease Agreement will not be included when calculating the City's constitutional debt limit under Article X, Section 14 of the Constitution of the State of South Carolina.

(e) The Lease Agreement will be subject to annual appropriation by the Council.

(f) It is in the best interest of the City to acquire the Equipment by entering into the Lease Agreement. The Lease Agreement will enable the City to purchase the Equipment which will provide services necessary or useful to the operations of the City government.

SECTION 2. Approval of Lease/Purchase Financing; Delegation of Authority to Determine Certain Matters Relating to the Lease/Purchase Financing. The Equipment described in Exhibit A shall be acquired pursuant to a lease purchase financing which is hereby approved in a principal amount of not exceeding \$2,625,000. A Request for Proposals in substantially the form set forth as Exhibit B hereto shall be distributed to various banks and other financial institutions

in the City and other areas as the City's Finance Director determines. Without further authorization, the Council hereby delegates to the Mayor or the Mayor Pro Tempore and City Manager, or either of them acting alone, the authority to (a) determine the payment schedule under the Lease Agreement; (b) determine the date and time for receipt of bids under the Request for Proposals; (c) award the sale of the lease-purchase financing to the bidder (the "Bidder") who submits the proposal determined to be the most advantageous to the City in accordance with the terms of the Request for Proposals; and (d) make changes to the quantity, cost or description of the Equipment set forth in Exhibit A attached hereto.

SECTION 3. Approval of Lease Agreement. Without further authorization, the City Manager is authorized to approve the form, terms and provisions of the Lease Agreement proposed by the Bidder. The City Manager is hereby authorized, empowered and directed to execute, acknowledge and deliver the Lease Agreement in the name and on behalf of the City. The Lease Agreement is to be in the form as shall be approved by the City Manager, the City Manager's execution thereof to constitute conclusive evidence of such approval.

SECTION 4. Execution of Documents; Written Procedures. The Mayor, Mayor Pro Tempore, City Manager, Finance Director, City Attorney and Municipal Clerk are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be reasonably requested by the Bidder to effect the delivery of the Lease Agreement, including any project fund or acquisition fund agreement, or any payment or draw request thereunder, in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor or City Manager shall approve, is hereby fully authorized. In addition, the Mayor, Mayor Pro Tempore, City Manager and Finance Director, or any of them acting alone, are further authorized and directed to adopt written procedures on behalf of the City to ensure the City's compliance with federal tax matters relating to the Lease Agreement.

SECTION 5. Federal Tax Covenant. The City, as lessee, agrees and covenants that it will not take any action which will, or fail to take any action which failure will, cause interest components of the payments to be made under the Lease Agreement to become includable in the gross income of the Bidder or its successors or assignees for federal income tax purposes pursuant to the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and regulations promulgated thereunder in effect on the date of original issuance of the Lease Agreement, and that it will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest portion of the payments to be made under the Lease Agreement; and to that end the City shall:

- (a) comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as the Lease Agreement is outstanding;
- (b) establish such funds, make such calculations and pay such amounts in the manner and at the times required in order to comply with the requirements of the Code

relating to required rebates of certain amounts to the United States; and

- (c) make such reports of such information at the times and places required by the Code.

The City will timely file Form 8038-G in accordance with the applicable regulations of the Internal Revenue Service.

The City will designate the Lease Agreement as a “qualified tax-exempt obligation” for purposes of Section 265 of the Code relating to the ability of financial institutions to deduct from income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax-exempt obligations.

SECTION 6. Reimbursement. This Ordinance shall constitute the City’s declaration of official intent pursuant to Regulation §1.150-2 of the Code to reimburse the City from a portion of the proceeds of the Lease Agreement for expenditures it anticipates incurring in the approximate amount of \$250,000 (the “Expenditures”) with respect to the Equipment prior to the execution and delivery of the Lease Agreement. Expenditures which are reimbursed are limited to Expenditures which are: (a) properly chargeable to capital account (or would be so chargeable with a proper election or with the application of the definition of “placed in service” under Regulation §1.150-2 of the Code) under general federal income tax principals; or (2) certain de minimis or preliminary Expenditures satisfying the requirements of Regulation §1.150-2(f) of the Code. The source of funds for the Expenditures with respect to the Equipment will be the City’s general funds. To be eligible for reimbursement of the Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (a) the date on which the Expenditures were paid; or (b) the date such Equipment was placed in service, but in no event more than three (3) years after the original Expenditures.

