



DANVILLE CITY COUNCIL REGULAR MEETING AGENDA

REVISED

MUNICIPAL BUILDING

September 20, 2022

7:00 P.M.

PRESIDING: Alonzo L. Jones, Mayor

**CITY COUNCIL
MEMBERS:** James B. Buckner
L.G. "Larry" Campbell, Jr.
Bryant Hood
Barry P. Mayo

Dr. Gary P. Miller, Vice Mayor
Sherman M. Saunders
J. Lee Vogler, Jr.,
Madison J. Whittle

STAFF: Ken F. Larking, City Manager
Earl B. Reynolds, Jr., Deputy City Manager

W. Clarke Whitfield, Jr., City Attorney
Susan M. DeMasi, City Clerk

The City Council is the City of Danville's legislative body and is composed of nine Council members. Council members are elected to serve a four year term of office and elects one of its own to serve as Mayor and presiding officer for a two year term.

Time and Place of Meeting

The public is invited and encouraged to attend and participate in the City Council meetings. The City Council meets in the City Hall, Fourth Floor, Council Chambers at 7:00 p.m. on the first and third Tuesday of each month. All meetings of the Council are open to the public.

Communications from Visitors

Communication from Visitors is an opportunity for citizens to address Council on matters not on the agenda. Citizens who desire to speak on agenda items will be heard when the agenda item is considered. Each speaker shall clearly state his or her name and address. Each individual speaker shall have five uninterrupted minutes. A representative of a group may have up to ten uninterrupted minutes to make a presentation. The representative shall identify the group and a group may have no more than one spokesperson. Time will be kept using the electronic timer on the podium.

Guidelines for Public Hearings

For Public Hearings the applicant or his or her representative shall be the first speaker(s). There shall be

a time limit of ten (10) minutes for the applicant's or his or her representative's presentation. The presiding officer shall then solicit comments from the public, asking those in favor of the proposal to speak first, and then those opposed to the proposal. Each speaker must clearly state his or her name and address. There shall be a time limit of three (3) minutes for each individual speaker. If the speaker represents a group, there shall be a time limit of five (5) minutes. A speaker representing a group shall identify the group at the beginning of his or her remarks. A group may have no more than one spokesperson. The presiding officer may limit or preclude comment which is repetitive, redundant, cumulative, or irrelevant to the subject of the public hearing. After public comments have been received, in a land use case, the applicant or the representative of the applicant, at his or her discretion, may respond with a rebuttal. There shall be a five (5) minute time limit for rebuttal.

MEETING CALLED TO ORDER

ROLL CALL

INVOCATION - J. Lee Vogler, Jr.

PLEDGE OF ALLEGIANCE TO THE FLAG

ANNOUNCEMENTS AND SPECIAL RECOGNITION

Proclamation: Constitution Week
Presented to: Cathy Nesselrode

Presentation: 2022 Accreditation of the Danville Treasurer's Office
Presented by: Sheila Williamson-Branch, Treasurer

COMMUNICATIONS FROM VISITORS

Communication from Visitors is an opportunity for citizens to address Council on matters not on the agenda. Citizens who desire to speak on matters not listed on the agenda or on matters which do not have a public hearing, will be heard at this time. Citizens who desire to speak on agenda items that have a public hearing will be heard when the agenda item is considered and the public hearing is opened.

CONSENT AGENDA

All matters listed under the Consent Agenda are considered to be routine, have previously been discussed by City Council and/or introduced for First Reading. There will be no separate discussion on these items and they will be enacted by one motion. If discussion is desired by a Council Member or a citizen, the item(s) will be removed from the consent process and considered separately.

- A. Public Hearing
- B. Consideration of Approval of Minutes from Regular Council Meeting held on August 16, 2022.
Council Letter Number CL - 2840.

- C. Consideration of Amending the Fiscal Year 2023 Budget Appropriation to Provide for a Virginia Commission for the Arts Grant.
Council Letter Number CL - 2813.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for a Virginia Commission for the Arts Grant in the Amount of \$4,500, and to Provide for the Local Share in the Amount of \$5,000 for a Total Appropriation of \$9,500.

FINAL ADOPTION

- D. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for Title III-B Grant Funds for Senior Transportation Services.
Council Letter Number CL - 2819.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance by Increasing Certain Revenues to Provide for Title III-B Grant Funds and Local Share for Senior Citizen Transportation Services and Appropriating the Same.

FINAL ADOPTION

- E. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for State Department of Aviation Maintenance Grant Funds.
Council Letter Number CL - 2825.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for State Department of Aviation Maintenance Grant Funds Related to the Maintenance of Certain Airport Properties in the Amount of \$40,000 and for the Local Share in the Amount of \$10,000 for a Total Appropriation of \$50,000 and Appropriating the Same.

FINAL ADOPTION

- F. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for a State Department of Aviation Grant to Promote Aviation Awareness.
Council Letter Number CL - 2826.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for a State Department of Aviation Grant for the Purpose of Providing Funding to Promote Aviation Awareness at the Danville Regional Airport in the Amount of \$5,000 and for the Local Share in the Amount of \$5,000 to be Provided by the General Fund Support of Grants for a Total Appropriation of \$10,000 and Appropriating Same.

FINAL ADOPTION

- G. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for Additional Federal and State Aviation Funding to Rehabilitate the South Ramp at the Danville Regional Airport.
Council Letter Number CL - 2827.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for Additional Federal and State Aviation Funding to Rehabilitate the South Ramp at the Danville Regional Airport in the Amount of \$1,830,412 and for the Local Share in the Amount of \$66,767 to be Provided by a Transfer from the General Fund Support of Special Grants Fund and Appropriating the Same.

FINAL ADOPTION

APPOINTMENTS

- A. Consideration of an Appointment to the Danville Community Policy & Management Team.
Council Letter Number CL - 2847.

A Resolution Appointing Deborah Harris to the Danville Community Policy and Management Team as the Danville Public Schools Representative.

NEW BUSINESS

- A. Review of General Fund Financial Reports through August 31, 2022.
Council Letter Number CL - 2820.

- B. Consideration of Authorizing a Negotiated Lease Agreement with Doc Brown, LLC.
Council Letter Number CL - 2834.

1. Public Hearing

2. An Ordinance Approving and Authorizing a Negotiated Lease Agreement with Doc Brown, LLC for the Installation and Operation of Commercial Energy Storage Facilities at 864 Monument Street.

- C. Consideration of Approving and Authorizing the Release of City-Held Liens Against Real Property Identified as Parcel #20165 Stokes Street.
Council Letter Number CL - 2814.

A Resolution Approving and Authorizing the Release of City-Held Liens Against Real Property Identified as Parcel #20165 Stokes Street to Facilitate its Transfer to New Bethel Baptist Church for Use as a Community Garden.

- D. Consideration of Authorizing the Execution of the 2022 Locust Ridge Wind Energy Schedule with American Municipal Power, Inc.
Council Letter Number CL - 2833.

A Resolution of the City Council of the City of Danville, Virginia Approving and Authorizing the Execution of the 2022 Locust Ridge Wind Energy Schedule with American Municipal Power, Inc. and Taking of Other Actions in Connection Therewith.

- E. Consideration of Authorizing and Approving Agreements between the Danville School Board, English Construction and Branch Builds for Preliminary Design Services.
Council Letter Number CL - 2842.

1. A Resolution of the Council of the City of Danville Virginia Approving and Authorizing the Interim Agreement Between the School Board of the City of Danville and English Construction Company, Inc. to Perform Preliminary Design Services for Renovations and Additions to George Washington High School, In Accordance with Virginia Code § 56- 575.16(5).

2. A Resolution of the Council of the City of Danville, Virginia Approving and Authorizing the Interim Agreement Between the School Board of the City of Danville and Branch Builds, Inc. to Perform Preliminary Design Services for a Newly Constructed G.L.H. Johnson Elementary School, In Accordance with Virginia Code § 56-575.16(5).

- F. Consideration of Approving a Moral Obligation Support Agreement with Virginia Community Capital.
Council Letter Number CL - 2844.

Resolution of the City Council of the City of Danville, Virginia, Approving a Moral Obligation Support Agreement with the Industrial Development Authority of Danville, Virginia.

- G. Consideration of and Amendment to the Membership of the Partnership for Regional Prosperity's Steering Committee.
Council Letter Number CL - 2838.

A Resolution Supporting the Amendment to the Partnership for Regional Prosperity, Formally the Danville-Pittsylvania Economic Development Alliance Steering Committee.

- H. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for a Grant from the Virginia Department of Historic Resources for a City-Wide Preservation Plan.
Council Letter Number CL - 2835.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for a Grant from the Virginia Department of Historic Resources in the Amount of \$26,950 and Local Match in the Amount of \$11,550 for a Total Grant in the Amount of \$38,500 and Appropriating the Same.

FIRST READING

- I. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for a Department of Historic Resources Grant for the Freedman's Cemetery Project.
Council Letter Number CL - 2836.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for a Grant from the Department of Historic Resources in the Amount of \$12,709 and a Local Match in the Amount of \$5,500 for a Total Amount of \$18,209 and Appropriating the Same.

FIRST READING

- J. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for a Victim Witness Program Grant.
Council Letter Number CL - 2830.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for a Grant from the Commonwealth of Virginia for a Victim Witness Program in the Amount of \$177,083 and Appropriating Same.

FIRST READING

COMMUNICATIONS FROM:

- A. City Manager
- B. Deputy City Manager
- C. City Attorney
- D. City Clerk
- E. Roll Call

ADJOURNMENT

Council Letter

City of Danville, Virginia



CL-2840

Consent Agenda B.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Consideration of Approval of Meeting Minutes

From: Susan M. DeMasi, City Clerk

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

Consideration of Approval of Minutes from Regular Council Meeting held on August 16, 2022.

Council Letter Number CL - 2840.

Attachments

Meeting Minutes

August 16, 2022

The Second Regular August meeting of the Danville City Council was held on August 16, 2022, at 7:00 p.m. in the Council Chambers located on the Fourth Floor of the Municipal Building. The following Council Members were present: James B. Buckner, L.G. "Larry" Campbell Jr., Bryant Hood, Mayor Alonzo L. Jones, Barry Mayo, Dr. Gary P. Miller, Sherman M. Saunders, J. Lee Vogler, Jr., and Madison J.R. Whittle (9).

Staff Members present were: City Manager Ken F. Larking, Deputy City Manager Earl B. Reynolds, Jr., City Attorney W. Clarke Whitfield Jr., and City Clerk Susan M. DeMasi.

Mayor Jones presided.

INVOCATION AND PLEDGE OF ALLEGIANCE

Council Member Saunders gave the Invocation the followed by the Pledge of Allegiance led by students from Tunstall High School.

COMMUNICATIONS FROM VISITORS

Tommy Bennett, President of the Danville branch of the NAACP, appeared before Council and noted the loss of Norma Brower, Vice President, one year ago, and the loss of their oldest member Mrs. Thorp, at the age of 114. Mr. Bennett introduced the new Vice President, Chasta White and also introduced Albert "Uncle Gus" Harris, who was 98-years-old. Mr. Bennett introduced members of the NAACP of Danville Board: Chasta White, Vice President, Sandra Hairston, Second Vice President, Donyell Mayo, Treasurer, Jacklyn Brown, Member, Pamela Mayo-Davis, Assistant to the Secretary, Barry Cochran, Vice President, and Darrius Johnson, Youth President.

CONSENT AGENDA

Council Member Buckner **moved** for adoption of the following Consent Agenda items:

Minutes from the Regular Council Meeting held on July 19, 2022. Draft copies of the Minutes had been distributed prior to the meeting.

Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for Funds from the U.S. Department of Housing and Urban Development in the Amount of \$990,667.

Ordinance No. 2022-06.12, an Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance for Projects to be or being Undertaken to Improve the Danville Community Financed with HOME-ARP Funds from the U.S. Department of Housing and Urban Development, for a Total Appropriation of \$990,667.