SECTION 7. Filings with Central Repository. In compliance with Section 11-1-85 of the S.C. Code, the City covenants that it will file or cause to be filed with a central repository for further availability in the secondary bond market when requested: (a) a copy of the annual audit of the City within thirty (30) days of the City’s receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which, in the opinion of the City, adversely affects more than five (5%) of the City's revenue or its tax base.

SECTION 8. Severability. All ordinances, orders, resolutions and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the execution of the Lease Agreement are, to the extent of such conflict, hereby repealed.

SECTION 9. Effective Date. This Ordinance shall be effective upon its enactment.

[Execution Page Follows]

DONE AND RATIFIED this 16th day of March, 2015.

CITY OF SPARTANBURG, SOUTH
CAROLINA

(SEAL)

MAYOR

ATTEST:

CITY CLERK

Date of First Reading: February 23, 2015
Date of Second Reading: March 16, 2015

This Ordinance has been reviewed by me and is hereby approved as to form and legality.

City Attorney, City of Spartanburg, South Carolina

Execution Page

EXHIBIT A

List of Equipment to be Replaced

Department / Division	Vehicle / Equip. Number	Model Year	Model or Manufacturer	Description	Estimated Replacement Cost FY 2014 - 2015
Property Maintenance Inspections (PMI)	Veh# 265	2000	Ford	Taurus	18,000
Procurement & Property Maintenance (PPM)	Veh# 609	2008	Ford	Crown Vic	23,000
Police / Animal Control	Veh# 216	2007	Ford	F-150 Pickup Truck	40,381
Police / Patrol	Veh# 711	2007	Chevrolet	1WS19 Impala	53,174
	Veh# 721	2008	Ford	Crown Vic	53,174
	Veh# 722	2008	Ford	Crown Vic	53,174
	Veh# 723	2008	Ford	Crown Vic	53,174
	Veh# 724	2008	Ford	Crown Vic	53,174
	Veh# 725	2008	Ford	Crown Vic	53,174
	Veh# 726	2008	Ford	Crown Vic	53,174
	Veh# 727	2008	Ford	Crown Vic	53,174
	Veh# 734	2009	Ford	Crown Vic	53,174
	Veh# 735	2009	Ford	Crown Vic	53,174
	Veh# 736	2009	Ford	Crown Vic	53,174
					584,914
Police / Investigations	Veh# 492	2005	Chevrolet	CG33503 Express Van	36,740
	Veh# 730	2008	Chevrolet	Impala	29,580
					66,320
Fire / Fire Administration	Veh# 219	2008	Ford	F-150 Pickup	30,000
	Veh# 728	2008	Chevrolet	Impala	35,000
					65,000
Fire / Fire Suppression	Veh# 280	1996	Pierce Lance	75' Aerial Ladder	843,974
	Veh# 377	2004	Mobile Concepts	Scotty Fire Safety House	51,000
					894,974
Grounds Maintenance	Veh# 406	1999	GMC	Aerial Lift	150,000
	Veh# 413	2004	Ford	2004 Ford F350 Water Truck	52,500
	Veh# 423	2003	Chevy	4x4 w/ext Pickup Truck	25,000
	Veh# 437	2006	Ford	E-350 XL Club Wagon	27,000
	Veh# 559	2007	Toro	Z Master Z597D Lawn Equipment	18,000
	Veh# 564	2007	Walker	Walker Mighs , Yellow, Lawn Equipment	17,500
					290,000
Street Maintenance	Veh# 34	2002	Chevrolet	LS 4X4 Blazer	27,000
	Veh# 85	1997	Ford	Pro Pothole Patcher	150,000
	Veh# 433	2004	Bobcat	Bobcat s-250 w/trailer	50,000
					227,000
Solid Waste	Veh# 117	2000	Sterling Truck	Clamshell	175,000
	Veh# 134	1999	International 4900	Truck Rear Loader	180,000
					355,000
Parks & Recreation Adminstration	Veh# 551	2000	Ford	F150 Pickup Truck	22,000
				GRAND TOTAL	\$ 2,586,589.00

EXHIBIT B

Form of Request for Proposals

REQUEST FOR PROPOSALS

City of Spartanburg, South Carolina
Equipment Lease/Purchase Financing, 2015
Bid Number: Proposal No. _____

Response Due: _____, 2015
12:00 Noon, South Carolina Time

BANK-QUALIFIED

The City of Spartanburg, South Carolina (the "City"), is requesting proposals from various banks and financial institutions for not exceeding \$2,625,000 tax-exempt lease purchase financing to defray the costs of acquisition of certain equipment as described herein. The City invites interested parties to submit a proposal to finance the equipment by specifying a rate of interest and other conditions for such financing.