The Motion was **seconded** by Council Member Mayo and carried by the following vote:

VOTE: 9-0
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, Vogler and Whittle (9)
NAY: None

APPOINTMENTS

Vice Mayor Miller **moved** for adoption of the following Appointment Resolutions:

August 16, 2022

Resolution 2022-08.02 – Reappointing Tyrell Payne to the Community Improvement Council.

Resolution 2022-08.03 – Reappointing Jackson Weller to the Commission of Architectural Review.

Resolution 2022-08.04 – Reappointing Sonja Ingram to the Commission of Architectural Review.

Resolution 2022-08.05 – Reappointing Robert Weir to the Commission of Architectural Review.

Resolution 2022-08.06 – Appointing Karl Almquist to the Commission of Architectural Review.

The Motion was **seconded** by Council Member Campbell and carried by the following vote:

VOTE: 9-0
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, Vogler and Whittle (9)
NAY: None

NEW BUSINESS

REVIEW OF THE GENERAL FUND FINANCIAL RESULTS FOR THE FISCAL YEAR ENDED JUNE 30, 2022

Director of Finance Michael Adkins gave the preliminary financial report, noting total revenues for Fiscal Year 2022 were just under \$122M; that was almost 100% of budget, at 99.7% of budgeted revenues. Property taxes did very well; Real Estate was just over 100%, Delinquent Real Estate collections exceeded expectations as did Personal Property tax collections. The big variance was local consumer driven taxes: Sales, Meals, Lodging, and Business Licenses; all four exceeded expectations. Local taxes were \$3M over budget; Sales Tax was \$736,000 over budget, Meals Tax was \$1.2M over budget, Lodging Tax was \$580,000 over budget, and Business Licenses were \$516,000 over budget. Some of that does have to do with inflationary trends seen over the last several months but a lot was economic growth as well. Three areas of revenue did fall short this year, one was Charges for Services which was primarily charges for detention services (jail, juvenile, and adult detention.) The census in these facilities was much lower, which resulted in lower cost; the public safety cost was about \$1M under budget as well. Categorical aide from the State, which was for Social Services, had a reduction in the amount of adoption subsidies and foster care budgeted this year, therefore there was less revenue coming in to reimburse those services; that was about \$1.3M. The other item the City was short on was a market adjustment to City investments. The City has a fund balance account which was like a savings account. The City does not save that cash and let it sit, it was invested in municipal bonds or federal agency notes that were backed by Freddie Mac or those types of programs. At the beginning of the year, interest rates were very low, and over the course of the year they have increased tenfold. The Federal Reserve rate was about 2.5% today and .25% a year ago. The City invested their fund balance in some short-term investments for about 12 months. A year ago, the City was happy to find investments that were paying 1% interest; those investments were not worth that much because today they were paying 2% or 2.5%. On June 30th, the City has to mark their investments down to what they were worth on that day; so those investments were not worth what the City paid for them at that point in time. However, they never sell their investments, they let them mature so whatever was invested, the City will get back with the interest; it was a timing difference. On the Expenditure side, departments spent between 93% and 95% of their budgets; most of those savings were through vacancies. Like most employers, the City was having a hard time finding

August 16, 2022

people to fill necessary positions. The only significant overage was in Expenditures related to group health insurance. This was typical since some years they have claims come in as expected, sometimes lower, but this year claims came in higher than expected at about 14% which represents about \$1M more.

Mr. Adkins noted they were adding \$400,000 to fund balance. As invoices and other items come in to finish out Fiscal Year 2022, the budget was expected to zero out or be around \$200,000 to the good. Council Member Whittle asked if the bonds that were purchased at a low interest rate, were the rates expected to climb and Mr. Adkins noted they were. Council Member Campbell asked how much was in reserves and Mr. Adkins stated that last year ended just under \$34M, so this year should end around the same.

CONSIDERATION OF AUTHORIZING THE EXECUTION OF A PERMANENT UTILITY EASEMENT IN PITTSYLVANIA COUNTY

Council Member Buckner **moved** for adoption of a Resolution entitled:

RESOLUTION NO. 2022-08.07

A RESOLUTION OF THE CITY COUNCIL OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING THE EXECUTION OF A PERMANENT UTILITY EASEMENT ON PARCEL NUMBER 2308-72-3185 IN PITTSYLVANIA COUNTY, VIRGINIA, FOR A PRICE OF \$5,000 PLUS REASONABLE RECORDING COST.

The Motion was **seconded** by Council Member Mayo and carried the following vote.

VOTE: 9-0
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, Vogler and Whittle (9)
NAY: None

CONSIDERATION OF APPROVING THE PURCHASE AND ACQUISITION OF THE PAGE ROAD WATER PUMPING STATION FROM PITTSYLVANIA COUNTY

Council Member Vogler **moved** for adoption of a Resolution entitled:

RESOLUTION NO. 2022-08.08

A RESOLUTION OF THE CITY COUNCIL OF DANVILLE, VIRGINIA APPROVING THE PURCHASE AND ACQUISITION OF THE PAGE ROAD WATER PUMPING STATION PARCEL NUMBER 1388-51-3619, OWNED BY THE BOARD OF SUPERVISORS OF PITTSYLVANIA COUNTY, FOR A PURCHASE PRICE NOT TO EXCEED \$64,270 AND RECORDING COSTS

The Motion was **seconded** by Council Member Whittle and carried the following vote.

VOTE: 9-0
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, Vogler and Whittle (9)
NAY: None

CONSIDERATION OF APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE POWER AGREEMENT FOR TWENTY MEGAWATTS OF SOLAR ENERGY

Council Member Miller **moved** for adoption of a Resolution entitled:

RESOLUTION NO. 2022-08.09

A RESOLUTION OF THE CITY COUNCIL OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE POWER AGREEMENT FOR TWENTY MEGAWATTS OF SOLAR ENERGY, CAPACITY, AND RENEWABLE ENERGY CREDITS FROM THE 2022 AMERICAN MUNICIPAL POWER SOLAR PROJECT FOR A PURCHASE PRICE NOT TO EXCEED \$50 PER MEGAWATT HOUR

The Motion was **seconded** by Council Member Buckner.

Vice Mayor Miller stated this item came to the Utility Commission and was approved. Renewable energy supplies about 5% of the City's needs and this will increase their renewable energy footprint quite a bit. Council Member Whittle asked if Mr. Grey could explain this, and Mr. Grey stated this was a large 150 MW solar project through their Municipal Power membership. The City was taking 20 MWs to help provide for growing projects, and the City's electric needs.

Council Member Campbell stated with the battery storage program and all the projects, could Mr. Grey speak on the stability of the City's pricing and keeping it reasonable. Mr. Grey explained the battery storage would certainly help with demand, and lower transmission avoidance and risk. The solar project will have to be built and was two to three years out. There were some other projects he was working on, but they were all very much in the City's and customer's best interests. Reverend Campbell questioned if this would keep rates stable or lower and Mr. Grey noted, both. The City looked at ways to stabilize and lower rates, and anything they can do to improve the bottom line. Council Member Whittle questioned the thermostats project and Mr. Grey stated Utilities was looking at a project that provides incentives to customers who have smart thermostats that would allow a third party to control the thermostats during peak times to pre-cool the house and then turn it off during the peak time to help keep the demand and cost down.

Council Member Vogler stated that different rates for different plans were mentioned and asked this be explained, and Mr. Grey noted that the new Time of Use rates became effective July 1, 2022. The peak times during the summer were from 12pm to 9pm, and there was a higher rate for on peak and a much lower rate for off peak times. About 81% of the total hours of the year were off-peak and that includes all hours on the weekends and holidays. The City was going to ask people to think about doing things during those non-peak times to cut back on power usage. All of this information can be found on the Utilities' website, or they can call Customer Accounts.

The **Motion** was carried the following vote.

VOTE: 9-0
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, Vogler and Whittle (9)
NAY: None

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CONSIDERATION OF AUTHORIZING THE ISSUANCE OF BONDS OF THE CITY OF DANVILLE, VIRGINIA

Upon **Motion** by Council Member Buckner and **second** by Council Member Mayo, an Ordinance entitled:

ORDINANCE NO. 2022-08.02

AN ORDINANCE AUTHORIZING THE ISSUANCE OF BONDS OF THE CITY OF DANVILLE, VIRGINIA, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$16,000,000 TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF VARIOUS CAPITAL PROJECTS

was presented by its **First Reading**, as required by City Charter, to lie over before final adoption.

CONSIDERATION OF AN APPLICATION TO THE VIRGINIA DEPARTMENT OF HOUSING AND DEVELOPMENT FOR AN INDUSTRIAL REVITALIZATION GRANT

Council Member Vogler **moved** for adoption of a Resolution entitled:

RESOLUTION NO. 2022-08.10

A RESOLUTION APPROVING AND AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION BY THE DANVILLE OFFICE OF ECONOMIC DEVELOPMENT, TO THE VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, INDUSTRIAL REVITALIZATION FUND AND FOR THE CITY TO FUND THE BALANCE OF THE "RIVER DISTRICT PROJECT" TO ELIMINATE BLIGHT.

The Motion was **seconded** by Council Member Buckner and carried the following vote:

VOTE: 9-0
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, Vogler and Whittle (9)
NAY: None

COMMUNICATIONS

City Manager Ken Larking noted *The Star Tribune* and other publications ran an article on Firefighter Hillary Alderson who helped get oxygen masks for pets; this helps pets when rescued from a fire.

There were no Communications from the Deputy City Manager, City Attorney or City Clerk.

Council Member Vogler gave a shout out to Tyrell Payne for helping to get a child that just moved to Danville, enrolled in school, and wished all the teachers and students a great school year. Today was the 45th anniversary of Elvis Presley passing away and he had a famous motto of "taking care of business,"; it was without a doubt that City Council was taking care of business.

Council Member Buckner thanked all the teachers for having Council there at the first day of school to welcome the children back.

August 16, 2022

Council Member Campbell thanked Tommy Bennett for recognizing Uncle Joe, and wished everyone a successful school year. Another person lost their life today making it the seventh homicide in Danville. Reverend Campbell stated Danville has a good Police Chief and a good City, and they can do better.

Council Member Hood recognized Mr. Vincent Brown for his program presented at Bibleway.

Council Member Mayo stated to the citizens, they have to make a stand together, so if they love their community then protect it from those who want to make trouble. Council Members have been everywhere welcoming students back; it was great being at G.W. High School welcoming those students. The Caesar's groundbreaking was a phenomenal sight to see. Main Street Baptist Church was having a community health awareness day promoting cancer awareness on Saturday, September 10 from 10am to 3pm at the Camp Grove Recreation Center. DCC will be spearheading a job and resource fair in November 1, with more information to come.

Vice Mayor Miller stated that one of the most exciting days was the first day of school, noting he went to Grove Park and Galileo, the excitement was amazing; Danville has a great group of students and teachers. He and Council Member Buckner attended a tourism meeting recently and received input on what was needed to improve the image of the City and Pittsylvania County. Dr. Miller noted the groundbreaking at Caesar's was amazing and people have been asking when it was going to open, they were ready, and stated he only sees great things for the community.

Council Member Saunders stated that he attended three schools last week and was pleased to see the students excited and ready to go. Mr. Saunders questioned what can be done with regard to the community coming back to Almagro. That was an area rich in history and memories; whatever Council can do to help they should. Mr. Saunders thanked the students from Tunstall High School for attending, and noted he and his wife just celebrated 50 years of marriage.

Mayor Jones thanked all the visitors for attending tonight, and thanked Mr. Bennett, Uncle Gus and his wife for coming out this evening.

Meeting adjourned at 8:57pm.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Council Letter

City of Danville, Virginia



CL-2813

Consent Agenda C.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Creative Communities Partnership Grant

From: Charlene Presley, Div Director of Special Recreation

COUNCIL ACTION

First Reading: 09/06/2022

Final Adoption: 09/20/2022

SUMMARY

In the past, the City of Danville has participated in the Creative Communities Partnership Grant, formerly known as the Local Challenger Grant, through the Virginia Commission for the Arts. The City has received notification from the Commission that a grant of \$4,500 has been awarded for Fiscal Year 2023. A public notice will be advertised in the Register and Bee in September.

BACKGROUND

The local match of \$5,000 has been provided in the Fiscal Year 2023 budget in the General Fund support of grants. Some of the local groups that have been assisted under this program over the years include: The Danville Area Choral Arts Society, Danville Art League and River District Association, Danville Concert Association, Danville Museum of Fine Arts and History, and Danville Symphony Orchestra. The advertising for availability of funding request will begin immediately; a public notice will be advertised September 21, 2022, soliciting applications. Agencies listed above will be sent letters advising them of the funding opportunity and informing them that they must complete an application. The applications are due back no later than October 13, 2022. City staff reviews the applications and makes award recommendations to the local arts grant taskforce, who vote on final awards. Award recipients are notified by letter of their grant amount, and funds must be spent prior to June 30, 2023.

RECOMMENDATION

It is recommended that City Council adopt the accompanying Ordinance providing funds for a Creative Communities Partnership Grant from the Virginia Commission for the Arts and the required local share.

Attachments

Ordinance

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. - _____.____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR A VIRGINIA COMISSION FOR THE ARTS GRANT IN THE AMOUNT OF \$4,500, AND TO PROVIDE FOR THE LOCAL SHARE IN THE AMOUNT OF \$5,000 FOR A TOTAL APPROPRIATION OF \$9,500.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the Fiscal Year 2023 Budget Appropriation Ordinance be, and the same is hereby, amended by increasing revenues for grant in the amount of \$4,500 from the Virginia Commission for the Arts, and local share of the grant in the amount of \$5,000, all for its support of the local arts, such funds to be appropriated in the Special Grants fund and to be as follows:

ANTICIPATED REVENUE

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Virginia Commission for the Arts Categorical Aid – State	60139000-47520	\$ 4,500
Local Share: Transfer from General Fund	60139000-6101	<u>\$ 5,000</u> <u>\$ 9,500</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Virginia Commission for the Arts Contribution from Other Entity	60139000-55005	<u>\$9,500</u>

AND BE IT FURTHER ORDAINED, that all other accounts and provisions of the Fiscal Year 2023 Budget Appropriation Ordinance not hereby amended shall continue in full force and effect unless and until hereafter further amend or repealed; and

BE IT FINALLY ORDAINED, that this appropriation shall be continuing appropriation and such appropriation shall carry forward from year to year until such funds are expended for the purpose for which they were appropriated.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney

Council Letter

City of Danville, Virginia



CL-2819

Consent Agenda D.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Older Americans Grant Funding for Fiscal Year 2023

From: Marc Adelman, Director of Transportation Services

COUNCIL ACTION

First Reading: 09/06/2022

Final Adoption: 09/20/2022

SUMMARY

The City of Danville applies annually for federal Older Americans Act Funds and state transportation funds, to serve as a contractor for the Southern Area Agency on Aging, to provide transportation services for senior citizens ages sixty and over. For the period July 1, 2021 through June 30, 2022, the Danville Transit System completed 12,367 one-way trips for seniors that were invoiced to the Southern Area Agency on Aging. Total senior ridership activity decreased for this period by 10% compared to the previous fiscal year.

BACKGROUND

The Transportation Services Department requests the City Council's approval to appropriate Title III-B Older Americans Act Grant funds for the federal fiscal year from October 1, 2022 through September 30, 2023 in the amount of \$49,892, and other federal funds in the amount of \$22,500. In addition, this request applies to the appropriation of \$22,445 in State Transportation funds and Program income of \$1,000 for transportation services.

The Ordinance includes an appropriation for in-kind services for the Title III-B Older Americans Act Grant in the amount of \$380,790. These charges are appropriated in the Transportation Services budget as well. The appropriation for in-kind service is necessary for administrative and reporting activities and to complete operational and supervisory duties to support the Senior Transportation program, and includes in-kind revenues and equal in-kind expenditures in the Special Grants fund.

RECOMMENDATION

It is recommended that City Council approve the attached Ordinance appropriating the Title III-B Older American Act grant funds received through the Southern Area Agency on Aging for Fiscal Year 2023.

Attachments

Ordinance

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2022 - _____ - _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE BY INCREASING CERTAIN REVENUES TO PROVIDE FOR TITLE III-B GRANT FUNDS AND LOCAL SHARE FOR SENIOR CITIZEN TRANSPORTATION SERVICES AND APPROPRIATING THE SAME.

WHEREAS, the City of Danville, Virginia applies annually for the Federal Older Americans Act funds and Stated transportation funds in order to provide transportation services for senior citizens aged sixty and older through the Southern Area Agency on Aging.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance by, and it is hereby, amended to provide for a grant from Title III-B Older Americans Act funds in the amount of \$49,892; Other Federal Funds in the amount of \$22,500, Virginia General Fund monies in the amount of \$22,445, administered by the Southern Area Agency on Aging to the Department of Transportation Services for the Federal Fiscal Year beginning October 1, 2022 and ending September 30, 2023; \$1,000 program income and \$380,790 in-kind services for a total of \$476,627, and appropriating such funds within the Special Grants Fund, such revenue and appropriations to be as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Categorical Aid –Federal:		
Older Americans Act		
Title III-B Funds (FY22-23)	61793000-48050	\$94,837
Local Share:		
Older Americans Act Title III-B		
Program Income (FY22-23)	61794000-44650	\$1,000
Title III-B Older Americans Act		
In-Kind (FY22-23)	61795000-44890	<u>\$380,790</u>
	TOTAL	<u>\$476,627</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Older Americans Act Title III-B (FY22-23)		
Salary and Wages	61793000-51200	\$ 39,000
FICA	61793000-51450	\$ 2,771
Mass Transit Services	61793000-52660	\$ 51,663
Postage	61793000-54050	\$ 903
Travel	61793000-54900	\$ 500
	Subtotal	<u>\$ 94,837</u>

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Older Americans Act Title III-B Program Income (FY22-23):		
Travel/ Training Expense	61794000-54900	\$ 500
Office Supplies	61794000-55820	\$ 500
	Subtotal	<u>\$ 1,000</u>

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Older Americans Act Title III-B In-Kind (FY22-23):		
Salary and Wages	61795000-59500	\$ 341,014
FICA	61795000-59510	\$ 23,058
Outside Services	61795000-59610	\$ 550
Print Shop	61795000-59620	\$ 3,000
Postage	61795000-59630	\$ 750
Telephone Internet	61795000-59635	\$ 1,400
Travel/Training Expense	61795000-59645	\$ 1,833
Office Supplies	61795000-59650	\$ 1,000
Lease/Rent Buildings	61795000-59670	\$ 8,185
	Subtotal	<u>\$ 380,790</u>
GRAND TOTAL		<u>\$ 476,627</u>

AND BE IT FURTHER ORDAINED, that all other accounts and provisions of the Fiscal Year 2023 Budget Appropriation Ordinance, as amended, not hereby amended, shall continue in full force and effect unless and until hereafter further amended or repealed; and

BE IT FINALLY ORDAINED, that this appropriation shall be continuing appropriation and such appropriation shall carry forward from year to year until such funds are expended for the purpose for which they were appropriated.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney

Council Letter

City of Danville, Virginia



CL-2825

Consent Agenda E.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Airport Maintenance Program

From: Marc Adelman, Director of Transportation Services

COUNCIL ACTION

First Reading: 09/06/2022

Final Adoption: 09/20/2022

SUMMARY

The Virginia Department of Aviation provides airport maintenance funding to assist airports with preserving facilities in a safe and economical operating condition. Maintenance grant funding will allow Virginia airports to receive up to \$100,000 in state aid on an annual basis subject to funding availability and project eligibility.

BACKGROUND

Eligible maintenance activities for use of State Airport Maintenance funds include scheduled and unscheduled repairs that are not performed each quarter. State maintenance funds can also be used to finance equipment purchases. Funding levels vary for different airport maintenance program activities relative to state guidelines. Projects that support facility preservation such as crack sealing are funded at higher levels compared to projects that are related to the replacement of grounds equipment.

For Fiscal Year 2023, the airport intends to use available airport maintenance funds to complete scheduled repair work related to automobile parking lots and navigational lights. In addition, it is anticipated that state aid may also be used for unscheduled repairs related to automatic gates.

RECOMMENDATION

It is recommended that City Council approve an Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to provide for Virginia Department of Aviation Airport Maintenance funds and for the local share appropriating the same.

Attachments

Ordinance

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2022 - _____ - _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR STATE DEPARTMENT OF AVIATION MAINTENANCE GRANT FUNDS RELATED TO THE MAINTENANCE OF CERTAIN AIRPORT PROPERTIES IN THE AMOUNT OF \$40,000 AND FOR THE LOCAL SHARE IN THE AMOUNT OF \$10,000 FOR A TOTAL APPROPRIATION OF \$50,000 AND APPROPRIATING THE SAME.

WHEREAS, the Virginia Department of Aviation provides airport maintenance Funding to assist airports with preserving facilities in a safe and economical operating condition; and

WHEREAS, the Maintenance Grant funding will allow Virginia airports to receive up to \$100,000.00 in state aid on an annual basis subject to funding availability and project eligibility.

NOW THEREFORE BE IT ORDAINED, by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance by, and it is hereby, amended by increasing revenues from the Commonwealth of Virginia, Department of Aviation, in an amount of \$40,000 and the local share for \$10,000 for an aggregate amount of \$50,000 for the purpose of providing for a State funded Airport Maintenance Program at the Danville Regional Airport such funds to be appropriated in the Support of Grants Fund as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
FY2023 Airport Maintenance		
Categorical Aid – State	61796000-45712	\$ 40,000
Local Share	61796000-6101	<u>\$ 10,000</u>
	TOTAL	<u>\$ 50,000</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
FY 2023 Airport Maintenance	61796999-50	<u>\$ 50,000</u>

BE IT FURTHER ORDAINED that all other accounts and provisions of the Fiscal Year 2023 Budget Appropriation Ordinance, as amended, not hereby amended, shall continue in full force and effect unless and until hereafter further amended or repealed.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney

Council Letter

City of Danville, Virginia



CL-2826

Consent Agenda F.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Aviation Promotion Grant

From: Marc Adelman, Director of Transportation Services

COUNCIL ACTION

First Reading: 09/06/2022

Final Adoption: 09/20/2022

SUMMARY

The Virginia Department of Aviation has approved an Aviation Promotion grant to support an Airport Open House and Young Eagles Rally, and a ribbon-cutting ceremony for the terminal building renovation project this fiscal year. Specific dates for the Young Eagles Rally and Ribbon Cutting Ceremony are currently not scheduled, but it is anticipated both events will be held by the spring of 2023.

Young Eagle rallies are completed nationwide by local aircraft chapters that offer children ages 8 to 17 the opportunity to complete a free plane ride. The last rally held at the Danville Regional Airport occurred on October 30, 2021.

The Young Eagles event will be held in conjunction with Airport Open House activities, including tours of the terminal building, operations tower, Civil Air Patrol building and Averett University's Flight Center. The local match requirement for the Aviation Promotion Grant is \$5,000, which involves a total project budget of \$10,000.

BACKGROUND

The Danville Regional Airport will hold an Airport Open House and Free Fly Day for children, and a ribbon-cutting ceremony for the terminal building renovation project this fiscal year. An aircraft chapter located in Apex, North Carolina will coordinate a Young Eagles Rally at the airport that will offer children ages 8 to 17 the opportunity to complete a free plane ride. In addition, facility tours will be completed in conjunction with the rally by staff representing the airport, the Civil Air Patrol and Averett University's Flight Center to facilitate aviation awareness. The North Carolina chapter has committed to supporting Free Fly Day activities at the Danville airport this fiscal year but will not schedule rallies for calendar year 2023 until this winter. In addition, no date has been scheduled for the ribbon-cutting ceremony for the terminal building renovation project since it is uncertain when the project will be finished. However, it is expected the renovation project will be complete by the spring of 2023.