Mailed or Hand Delivered Bids: Each mailed or hand delivered proposal shall be enclosed in a sealed envelope marked "Proposal for 2015 Equipment Lease Purchase" and should be mailed or delivered to:

Carl Wright
Purchasing Manager
City of Spartanburg
145 West Broad Street
P.O. Box 1749
Spartanburg, South Carolina 29304
Telephone: 864.596.2049

Facsimile Bids: The City will accept the facsimile transmission of a proposal at the risk of the bidder. The City shall not be responsible for the confidentiality of proposals submitted by facsimile transmission. Any delay in receipt of a facsimile proposal, and any incompleteness or illegible portions of such proposal are the responsibility of the bidder. Proposals by facsimile should be transmitted to the attention of Mr. Carl Wright, Property and Procurement Manager, fax number: 864.596.2365.

E-Mail Bids: Electronic proposals may be e-mailed to the attention of Carl Wright at e-mail address: cwright@cityofspartanburg.org, with a copy to mburns@mcnair.net.

PROPOSALS MAY BE DELIVERED BY HAND, BY MAIL, BY E-MAIL OR BY FACSIMILE TRANSMISSION, BUT NO PROPOSAL SHALL BE CONSIDERED WHICH IS NOT ACTUALLY RECEIVED BY THE CITY AT THE PLACE, DATE AND TIME APPOINTED, AND THE CITY SHALL NOT BE RESPONSIBLE FOR ANY FAILURE, MISDIRECTION, DELAY OR ERROR RESULTING FROM THE SELECTION BY ANY BIDDER OF ANY PARTICULAR MEANS OF DELIVERY OF BIDS.

Please note that this Request for Proposals is also being sent to a number of other institutions as well and that the City reserves the right to select the proposal determined to be the most advantageous to the City in its sole discretion. The selection process will be heavily weighted toward lowest financing costs; however, lowest financing cost is not the only factor that may be considered by the City. The City reserves the right to reject any or all bid proposals as well as negotiate with the lowest responsive bidder.

The City requests that each bidder reference the following bid number in its proposal for the Lease/Purchase financing: Bid Number: Proposal No. _____.

I. Terms and Conditions

- (a) Amount to be Financed: The amount to be financed will not exceed \$2,625,000. The City retains the option to reduce the total amount to be financed by up to 10%.
- (b) Payments: Interest will be payable on the unpaid principal balance semi-annually on April 1 and October 1 of each year commencing October 1, 2015 and ending April 1 2025. Unless otherwise designated by a bidder interest on the lease will be calculated based on a 360-day year comprised of twelve 30-day months. Principal amounts of the lease will be payable semi-annually on April 1 and October 1 in each of the years and in the principal amounts as follows:

<u>Payment Date</u>	<u>Principal Amount</u>
10/01/2015	\$ 206,000
04/01/2016	208,000
10/01/2016	211,000
04/01/2017	213,000
10/01/2017	216,000
04/01/2018	218,000
10/01/2018	222,000
04/01/2019	224,000
10/01/2019	227,000
04/01/2020	230,000
10/01/2020	43,000
04/01/2021	43,000
10/01/2021	44,000
04/01/2022	44,000

10/01/2022	45,000
04/01/2023	45,000
10/01/2023	46,000
04/01/2024	46,000
10/01/2024	47,000
04/01/2025	47,000