An Aviation Promotion Grant has been approved by the Virginia Department of Aviation to provide funding for both special events. Related eligible expenses include refreshments for the public, aviation fuel for pilots and advertising charges.

RECOMMENDATION

It is recommended that City Council approve the attached Budget Appropriation Ordinance appropriating Aviation Promotion grant funds to support an Airport Open House and Free Fly Day for children and a ribbon cutting ceremony for the terminal building renovation project at the Danville Regional Airport.

Attachments

Ordinance

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2022-_____- _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR A STATE DEPARTMENT OF AVIATION GRANT FOR THE PURPOSE OF PROVIDING FUNDING TO PROMOTE AVIATION AWARENESS AT THE DANVILLE REGIONAL AIRPORT IN THE AMOUNT OF \$5,000 AND FOR THE LOCAL SHARE IN THE AMOUNT OF \$5,000 TO BE PROVIDED BY THE GENERAL FUND SUPPORT OF GRANTS FOR A TOTAL APPROPRIATION OF \$10,000 AND APPROPRIATING SAME.

WHEREAS, the Virginia Department of Aviation has approved an Aviation Promotion grant to support an Airport Open House, a Young Eagles Rally, and a ribbon-cutting ceremony for the terminal building renovation project this fiscal year; and

WHEREAS, the local match requirement for the Aviation Promotion Grant is \$5,000.00, which involves a total project budget of \$10,000.00.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia that the 2022-2023 Budget Appropriation Ordinance by, and it is hereby, amended by increasing revenues for a grant from the Commonwealth of Virginia, Department of Aviation, in an amount of \$5,000 for promotion activities at the Danville Regional Airport, and the local share for said grant in an amount of \$5,000 to be provided by the General Fund Support of Grants for an aggregate amount of \$10,000, such funds to be appropriated as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
FY23 Aviation Promotion Grant Categorical Aid –State:	61797000-45712	\$ 5,000
Local Share	61797000-6101	<u>\$ 5,000</u>
	TOTAL	<u>\$ 10,000</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
FY23 Aviation Promotion Grant	61797999-50	<u>\$ 10,000</u>

BE IT FURTHER ORDAINED, that all other accounts and provisions of the 2023 Budget Appropriation Ordinance, as amended, not hereby amended, shall continue in full force and effect unless and until hereafter further amended or repealed.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney

Council Letter

City of Danville, Virginia



CL-2827

Consent Agenda G.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: South Ramp Rehabilitation Project

From: Marc Adelman, Director of Transportation Services

COUNCIL ACTION

First Reading: 09/06/2022

Final Adoption: 09/20/2022

SUMMARY

The Federal Aviation Administration and the Virginia Department of Aviation approved grant funds to rehabilitate the south ramp located at the Danville Regional Airport. The south ramp is 525' x 410' and includes two taxiway connections that provide access to the parallel taxiway and to the primary runway. The concrete ramp was constructed twenty years ago. Due to the scope of the South ramp rehabilitation project and funding availability, the project will be completed in two different phases. Phase 1 will begin in October 2022, which will involve paving the taxiway connections and reducing the existing concrete ramp into rubble, so the concrete can be used as a base that will be paved over during Phase 2, which is expected to be completed by the fall of 2023. This project is very significant with respect to supplying sufficient aircraft parking and supporting airport development opportunities.

BACKGROUND

In 2002, federal, state and local funding financed the construction of a concrete ramp that includes two taxiway connections located on the southwest side of the airport. One of the taxiway connections and the entire ramp, which is 525' x 410', are comprised of concrete. Asphalt was used to construct the second taxiway connection. However, the current condition of the south ramp and the taxiway connections that provide access from the ramp to the operations area requires full rehabilitation.

Blackening and cracking was detected on the surface of the ramp. Therefore, cores were extracted from the ramp to complete an analysis to determine the quality and condition of the concrete. Through outside analysis, it was confirmed that the concrete was affected by an Alkali Silica Reaction, which can cause serious expansion and cracking resulting in major structural problems.

A gel is produced through an Alkali Silica Reaction, which increases in volume by taking up water and causes expansive pressure, resulting in failure of the concrete. To rehabilitate the concrete ramp, the airport's engineering firm recommended reducing the existing concrete into rubble at its current location, so the concrete can be used as the base for an asphalt overlay. This approach will also serve to reduce the project cost, since the concrete material will not need to be relocated from the airfield.

Due to federal funding constraints, the rehabilitation project will be completed in two different phases as shown in the attached exhibit. The first phase of the project will involve reducing the concrete ramp into

rubble and paving both taxiway connections that provide access from the south ramp to the operations area. This phase of the project is expected to be completed by December 2022. The second phase of the project will involve paving the ramp, which is expected to begin during the fall of 2023.

RECOMMENDATION

It is recommended that City Council approve an ordinance appropriating federal and state aviation grant funds and local matching funds for the south ramp rehabilitation project.

Attachments

Ordinance
Project Area

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2022 - _____ - _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR ADDITIONAL FEDERAL AND STATE AVIATION FUNDING TO REHABILITATE THE SOUTH RAMP AT THE DANVILLE REGIONAL AIRPORT IN THE AMOUNT OF \$1,830,412 AND FOR THE LOCAL SHARE IN THE AMOUNT OF \$66,767 TO BE PROVIDED BY A TRANSFER FROM THE GENERAL FUND SUPPORT OF SPECIAL GRANTS FUND AND APPROPRIATING THE SAME.

WHEREAS, the Federal Aviation Administration and the Virginia Department of Aviation determined the existing condition of the Danville Airport's south ramp requires rehabilitation; and

WHEREAS, the south ramp rehabilitation project was included in the Capital Improvement Plan for Fiscal Year 2023; and

WHEREAS, the federal eligible portion of the south ramp project will be funded with federal aviation capital aid at ninety percent and other project areas will be funded with state aid at eighty percent; and

WHEREAS, the Virginia Aviation Board has approved state funding to supplement the FAA eligible scope of work for the south ramp rehabilitation ramp project.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance be, and it is hereby, amended by increasing revenues for grants from the Federal Aviation Administration and the Virginia Department of Aviation in the amount of \$1,563,360 and \$267,052, and a local match of \$66,767 to be provided by the General Fund Support of Grants for an aggregate amount of \$1,897,179, such funds to be appropriated as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
South Ramp Rehabilitation Project Federal Aviation Admin Funds	61379000-48420	\$1,563,360
State Aviation Funds	61379000-45712	\$ 267,052
Local Share	61379000-6101	<u>\$ 66,767</u>
	TOTAL	<u>\$1,897,179</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
South Ramp Rehabilitation Project	61379999-50	<u>\$1,897,179</u>

AND BE IT FURTHER ORDAINED, by the Council of the City of Danville, Virginia, that the Fiscal Year 2023 Budget Appropriation Ordinance, as amended, not hereby amended, shall continue in full force and effect unless and until hereafter further amended or repealed.

APPROVED:

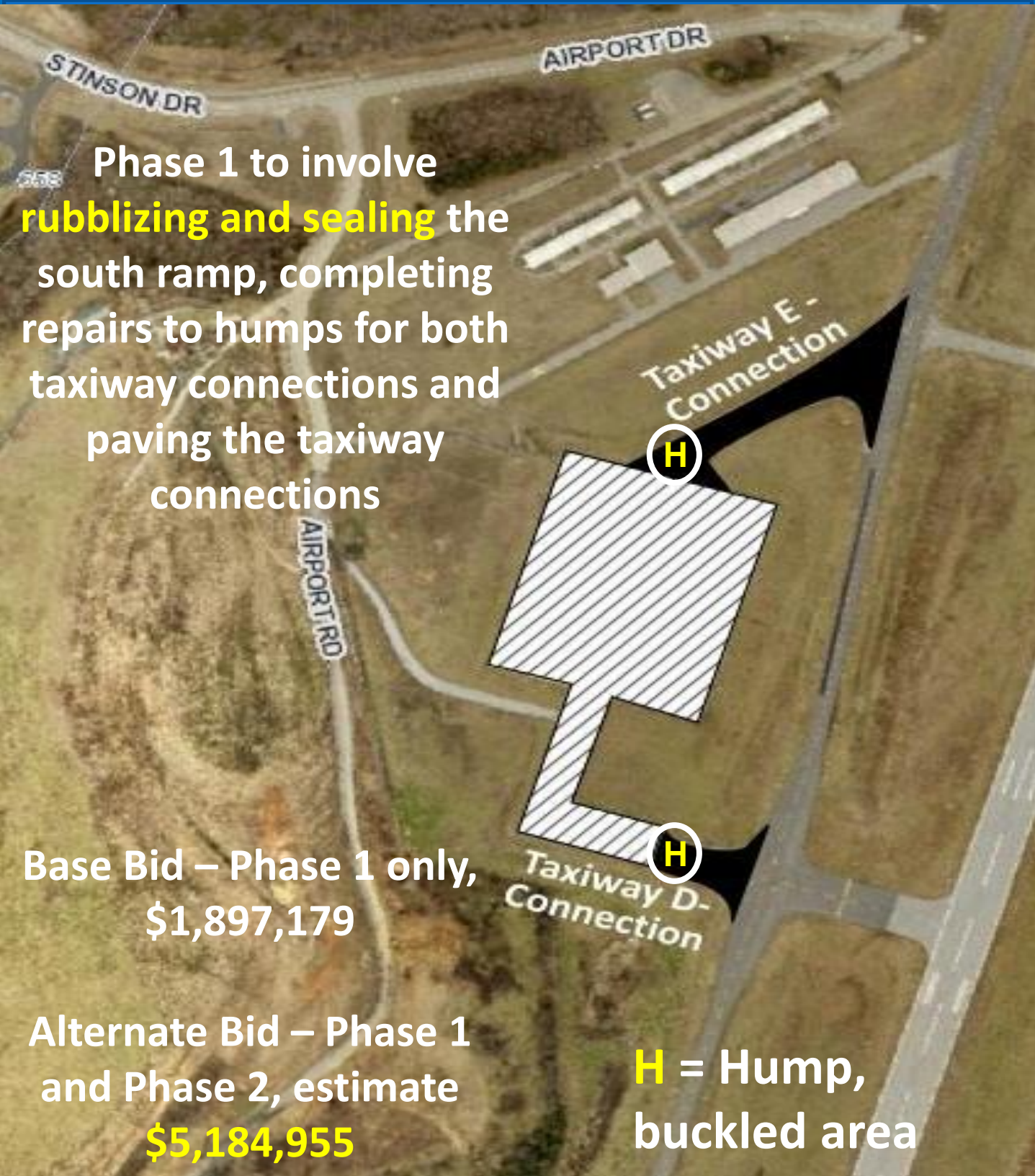
MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney



Council Letter

City of Danville, Virginia



CL-2847

Appointments A.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Consideration of an Appointment to the Danville CPMT

From: Susan M. DeMasi, City Clerk

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

Consideration of an Appointment to the Danville Community Policy & Management Team.

Council Letter Number CL - 2847.

Attachments

Resolution

PRESENTED: _____

ADOPTED: _____

RESOLUTION NO. 2022 – ____.

**A RESOLUTION APPOINTING DEBORAH HARRIS AS A MEMBER OF THE
DANVILLE COMMUNITY POLICY AND MANAGEMENT TEAM AS THE DANVILLE
PUBLIC SCHOOLS REPRESENTATIVE**

BE IT RESOLVED by the Council of the City of Danville, Virginia, that Deborah Harris be, and she is hereby appointed as a member of the Danville Community Policy and Management Team as the Danville Public Schools Representative.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Council Letter

City of Danville, Virginia



CL-2820

New Business A.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: General Fund Monthly Financial Report

From: Michael Adkins, Director of Finance

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

A brief summary of General Fund financial results through August 31, 2022, will be given. Financial Statements are included.