- (c) Guarantee of Interest Rate: The interest rate, costs and other terms of the bid submitted must be guaranteed from the date of your proposal to the closing date (expected to be on or about April 23, 2015).
- (d) Equipment: The equipment to be financed by the lease is described and designated as having a five or ten year amortization period on Exhibit A attached hereto. Equipment having a five year amortization period will be released from the lien of the lease on April 1, 2020 and equipment having a ten year amortization period will be released from the lien of the lease on April 1, 2025.
- (e) Form of Equipment Lease/Purchase Agreement: A bidder’s proposed form of lease agreement (“Lease Agreement”) should be provided to the City’s special counsel within three (3) business days of the award of the successful proposal.
- (f) Non-appropriation: A non-appropriation provision acceptable to the City must be included in the Lease Agreement. All amounts due under the Lease Agreement must be subject to annual appropriation by the City.
- (g) Non-substitution: A non-substitution provision is not permitted to be included in the Lease Agreement.
- (h) Deficiency Judgment: No deficiency judgment can be assessed or imposed against the City nor will the full faith, credit and taxing power of the City be pledged to the payment of the Lease Agreement.
- (i) Title: Title to the equipment will be in the name of the City subject to the bidder's rights under the Lease Agreement. Upon the closing of the Lease Agreement, the successful bidder shall be responsible for taking all actions it deems necessary to impose its lien upon or perfect any security interest in the Equipment.
- (j) Acquisition Account: The City will require the successful bidder to transfer by Federal funds the full amount of this financing on the date of the closing. If a bidder requires that the acquisition or escrow account (the “Acquisition/Escrow Account”) be held by it or its designee, the bidder must so indicate on its proposal (including any fees required thereunder). Otherwise, the City retains the right to designate a bank to act as custodian

of the Acquisition/Escrow Account. Interest earnings in the Acquisition/Escrow Account must accrue to the City. Payments therefrom may be made either to the City as reimbursement for prior expenditures or directly to the equipment vendor for payment of the equipment as directed by the City.

- (k) Costs of Issuance: All such costs relating to the preparation of the Lease Agreement and fees of special counsel will be paid by the City. Any fees and costs of the bidder to be paid by the City must be stated in the response to this Request for Proposals. The Lease Agreement must allow the City to pay its legal fees and costs related to execution and delivery of the Lease Agreement out of the proceeds of the Lease Agreement.
- (l) Insurance: The City provides insurance through the South Carolina Municipal Insurance and Risk Financing Fund for equipment/personal property. The equipment will be insured in a similar manner at face value. The lessor may be listed as a loss-payee, but may not be listed as an additional insured under the City's insurance arrangement with the South Carolina Municipal Insurance and Risk Financing Fund.
- (m) Closing: The City expects to accept the successful proposal on April 7, 2015, and close the transaction on or about April 23, 2015.
- (n) Lease Agreement Designated as Qualified Tax-Exempt Obligation: The City will designate the Lease Agreement as a "qualified tax-exempt obligation" for purposes of Section 265 of the Internal Revenue Code of 1986, as amended (the "Code") relating to the ability of financial institutions to deduct from income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax-exempt obligations.
- (o) Redemption: Unless otherwise specifically provided in a bidder's proposal and agreed to by the City, the Lease Agreement will be subject to prepayment at the option of the City in whole or in part at any time without any prepayment penalty.

II. Form of Proposal

- (a) The proposal must be in writing. It is preferred that a bidder's proposal not be subject to further credit or underwriting approval.
- (b) No proposal may be modified by a bidder after it has been submitted.
- (c) Proposals should include: the name, address, telephone number of your institution; the primary contact; and identity of legal counsel, if any.

- (d) Proposals must be accompanied with a list of all requirements and conditions associated with its bid.
- (e) Proposals must indicate a single interest rate for the lease term and include an amortization schedule showing annual payment amounts for the term of the financing.
- (f) Proposals must provide full disclosure of all financing costs, including any closing, legal, and tax opinion charges.
- (g) Any prepayment penalty or other fee requirements should be detailed in the proposal.

III. Evaluation of Proposals and Award

The Lease Agreement may be awarded to the bidder that provides the most advantageous proposal, as determined by the City in its sole and absolute discretion. After the proposals are received, they will be evaluated by the officials of the City based on various factors, including, but in no way limited to, the interest rate, redemption terms, additional credit or underwriting approval, additional covenants and terms, if any, and other conditions set forth therein. The City reserves the right to reject any and all bids or to waive irregularities in any proposal. The City expects to accept the successful proposal on April 7, 2015.

IV. Legal Opinions. The execution and delivery of the Lease Agreement is subject to the respective opinions of the McNair Law Firm, P.A., Special Counsel, and the City Attorney, Cathy Hoefer McCabe, Esq.