Attachments

Financial Statements



To: Ken F. Larking, City Manager

From: Michael L. Adkins, Chief Financial Officer

Date: September 9, 2022

Subject: Summary of Preliminary General Fund Financial Results for August 31, 2022

After completing the first two months of the new fiscal year, revenues are ahead of the previous year. As of August 31, General Fund revenues were \$14,608,869. This represents 12.11% of our FY 2023 budget. Last year at this time, we had collected \$12,692,206 or 16.9.% of budget. In the prior year, the timing of revenues from the Commonwealth resulted in a temporary decrease of about \$700,000 in Non-Categorical Aid (State). The remainder of the increase over last year is primarily from growth in local taxes, as well as permitting fees related to the casino.

We continue to see steady performance in the collection of delinquent real estate taxes with \$307,470 realized in the first two months of this fiscal year. This accounts for 34.2% of the current year budget. Tax bills for FY 2023 will be mailed in November and we will begin realizing collection of current real estate and personal property taxes at that time. Local taxes collected through August 31, were \$4,910,072, or 15.6% of budget. This exceeds FY 2022 collections by \$570,804.

With regard to local taxes, sales tax collections through August amounted to \$1,816,832, or 16.6% of budget, an increase of \$43,208 from last year. Meals taxes collected for the first two months of the fiscal year amounted to \$1,880,775 or 19.8% of budget, an increase of \$273,981 from last year. Business Licenses realized at the end of August were \$417,234, an increase of \$120,804 from the prior year. Lodging taxes received as of August 31, were \$445,487 or 22% of budget, an increase of \$93,559 from the prior year. All other revenue categories exceed the prior year and are tracking well with budget at this point.

Expenditures through August 31 were \$20,391,917 or 16.1% of budget. This is an overall decrease of \$547,004 when compared to August 31, 2021. The net decrease in transfers to schools of \$2,858,991 at the end of August is offset in part by an increase of \$1,251,000 in departmental expenditures attributed to the timing of payments for maintenance service contracts within general government and an increase in public safety of approximately \$443,000 for budgeted payments to other entities along with an increase in labor and benefits.

Fund expenditures exceeded revenues by \$5,783,048, an improvement of \$2,463,667 when compared to the prior fiscal year. This is typical for the start of the fiscal year in the General Fund because the timing of the revenue recognition is not matched to expenditures. At this point, the General Fund is performing as expected.

CITY OF DANVILLE, VIRGINIA

GENERAL FUND REPORT

17% OF YEAR LAPSED AS OF AUGUST 31, 2022

PRE-CLOSING FIGURES - SUBJECT TO CHANGE - UNAUDITED

	Budgets & Appropriations For Current Year	Actual Revenues & Expenditures For Year-to-Date	Percent Realized/Expended This Year	Encumbrances	Balance to be Realized/Expended	Actual Revenues & Expenditures At This Date Last Year
REVENUES:						
Property Taxes	\$ 36,963,520	\$ 1,845,323	4.99%		\$ 35,118,197	\$ 1,703,945
Other Local Taxes	31,579,500	4,910,072	15.55%		26,669,428	4,339,267
License Permits & Privilege Fees	283,330	150,857	53.24%		132,473	41,718
Fines & Forfeitures	299,600	42,398	14.15%		257,202	37,596
Revenue From Use Money & Property	696,940	177,473	25.46%		519,467	108,609
Charges For Services	3,389,630	634,777	18.73%		2,754,853	546,665
Miscellaneous Revenue	44,750	70,479	157.49%		(25,729)	65,451
Recovered Cost	8,490,570	1,118,230	13.17%		7,372,340	1,037,038
Non-Categorical Aid	5,528,740	1,240,392	22.44%		4,288,348	459,830
Shared Expenses (Categ. Aid State)	5,637,550	817,390	14.50%		4,820,160	787,078
Categorical Aid (State)	10,048,080	1,016,646	10.12%		9,031,434	980,175
Emergency Services (Federal)	27,020	-	0.00%		27,020	-
Categorical Aid (Federal)	-	-			-	-
Transfers From Utilities	17,673,000	2,584,833	14.63%		15,088,167	2,584,833
TOTAL REVENUES	\$ 120,662,230	\$ 14,608,869	12.11%		\$ 106,053,361	\$ 12,692,206
EXPENDITURES:						
General Government Administration	\$ 13,283,994	\$ 3,164,853	23.82%	\$ 939,043	\$ 9,180,097	\$ 2,513,579
Judicial Administration	8,358,031	1,300,745	15.56%	53,521	7,003,765	1,207,951
Public Safety	36,946,805	5,105,173	13.82%	838,868	31,002,764	4,662,512
Public Works	5,080,177	724,583	14.26%	311,513	4,044,082	706,665
Health, Education, Welfare & Soc. Svc.	9,538,774	1,011,738	10.61%	77,198	8,449,837	974,875
Parks, Recreation & Cultural	5,842,651	723,624	12.39%	62,304	5,056,723	755,087
Community Development	2,719,827	276,391	10.16%	183,899	2,259,537	234,680
Non-Departmental	16,117,970	3,065,674	19.02%	-	13,052,297	2,015,472
Transfer to Schools - Operating	26,300,818	4,853,995	18.46%	3,293,325	18,153,497	7,712,986
Transfer to Capital Projects	945,000	165,000	17.46%	-	780,000	-
Transfer to Other Funds	1,647,930	140	0.01%	-	1,647,790	155,114
TOTAL EXPENDITURES	\$ 126,781,977	\$ 20,391,917	16.08%	\$ 5,759,671	\$ 100,630,389	\$ 20,938,921
Revenue over(under) Expenditures		\$ (5,783,048)				\$ (8,246,715)
FUND BALANCE:						
Beginning Fund Balance 07/01/2022		\$ 46,401,528				\$ 47,097,840
Revenue over(under) Expenditures		(5,783,048)				(8,246,715)
Ending Fund Balance 08/31/2022		\$ 40,618,480				\$ 38,851,125
Composition of Fund Balance:						
Reserved for Encumbrances/Designated Funds		\$ 8,260,034				\$ 12,481,310
Unassigned		32,358,446				26,369,815
TOTAL FUND BALANCE 08/31/2022		\$ 40,618,480				\$ 38,851,125

City of Danville, Virginia
Summary of Other Local Tax Revenues - PRE-CLOSING - UNAUDITED
For the period ending August 31, 2022

Description	Current Budget	Revenue Realized	Percentage Realized	Prior Year Budget	Prior Year Realized	Percentage Prior Year
Sales Tax	\$ 10,962,050	\$ 1,816,832	16.57%	\$ 10,115,880	\$ 1,773,624	17.53%
Business Licenses	5,430,000	417,234	7.68%	5,450,000	296,430	5.44%
Meals Tax	9,500,000	1,880,775	19.80%	8,471,320	1,606,794	18.97%
Utility Taxes	930,000	94,175	10.13%	940,000	86,427	9.19%
Vehicle License Fees	1,000,000	95,232	9.52%	1,000,000	89,109	8.91%
Bank Stock Tax	1,000,000	-	0.00%	940,000	-	0.00%
Recordation Tax	270,000	91,279	33.81%	200,000	71,435	35.72%
Hotel Motel Tax	2,025,080	445,487	22.00%	1,511,630	351,928	23.28%
Daily Property Rental Tax	12,370	5,676	45.89%	13,200	4,127	31.26%
Motor Vehicle Tax	200,000	37,658	18.83%	162,000	36,362	22.45%
DMV Fees	250,000	25,724	10.29%	260,000	23,031	8.86%
TOTAL	\$ 31,579,500	\$ 4,910,072	15.55%	\$ 29,064,030	\$ 4,339,267	14.93%

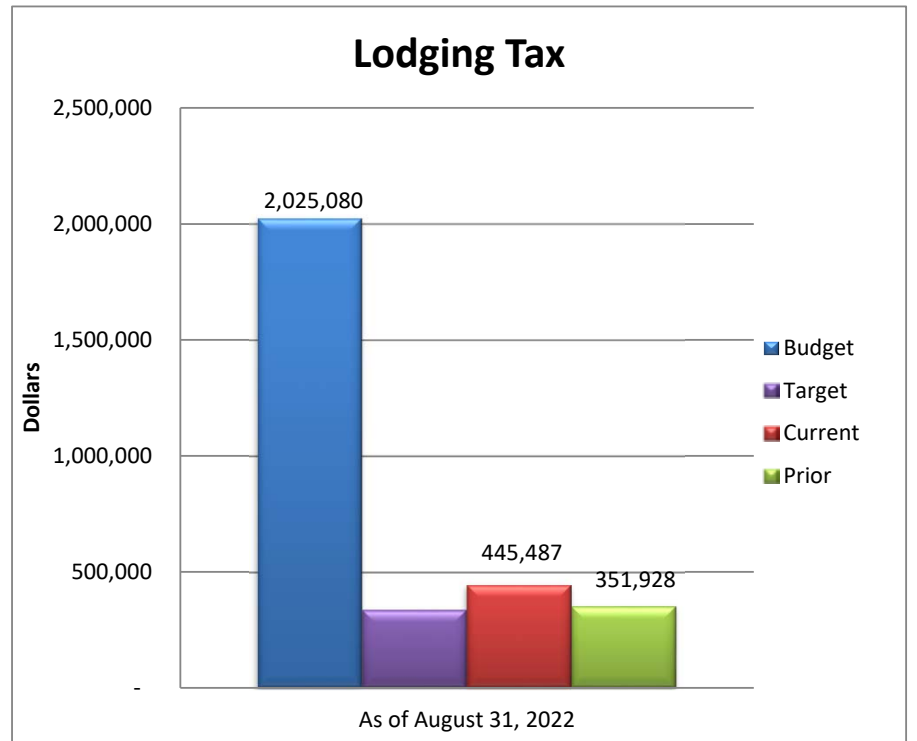
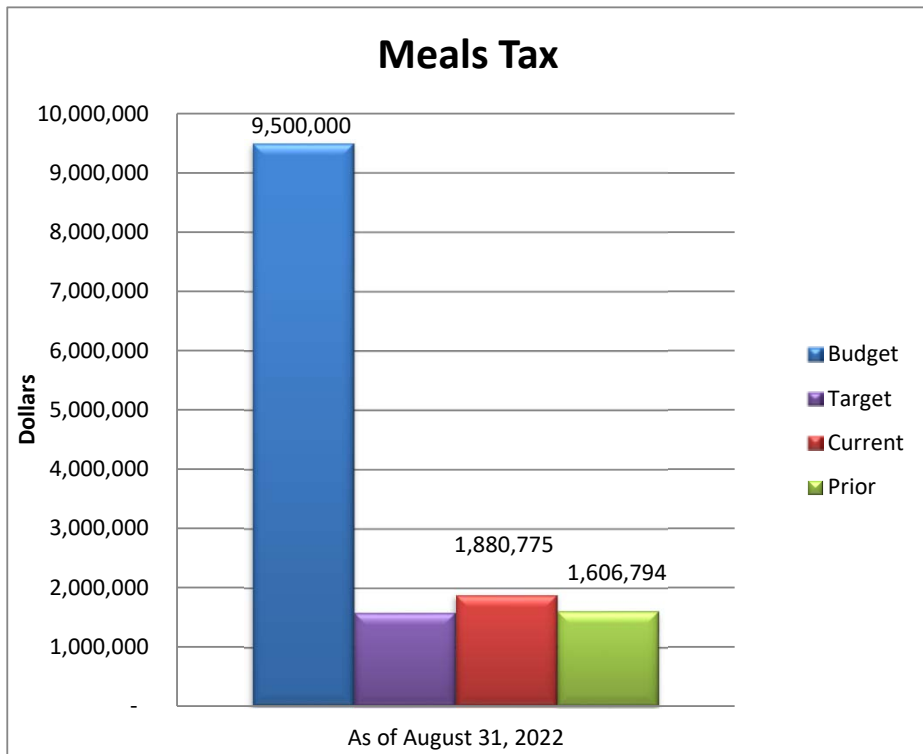
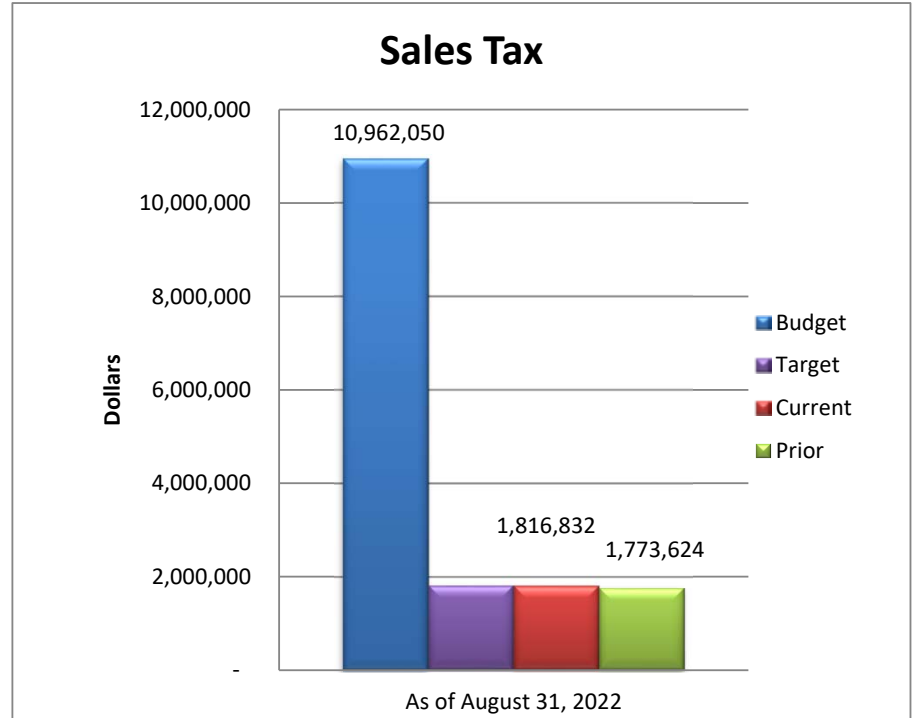
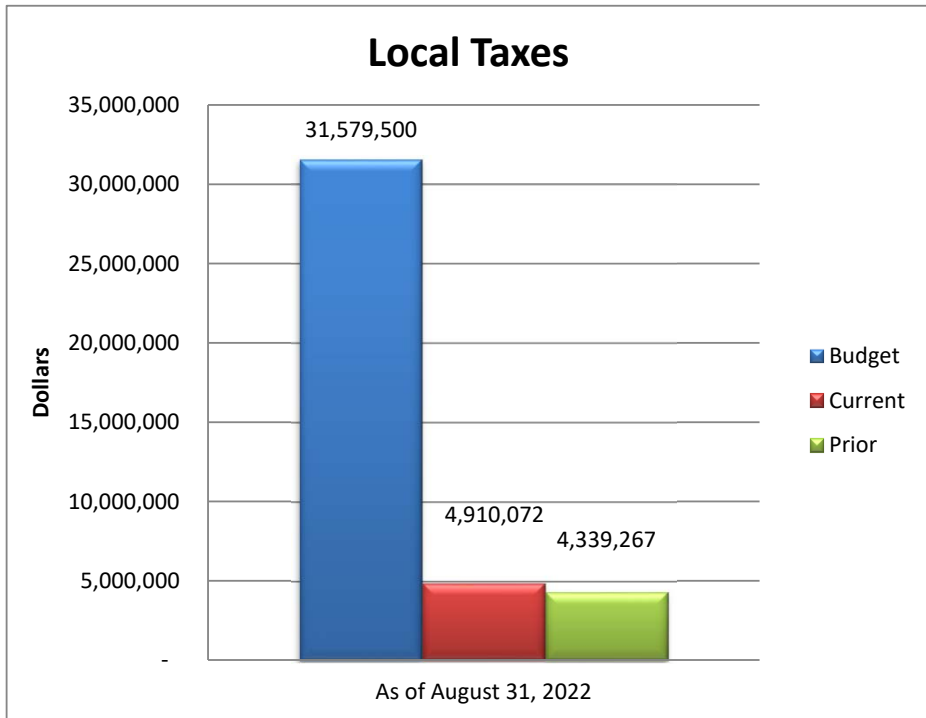
**CITY OF DANVILLE, VIRGINIA
GENERAL FUND
COMPOSITION OF FUND BALANCE
PRELIMINARY - AS OF AUGUST 31, 2022**

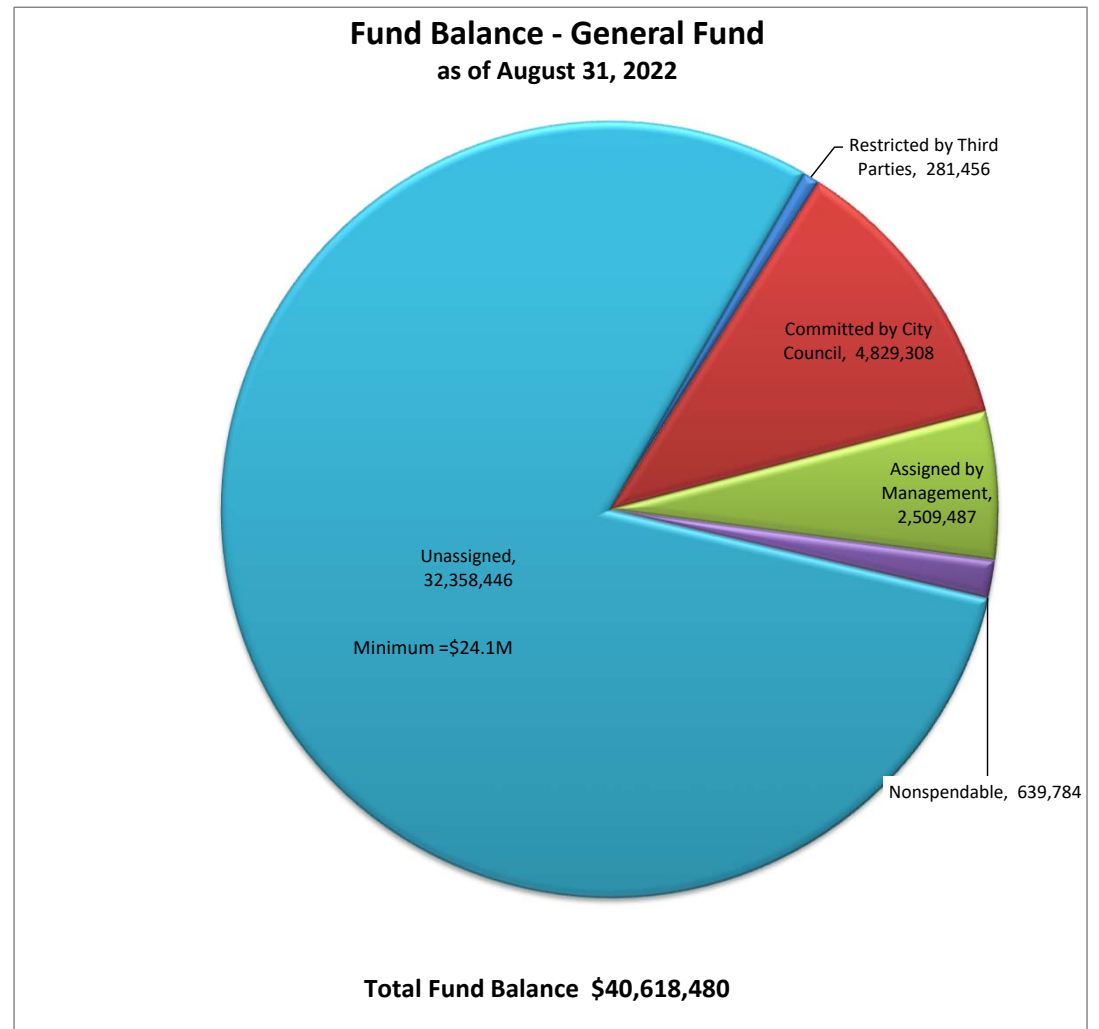
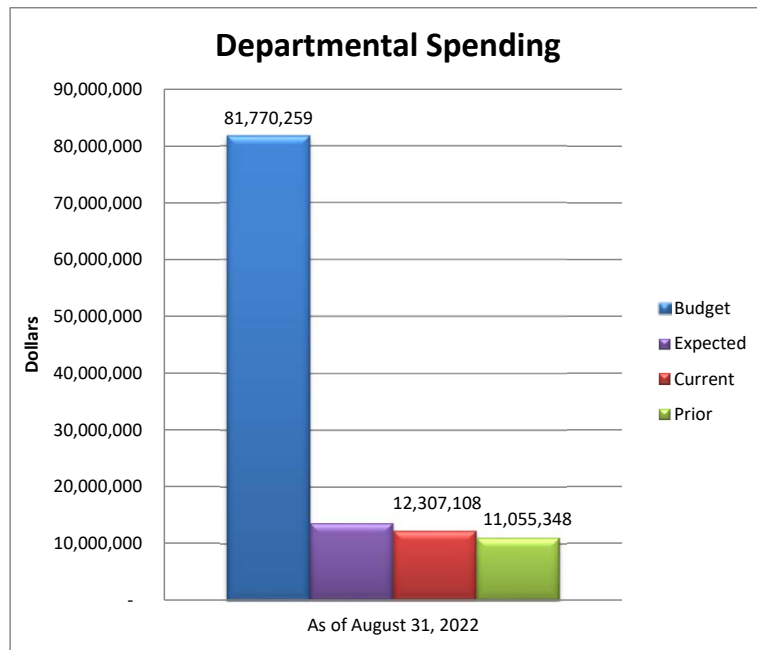
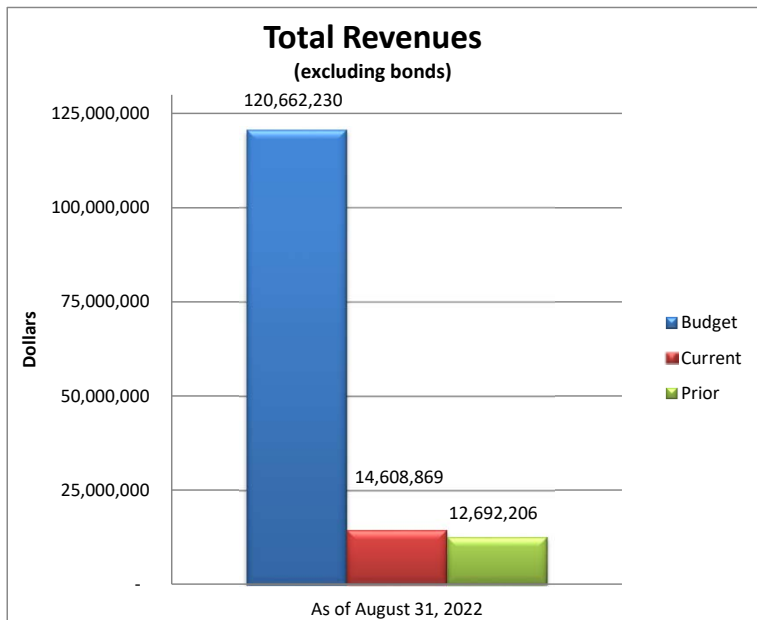
Beginning Total Fund Balance, July 1, 2022	46,401,528.32
Add: General Fund Revenues	14,608,869.08
Deduct: General Fund Expenditures	<u>(20,391,917.06)</u>
Ending Total Fund Balance, August 31, 2022	<u><u>40,618,480.34</u></u>

Composition of Fund Balance:

Restricted for Commonwealth Attorney	103,683.31
Restricted for Police Department	42,835.76
Restricted for Fire Department	134,937.12
Committed for Sheriff's Department	49,631.50
Committed to Schools	1,779,676.06
Committed to Budget Stabilization	3,000,000.00
Assigned to Sheriff's Department	7,170.14
Assigned to Community Development	35,970.70
Assigned for Encumbrances	2,466,345.89
Nonspendable (Inventory and Prepaids)	639,784.01
UNASSIGNED	<u>32,358,445.85</u>
Total Fund Balance, August 31, 2022	<u><u>40,618,480.34</u></u>

Unassigned fund balance from above	32,358,445.85
Unassigned Minimum per policy (20% of General Fund Operating Revenues) based on FY 2022 budget	<u>24,132,446.00</u>
Current surplus (deficit) over (under) minimum	8,225,999.85





Council Letter

City of Danville, Virginia



CL-2834

New Business B.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Consideration of Approval of a Franchise Agreement with Doc Brown LLC

From: W. Clarke Whitfield, Jr., City Attorney

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

Doc Brown, LLC, a subsidiary of Delorean Power is seeking a non-exclusive franchise agreement with the City allowing for the installation of commercial energy storage facilities, including battery technology, on city-owned property located at 864 Monument Street.