V. Tax Exemption and Other Tax Matters. The Code, and the Treasury Regulations promulgated thereunder, include provisions that relate to tax exempt obligations, such as the Lease Agreement, including, among other things, permitted uses and investment of the proceeds of the Lease Agreement and the rebate of certain net arbitrage earnings from the investment of such proceeds to the United States Treasury. Noncompliance with these requirements may result in interest paid under the Lease Agreement becoming subject to federal income taxation retroactive to the date of issuance of the Lease Agreement. The City has covenanted to comply with the requirements of the Code to the extent required to maintain the exclusion of interest on the Lease Agreement from gross income for federal tax purposes. Failure of the City to comply with these covenants could cause the interest on the Lease Agreement to be taxable retroactively to its date of issuance.

The Code imposes an alternative minimum tax on a taxpayer's alternative minimum taxable income. Interest on the Lease Agreement is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however such interest will be taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations.

The accrual or receipt of interest on the Lease Agreement may affect the federal income tax

liability of the recipient. The extent of these other tax consequences will depend upon the recipient's particular tax status or other items of income or deduction. Prospective purchasers of the Lease Agreement should be aware that ownership of the Lease Agreement may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with "excess net passive income," foreign corporations subject to the branch profits tax, life insurance companies and taxpayers otherwise entitled to claim the earned income credit and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Lease Agreement. Special Counsel will not express any opinion as to such collateral tax consequences. Prospective purchasers of the Lease Agreement should consult their tax advisors as to collateral federal income tax consequences.

Special Counsel has not undertaken to determine (or to inform any person) whether any action taken (or not taken) or event occurring (or not occurring) after the date of issuance of the Lease Agreement may affect the tax status of interest on the Lease Agreement. In rendering its opinion, Special Counsel will rely upon certificates and representations of the City with respect to certain material facts solely within the knowledge of the City relating to the application of the proceeds of the Lease Agreement.

VI. Investment Letter. The lessor will be requested to execute a letter to the City in substantially the form submitted with this Request for Proposals.

VII. Additional Information

Persons seeking additional information should communicate with:

Dennis R. Locke, CGFO
Finance Director
City of Spartanburg, South Carolina
Phone: 864.596.2059
E-mail: dlocke@cityofspartanburg.org

Michael W. Burns, Esq.
Special Counsel
McNair Law Firm, P.A.
Phone: 864.271.4940
E-Mail: mburns@mcnair.net

Brandon T. Norris, Esq.
Special Counsel
McNair Law Firm, P.A.
Phone: 864.271.4940
E-Mail: bnorris@mcnair.net

CITY OF SPARTANBURG, SOUTH CAROLINA

Dated: March 18, 2015

Exhibit A

Equipment

Five (5) Year Amortization

One (1) Property Maintenance Inspections (PMI) Vehicle
One (1) Procurement and Property Maintenance (PPM) Vehicle
One (1) Police/Animal Control Vehicle
Eleven (11) Police/Patrol Vehicles
Two (2) Police/Investigations Vehicles
Two (2) Fire/Fire Administration Vehicles
One (1) Fire Safety House
One (1) Grounds Maintenance Aerial Lift
Three (3) Grounds Maintenance Vehicles
Two (2) Items of Grounds Maintenance Equipment
One (1) Street Maintenance Vehicle
One (1) Street Maintenance Pothole Patcher
One (1) Street Maintenance Bobcat (w/trailer)
One (1) Solid Waste Clamshell
One (1) Solid Waste Truck Rear Loader
One (1) Parks and Recreation Administration Vehicle

Ten (10) Year Amortization

One (1) Fire Truck



REQUEST FOR CITY COUNCIL ACTION

TO: Mayor and Members of City Council
FROM: Ed Memmott, City Manager
SUBJECT: Ordinance to Approve a Development Agreement with OTO Development
DATE: February 18, 2015

BACKGROUND:

The attached proposed development agreement sets forth the terms and conditions for the development of a hotel at the southwest corner of the West Main Street and Daniel Morgan Avenue intersection by OTO Development.

The proposed development agreement (if approved by Council) would obligate the City to:

1. Provide approximately \$750,000 in public improvements to include streetscape improvements along the west side of Daniel Morgan Avenue and “quiet zone” improvements for the CSX grade crossings at West Main and Henry Streets.
2. Provide its best efforts to designate the project site as a Multi-County Industrial/Business Park in order to achieve a 50% reduction in the incremental real property taxes paid by the new development. This abatement would be in place for 20 years.
3. Provide OTO with an option to purchase city owned property as identified on Exhibit A of the agreement for \$1.00. The specific terms regarding the purchase option are set forth in the development agreement.
4. Restrict economic development incentives for any other select service hotel for a period of 3 years from the date of opening of the OTO project as set forth in the development agreement.

The proposed development agreement would obligate OTO to:

1. Construct and open a select service hotel having not less than 100 rooms and other amenities as specified in the development agreement.
2. Affiliate the hotel with a national brand as specified in the development agreement.
3. Make capital project investment of at least \$18 million.
4. Open the hotel for business by September 30, 2017.

PROJECT ASSESSMENT AND STAFF RECOMMENDATION:

OTO's proven track record of hotel development nationally provides staff with a high degree of confidence that OTO will meet all of its obligations associated with this project. The project location is also a significant factor in staff's recommendation. Over 20 restaurants are located within 3-4 blocks of the proposed site. The hotel structure will also be a significant architectural feature at a very prominent downtown intersection. This combination of design, location, and new business activity will significantly enhance downtown's urban vitality and serve as a catalyst for continued corporate, retail, entertainment, multi-family, and mixed use development in our downtown.

Staff is strongly recommending approval of the proposed development agreement.

ACTION REQUESTED:

First Reading Approval of an Ordinance to approve a development agreement with OTO Development.

BUDGET AND FINANCE DATA:

\$750,000 in public improvements costs.

Costs incurred by the City will be offset by approximately \$300,000 in net new annual revenues that will be generated and paid to local taxing entities when the project is placed into service.

AN ORDINANCE

APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SPARTANBURG AND OTO DEVELOPMENT

WHEREAS, the City of Spartanburg (herein referred to as “City”) has determined that it is in the public interest to encourage redevelopment and private investment in its downtown; and

WHEREAS, the City has in the past entered into public-private partnerships to induce private investment, create private jobs, and increase the tax base; and

WHEREAS, the City in these public-private partnerships has provided incentives and received the commitment of private parties under the terms of development agreements; and

WHEREAS, the City has reached tentative agreement on certain terms and conditions with OTO Development for the development of a hotel on the southwest corner of the West Main Street and Daniel Morgan Avenue intersection in downtown Spartanburg; and

WHEREAS, a development agreement would memorialize the respective obligations of the City and OTO Development; and

WHEREAS, should Council conclude that it is in the City’s best interest to finalize an agreement with OTO Development, it will be necessary for Council to formally act and authorize the City Manager to take certain actions.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND MEMBERS OF COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA, IN COUNSEL ASSEMBLED:

SECTION 1. A Development Agreement between the City and OTO Development substantially in its final form attached hereto is hereby approved.

SECTION 2. The City Manager is authorized to execute the Development Agreement and any other documents necessary to meet the City obligations as set forth in the Development Agreement provided such documents are consistent with the intent of this Ordinance.

SECTION 3. The City Manager, upon the advice of the City Attorney, is authorized to make minor, nonmaterial modifications to the Development Agreement prior to its signature.

SECTION 4. This Ordinance shall become effective upon the date of enactment.

DONE AND RATIFIED this _____ day of _____, 2015.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

franchise brand acceptable to the City. The City will not unreasonably withhold its approval.

- d. **Capital Investment.** The Project will include a minimum capital investment of not less than \$18 million and will be completed for occupancy by September 30, 2017. Extensions may be provided at the request of OTO with the approval the City, which the City will not unreasonably withhold.

2. **City Commitments**

- a. **Public Improvements.** The City will construct at its expense streetscape improvements along approximately 380 linear feet on the western side of Daniel Morgan Avenue to include brick paver sidewalks, street trees, pedestrian scale lighting. This work will be similar to the streetscape improvements previously installed along West Main Street immediately adjacent to the Project site. The City will also pay the design and construction costs of physical modifications necessary to achieve a railroad “Quiet Zone” for the CSX railroad grade crossings at West Main and Henry Streets.
- b. **Property Tax Abatement.** The City will provide its best efforts to achieve a 50% abatement of the incremental property taxes generated by the Project for 20 years.
- c. **Option to To Purchase Land.** The City will provide OTO with an exclusive option to purchase for \$1.00 the City owned parcel shown on Exhibit A (City Parcel) if OTO provides evidence of one of the below needs:
 - i. OTO demonstrates to the City’s reasonable satisfaction that it needs the City Parcel in order for OTO or its affiliates to meet onsite parking obligations for its current tenant of 189 West Main Street (property that abuts the City Parcel). In order to secure this purchase option, OTO must construct permanent parking improvements on the City Parcel, meeting all City ordinances, statutes and laws, within six (6) months of the exercise of its option.
 - ii. If OTO, or its affiliates, provides City with a written statement of its intent to develop the City Parcel with a stand-alone building of not less than three (3) stories in height and approximately 8,000 square feet of gross finished floor space per floor, built to City Code and City zoning requirements, the City will extend its purchase option for up to three (3) years. OTO must provide the City with written notice of its intent to extend its purchase option within ninety (90) days of the termination of the lease of its 189 West Main Street tenant. Purchase of the City Parcel for the development of the stand-alone building will require the execution of a full development agreement between the City and OTO.
 - iii. If OTO provides the City with a written statement of its intent to combine the City Parcel with its 189 West Main Street parcel for the