BACKGROUND

Danville Utilities is seeking to enter into a franchise agreement for the installation, placement, and operation of commercial energy storage facilities, including battery technology, on city-owned property located at 864 Monument Street. Such facilities would be utilized to store surplus energy generation for later use by Danville Utilities during peak power periods to reduce energy purchase costs for Danville Utilities customers.

Under the Virginia Constitution, the granting of any lease or franchise to use public property exceeding five (5) years must be approved by City Council after a public hearing in which other interested parties may submit competing offers to the franchise sought.

Granting the attached franchise agreement will permit Doc Brown, LLC to install, place, and operate commercial energy storage facilities, including battery technology, at 864 Monument Street for use by Danville Utilities, provided they abide by all the negotiated terms and conditions. Installing these proposed energy storage facilities will reduce dependence on purchased energy generation during peak periods of energy consumption, and will do so in a manner that protects City involvement in the siting and installation process and lowers energy costs ultimately passed through to customers within the City.

RECOMMENDATION

Staff recommends the approval of the attached franchise agreement and the granting of a franchise to Doc Brown, LLC for the installation of commercial energy storage facilities, including battery technology, on city-owned property located at 864 Monument Street, subject to the terms and conditions contained within the agreement.

Attachments

Ordinance
Agreement

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2022-____.____

AN ORDINANCE APPROVING AND AUTHORIZING A NEGOTIATED LEASE AGREEMENT WITH DOC BROWN, LLC FOR THE INSTALLATION AND OPERATION OF COMMERCIAL ENERGY STORAGE FACILITIES AT 864 MONUMENT STREET.

WHEREAS, the City of Danville has authority to grant leases upon City-owned property for public purposes subject to approval by City Council; and

WHEREAS, Doc Brown, LLC, provides commercial energy storage services in the Commonwealth of Virginia, and has requested a lease with the City for the installation of commercial energy storage facilities, including battery technology, upon a portion of City-owned property identified as 864 Monument Street in the City of Danville; and

WHEREAS, the Danville Utilities has negotiated an agreement with Doc Brown, LLC, to install such commercial energy storage facilities upon the property located at 864 Monument Street in the City under the terms and conditions substantially in the form attached hereto and further identified as the "Agreement".

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia, that pursuant to Virginia law, the City grants a lease to Doc Brown, LLC, to occupy a portion of 864 Monument Street for the purpose of installing and operating commercial energy storage facilities under the terms and conditions more particularly set forth in the lease agreement, in the form substantially attached hereto and incorporated herein as **Exhibit A** (the "Agreement"); and

AND BE IT FURTHER ORDAINED, by the Council of the City of Danville, Virginia, that the City Manager, Kenneth F. Larking, be, and is hereby, authorized and directed to execute the Lease Agreement and to any other documents necessary to be executed or signed to complete this transaction.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

Assistant City Attorney

LEASE AGREEMENT

This Lease Agreement (“Agreement”) effective as of _____ (the “Effective Date”) is by and between the City of Danville, Virginia, a municipal corporation of the Commonwealth of Virginia, having a mailing address of 1040 Monument Street, Danville, Virginia 24541 (“Landlord”), and Doc Brown, LLC, a Virginia limited liability company having a mailing address of c/o Delorean Power LLC, 1201 Wilson Boulevard, Arlington, Virginia 22209, its successors and assigns (“Tenant”). Landlord and Tenant are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

A. Landlord is the owner of certain real property located at 864 Monument Street, Danville, Virginia 24541, the portion(s) of which that are subject to this Agreement are described in greater detail on Exhibit A hereto (the “Leased Premises”);

B. The Parties have entered into (i) that certain Energy Storage Services Agreement dated on or about the date hereof (the “ESSA”), and (ii) each Interconnection Agreement for Battery Energy Storage Facility (collectively, the “Interconnection Agreement”), in each case in respect of the energy storage services to be provided by Tenant to Landlord thereunder; and

C. Tenant intends to use the Leased Premises and the other areas leased or granted to Tenant hereunder for the development, construction, installation, operation, and maintenance of the “Storage Facility” described in the ESSA (the “Energy Storage Facility”).

AGREEMENT

Section 1. Lease and Grant of Easements. Landlord hereby leases to Tenant the Leased Premises, and grants to Tenant the easements specified herein (the “Easements”), upon and subject to the terms and conditions in this Agreement. Tenant shall have the quiet use and enjoyment of the Leased Premises and the Easements in accordance with and subject to the terms of this Agreement. Landlord further leases to Tenant the “Construction Area” (as depicted on Exhibit B) during the Construction Term (as defined in Section 3) of this Agreement for use as a staging area in connection with the development, construction, and the installation of the Energy Storage Facility (as defined in Section 2).

Section 2. Use of Leased Premises. During the Term of this Agreement, Tenant will have the exclusive right to use and occupy the Leased Premises and to exercise the other rights and privileges granted to Tenant herein, for purposes of developing, erecting, constructing, installing, operating, maintaining, repairing, replacing, removing and decommissioning the Energy Storage Facility.

Section 3. Term of Agreement.

3.1 Construction Term. The “Construction Term” shall commence on the Effective Date and shall terminate upon the date that the Energy Storage Facility is placed in service (the “Commercial Operation Date”). During the Construction Term, the Tenant may use and enjoy the Construction Area for purposes relating to the construction and installation of the Energy Storage Facility. Upon the expiration of the Construction Term, Tenant’s right to use and occupy the Construction Area shall automatically cease, and Tenant’s sole property rights hereunder during the remainder of the Term shall be the right to use and occupy the Leased Premises together with the Easements granted hereunder to construct the Energy Storage Facility. As soon as practicable following the expiration of the Construction Term, Tenant shall restore and landscape the Construction Area to substantially its condition as it existed immediately prior to the Effective Date, ordinary wear and tear excepted.

3.2 Operations Term. The “Operations Term” of this Agreement shall commence on the Commercial Operation Date and shall expire upon the twentieth anniversary of the Commercial Operation Date, unless extended as described below. The Construction Term and the Operations Term (including all renewals and extensions thereof) are together referred to as the “Term.” The Operations Term shall automatically, without need for any action by either Party, be extended for successive one year periods in connection with any “Extension Term” occurring under (and as defined in) the ESSA.

3.3 Lease Year. The term “Lease Year,” as used herein, shall refer to the period between the Commercial Operation Date and the one-year anniversary of the Commercial Operation Date, and each subsequent one-year period thereafter during the Term.

3.4 Decommissioning Period; Removal. Tenant shall have six months following the expiration of the Term or the earlier termination of this Agreement during which to decommission and remove the Energy Storage Facility from the Leased Premises, unless Tenant has elected to abandon the Energy Storage Facility in place following a termination of the ESSA arising out of a default by Landlord as described in Section 11(B) thereof. During this six-month period, Tenant shall have the right to use and occupy the Leased Premises and the Easement Areas (as defined in Section 11) solely for the purposes of decommissioning and removing the Energy Storage Facility from the Leased Premises. During the decommissioning term, Tenant shall restore and landscape the Leased Premises and the Easement Areas to substantially their condition as they existed immediately prior to the Effective Date, ordinary wear and tear excepted.

Section 4. Rent. The rent to be paid by the Tenant to the Landlord for the Term is \$10.00, paid on or before the Effective Date.

Section 5. Ownership of Energy Storage Facility. Landlord shall have no ownership, lien or other interest in the Energy Storage Facility or any of its components; and Tenant may remove any or all components of the Energy Storage Facility at any time. No part of the Energy Storage Facility installed by Tenant on the Leased Premises shall be considered part of the Leased Premises or an improvement to real property; the Energy Storage Facility shall at all times be considered tangible personal property owned exclusively by Tenant.

Section 6. Taxes and Assessments.

6.1 Tenant shall pay all real and personal property taxes, assessments and charges, general and specific, that may be levied or assessed by reason of Tenant’s use of the Leased Premises, Tenant’s leasehold interest under this Agreement, or Tenant’s use or ownership of the Energy Storage Facility installed on the Leased Premises (collectively, “Tenant Taxes”). Landlord represents and warrants that the Leased Premises are exempt from any taxes attributable to (a) improvements or facilities installed by Landlord or others (excluding Tenant) on the Leased Premises; (b) the underlying value of the Leased Premises; and (c) any and all other taxes and assessments pending or levied against the Leased Premises

6.2 Tenant shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings the validity or amount of any assessments or taxes for which Tenant is responsible under this Agreement.

Section 7. Indemnification.

7.1 Tenant Indemnification of Landlord. Tenant shall, from and after the Effective Date, defend, indemnify and hold harmless Landlord and Landlord’s affiliates and their respective directors, officers, managers, members, shareholders, employees, representatives and agents from and against all loss, liability, damages, claims, proceedings, costs (including costs of defense and attorneys’ and professionals’

fees incurred in defense or incurred in enforcement of this indemnity), expenses, demands, suits and causes of action (all of the foregoing collectively referred to as “Liabilities”) arising out of: (i) negligence or willful misconduct of Tenant, its agents, officers, directors, employees or contractors; or (ii) the material breach by Tenant of any of its obligations under this Agreement, except to the extent arising out of the negligence or willful misconduct of Landlord or material breach of this Agreement by Landlord.

7.2 Landlord Indemnification of Tenant. Landlord shall, to the maximum extent allowable by law, from and after the Effective Date, defend, indemnify and hold harmless Tenant and Tenant’s affiliates and their respective directors, officers, managers, members, shareholders, employees, representatives and agents from and against all Liabilities arising out of: (i) negligence or willful misconduct of Landlord, its agents, officers, directors, employees or contractors; or (ii) the material breach by Landlord of any of its obligations under this Agreement, except to the extent arising out of the negligence or willful misconduct of Tenant or material breach of this Agreement by Tenant.

7.3 This Section 7 shall survive the expiration or termination of this Agreement.

Section 8. Tenant’s Representations, Warranties and Covenants. Tenant represents, warrants and covenants to Landlord that:

8.1 Tenant’s Authority. Tenant has the unrestricted right and authority to execute and deliver this Agreement. When signed by Tenant, this Agreement constitutes a valid and binding Agreement enforceable against Tenant in accordance with its terms.

8.2 Insurance. Tenant shall, at its expense, obtain and maintain throughout the Term, public liability insurance insuring Tenant and Landlord against loss or liability caused by Tenant’s activities on the Landlord’s Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate, accident or incident, which has a commercially reasonable deductible.