comprehensive redevelopment of the combined site resulting in the development of the mixed use project(s) producing not less than \$7 million in incremental real property tax value, OTO may extend its purchase option for up to an additional five (5) years. OTO must provide the City with written notice of its intention to extend this purchase option within ninety (90) days of the termination of the lease of its 189 West Main street tenant. Purchase of the City Parcel for consolidation and development of the mixed use project(s) will require the execution of a full development agreement between the City and OTO.

d. Restrictions Regarding City Provision of Economic Development

Incentives for a Competing Hotel Project for Three (3) Years. For a period of three (3) years from the date of Project opening or until December 31, 2017 (whichever date occurs first), the City will not provide economic development incentives to include, but not limited to, tax abatements, public improvements, or discounted land sales for another select service hotel. Property located on Exhibit B attached hereto (Exhibit B Parcel) is not subject to restrictions regarding hotel development or discounted land sale pursuant to another agreement but is otherwise subject to all other restrictions regarding the provision of any development incentives by the City as set forth in this Paragraph.

3. **Invalidity.** Should any of the provisions of this Agreement be held invalid in whole or in part, it shall not affect or invalidate the balance of such provision or any other provisions.
4. **Amendments.** This Agreement may not be amended, modified or changed, except by an instrument in writing and signed by all the parties.
5. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements between the parties with respect to the Project. This Agreement contains the sole and entire understanding between the parties, and all other promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the parties, if any, are merged into this Agreement. Nothing in this agreement exempts OTO Development from compliance with all local, state, and other authorized jurisdiction permitting processes, building codes, or other development standard of the City.
6. **Notices.** All, notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by overnight courier, or by fax, with evidence of delivery, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of delivery. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party, from time to time, may change its address for notices hereunder.

- a. **OTO Development:** Chief Executive Officer, OTO Development, 100 Dunbar Street, Suite 402, Spartanburg, South Carolina 29306
 - b. **CITY:** City Manager, City of Spartanburg, PO Box 1749, Spartanburg, SC 29304.
 - c. **Copy:** City Attorney, City of Spartanburg, PO Box 1749, Spartanburg, SC 29304.
7. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.
 8. **Successor and Assigns; Termination.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns. This Agreement may only be terminated with the consent of all parties hereto.
 9. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
 10. **No Continuing Waiver.** The waiver of any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands and seals and executed this Agreement this _____ day of _____, 2015.

WITNESSES:

OTO Development

By: _____
 Name: Corry Oakes
 Title: CEO and Founder

CITY OF SPARTANBURG

By: _____
 Name: Ed Memmott
 Title: City Manager

APPROVED AS TO FORM:

By: _____
 Cathy H. McCabe
 City Attorney

Exhibit A

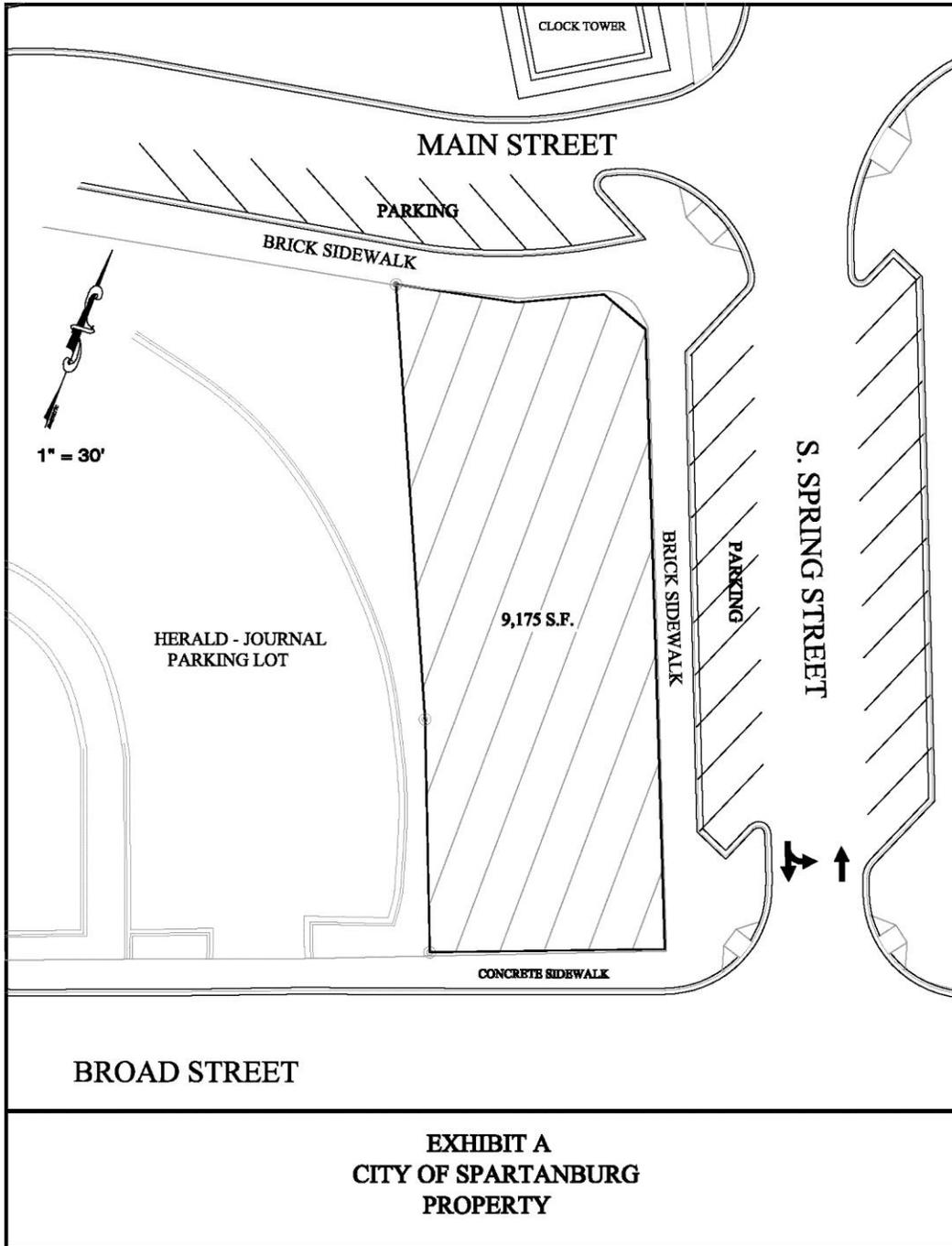


Exhibit B





Boards and Commissions Nominee Form

(Please print or type information)

BOARD/COMMITTEE: Accommodations Tax Committee

CITY RESIDENT: YES ___ NO SEX: M () F () RACE: White

NAME: Emily Wood

ADDRESS: 275 Summer Winds Lane Inman, S.C., 29349
Street City, State, Zip Code

BUSINESS PHONE: 707-5337 HOME PHONE: 542-3096 EMAIL: emilyw3096@yahoo.com

OCCUPATION: Business Owner

EMPLOYER: Health in Hand / Self

OTHER VOLUNTEER OR CIVIC ACTIVITIES: _____

Spartanburg Young Professionals Board Member 2015
Grain Ideas "Board Member" 2014 - present

WHY ARE YOU INTERESTED IN SERVING ON THIS BOARD? To better serve the
City of Spartanburg and to help foster City
events.

RECOMMENDED BY: Kathy Hill

DO YOU PRESENTLY SERVE ON OTHER GOVERNMENTAL BOARDS OR COMMISSIONS?

YES ___ NO IF YES, PLEASE LIST: _____

02/13/2015
DATE

Return via FAX to (864) 596-2313. MAIL or Email to:

Connie S. McIntyre, City Clerk
City of Spartanburg
PO Drawer 1749
Spartanburg, SC 29304
Email: cmcintyre@cityofspartanburg.org