8.3 Hazardous Materials. Tenant shall not violate, and shall indemnify Landlord against any violation by Tenant, of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations (each such substance, material and waste “Hazardous Materials”) in, on, under or about the Leased Premises. In conformance with the requirements of applicable law, Tenant shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Tenant in, on, under, or about the Leased Premises.

Section 9. Landlord’s Representations, Warranties and Covenants. Landlord represents, warrants and covenants as follows:

9.1 Landlord’s Authority. Landlord is the sole owner in fee simple of Landlord’s Property, including without limitation the Leased Premises, the Construction Area and the Easement Areas, and has the unrestricted right and authority to execute and deliver this Agreement and to grant to Tenant the rights granted under this Agreement. When signed by Landlord, this Agreement constitutes a valid and binding Agreement enforceable against Landlord in accordance with its terms.

9.2 No Interference. Landlord’s activities and any grant of rights Landlord makes to any person or entity shall not interfere with the Energy Storage Facility or Tenant’s rights under this Agreement. Landlord shall ensure that the conditions at Landlord’s Property do not interfere with the operation of the Energy Storage Facility.

9.3 Liens. As of the Effective Date, there are no liens, encumbrances, leases, mortgages, deeds of trust, security interests, licenses or other exceptions (collectively, “Liens”) that would prevent, interfere with, frustrate or otherwise adversely affect the Energy Storage Facility or Tenant’s rights under this Agreement.

9.4 Treatment of Liens; Third Party Rights. If at any time during the Lease Term, any Lien or any third party right is found, exists or is claimed to exist against the Leased Premises or Easement Areas or any portion thereof, that creates rights superior to those of Tenant (a “Landlord Mortgage”), Tenant shall be entitled to seek to obtain a Subordination and Non-Disturbance Agreement (defined below) from the holder of such Lien or such third party right (the “Landlord Mortgagee”), and Landlord shall use best efforts and diligence in helping Tenant obtain the same. Landlord agrees that any Landlord Mortgage granted by Landlord from and after the Effective Date in favor of or granted to any Landlord Mortgagee shall be subject to (i) this Agreement and all of Tenant’s rights, title and interests created in this Agreement, and (ii) any and all documents executed or to be executed by and between Tenant and Landlord in connection with this Agreement; provided that at Landlord’s request Tenant shall agree to execute a Subordinate and Non-Disturbance Agreement. A “Subordination and Non-Disturbance Agreement” shall mean an agreement between Tenant and/or any Leasehold Mortgagee (as defined below) and any Landlord Mortgagee that provides that such Landlord Mortgagee (i) subordinates such Landlord Mortgage to Tenant’s interest under this Agreement, (ii) agrees not to disturb Tenant’s possession or rights under this Agreement, (iii) agrees to provide notice of defaults under the Landlord Mortgage documents to Tenant and agrees to allow Tenant a reasonable period of time following such notice to cure such defaults on behalf of Landlord, and (iv) agrees to comply with such other requirements as may be reasonably required by Tenant to ensure the interests of Tenant are not interfered with. All Subordination and Non-Disturbance Agreements obtained by Landlord pursuant to this Section 9.4 shall be in a form reasonably acceptable to Tenant and shall be in a form that may be recorded following their execution.

9.5 Hazardous Materials. To the best of Landlord’s knowledge, as of the Effective Date, there are no Hazardous Materials located on Landlord’s Property and Landlord’s Property has not been used for the generation, treatment, storage or disposal of Hazardous Materials, no underground storage tanks have ever been located on Landlord’s Property nor are any underground storage tanks presently located on Landlord’s Property. So long as this Agreement is in place Landlord shall not violate, and shall indemnify Tenant against any violation by Landlord of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials, in, on, under or about Landlord’s Property, including without limitation any such violation which may have occurred by Landlord or any other person prior to the Effective Date. Landlord’s violation of the foregoing prohibition shall constitute a material breach and default under this Agreement and Landlord shall indemnify and hold harmless and defend Tenant from and against any claims, damages, penalties, liabilities or costs caused by or arising out of said violation. In conformance with the requirements of applicable law, Landlord shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials in, on, under, or about Landlord’s Property.

9.6 No Litigation. Landlord is not a party to any, and to Landlord’s best knowledge, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Landlord (i) challenging the validity or propriety of this Agreement, and/or transactions contemplated in this Agreement or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Landlord’s Property or any part thereof or interest therein.

9.7 Requirements of Governmental Agencies. Landlord shall assist and fully cooperate with Tenant, so long as Landlord is reimbursed for its out-of-pocket expenses, in complying with or

obtaining any land use permits and approvals, building permits, development permits, construction permits, subdivision approvals or any other approvals required for the financing, construction, installation, interconnection, replacement, relocation, maintenance, operation or removal of the Energy Storage Facility (collectively the “Permits”), including execution of applications for such approvals.

9.8 Estoppel Certificates. Within fifteen (15) days of receipt from Tenant, Landlord shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying that to the best of Landlord’s knowledge there are no uncured events of default under this Agreement (or, if any uncured events of default exist, stating with particularity the nature thereof) and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Tenant. The failure of Landlord to deliver such statement within such time shall be conclusive evidence upon Landlord that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Tenant under this Agreement.

9.9 Cooperation in Security Rebates, Tax Credits and Other Economic Benefits. The Landlord will cooperate with Tenant in completing and filing such applications and other documents as are necessary to permit the Tenant to receive all mandatory or voluntary federal, state, or local renewable energy certificates or emissions or rebates, tax credits and including, without limitation, other economic benefits (the “Environmental Attributes”) that are now or may hereafter become available to the Tenant in connection with the Energy Storage Facility, provided that Landlord shall not be required to bear any material out-of-pocket costs in doing so. Notwithstanding anything to the contrary herein contained, all Environmental Attributes in connection with the Energy Storage Facility shall remain the property of the Tenant or its successors and assigns. Tenant shall have the exclusive right to sell, transfer, or convey the Environmental Attributes to any other person in Tenant’s sole discretion.

Section 10. Assignment.

10.1 Assignment by Tenant. Tenant shall not assign this Agreement without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant may, without the prior written consent of Landlord, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement to any lender or other party providing financing for the Energy Storage Facility (collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns, the “Lender”) as described more fully in Section 14 below, (ii) directly or indirectly assign this Agreement to an affiliate of Tenant, (iii) assign this Agreement to any entity through which Tenant is obtaining financing or capital for the Energy Storage Facility, and (iv) assign this Agreement to any person succeeding to all or substantially all of the assets of Tenant; provided that if Tenant assigns 100% of its interest in this Agreement to another person, Landlord shall be deemed to release Tenant from all of its obligations under this Agreement upon assumption of Tenant’s obligations by the assignee. Landlord’s consent to any other assignment shall not be unreasonably withheld if Landlord has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining energy storage systems comparable to the Energy Storage Facility, and (y) has the financial capability to maintain the Energy Storage Facility and comply with the Tenant’s obligations in the manner required by this Agreement.

10.2 Assignment by Landlord. The burdens of this Agreement and other rights contained in this Agreement shall run with and against the Leased Premises and Easement Areas and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Landlord and its successors and assigns. Landlord shall notify Tenant in writing of any sale, assignment or

transfer of any of Landlord's interest in the Leased Premises, or any part thereof, and shall cause any such successor to agree to be bound by the terms hereof.

Section 11. Easements. For purposes of this Agreement, the term "Easement Areas" shall refer to the location of the Easements described herein.

11.1 Grant of Access Easements. Landlord hereby grants to Tenant during the Term a non-exclusive easement on, under, over and across the Landlord's Property, for access to and from, and ingress and egress to and from, the Energy Storage Facility and _____ (the "Access Easement"). The "Access Easement Area" is depicted on the site map attached as Exhibit B.

11.2 Provisions Applicable to all Easements. The following provisions shall apply to all Easements granted herein:

(a) Each Easement shall be for a term that is coterminous with the Term, provided that in the event that this Agreement is terminated prior to the end of the Term, each Easement shall terminate upon the date that this Agreement is terminated.

(b) Each Easement shall run with the Leased Premises, and shall inure to the benefit of and be binding upon Landlord and the holder of such Easement, and their respective transferees, successors and assigns, and all persons claiming under them.

Section 12. Right to Terminate.

12.1 Termination by Tenant Prior to COD. Prior to the Commercial Operation Date for the Energy Storage Facility, the Tenant may terminate this Agreement if Tenant is unable to perform or prohibited from performing under the ESSA as a result of (i) any governmental agency denying a request by Tenant for, or revoking, a permit, license, or approval that is required for Tenant to construct or operate the Energy Storage Facility or related infrastructure on the Leased Premises or otherwise ordering or demanding that operation of the Energy Storage Facility cease or that the Energy Storage Facility must be removed from the Leased Premises for reasons unrelated to any default, violation or breach by Tenant of any applicable law; or (ii) the Leased Premises and/or Energy Storage Facility becoming damaged or destroyed to an extent that prohibits or materially interferes with Tenant's use of the Leased Premises.

12.2 Damage or Destruction. If the Energy Storage Facility is destroyed or substantially damaged as a result of fire or other casualty, then this Agreement may be terminated at the election of Tenant. Tenant will make such election by giving notice to Landlord within ninety (90) days after the date of the casualty. Tenant's election to terminate shall be conditioned upon Tenant's safeguarding the portion of the Energy Storage Facility not damaged from further damage, or, at Landlord's election, removing the Energy Storage Facility, and restoring the Leased Premises to substantially the same condition it was in on the Effective Date, ordinary wear and tear excepted. This Agreement shall terminate upon the latest of (i) receipt by Landlord of Tenant's notice of termination, (ii) the safeguarding or razing of the Energy Storage Facility as described above, (iii) restoration of the Leased Premises to substantially the same condition it was in on the Effective Date, ordinary wear and tear excepted, and (iv) payment by Tenant to Landlord of all fees and other payments owing to Landlord under the Agreement, if any, up to the date of termination. If Tenant does not elect to so terminate, this Agreement shall continue in full force and effect, and Tenant shall promptly restore the Energy Storage Facility, or damaged parts thereof, to its or their condition immediately prior to such casualty.

In the event of termination by Tenant pursuant to this provision, each Party shall be relieved of all further liability hereunder except for Tenant's obligation to remove the Energy Storage Facility as provided

herein, any obligations that accrued prior to the termination and each Party's indemnification obligations hereunder.

Section 13. Default.

13.1 Tenant Default. It shall be an event of default (an "Event of Default") by Tenant if:

(a) Tenant fails to pay any fees and charges payable under this Agreement within thirty (30) days after Tenant's receipt of written notice from Landlord that such amounts were not paid when due;

(b) Tenant fails to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed for a period of thirty (30) days after Tenant's receipt of written notice from Landlord specifying such failure and requesting that it be remedied, given to the Tenant by the Landlord; provided, however, if the default is of such nature that Tenant cannot remedy the default within such 30-day period, Tenant shall have such additional time as may reasonably be required to remedy such default so long as Tenant commences to cure the default within such thirty (30) days and thereafter prosecutes the same to completion in good faith and with due diligence, but in no event later than ninety (90) days from the date of the notice from the Landlord; and/or

(c) Tenant commits a Seller Event of Default (as that term is defined under the ESSA) under the ESSA and the ESSA is terminated.

(d) Tenant commits an Event of Default (as that term is defined under the Interconnection Agreement) under the Interconnection Agreement and the Interconnection Agreement is terminated.

If an Event of Default of Tenant occurs, then without limiting any of Tenant's rights under this Agreement or the ESSA to access or remove the Energy Storage Facility, Landlord shall have the right, while such Event of Default continues, to re-enter and take complete possession of the Premises, and to declare the Term of this Agreement ended, and remove the Energy Storage Facility and Tenant's other effects on the Leased Premises, without prejudice to any remedies which might be otherwise be available to Landlord.

13.2 Landlord Default. If Landlord shall at any time (i) be in default of any Landlord Mortgage, or (ii) be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord hereunder and any such default shall continue for a period of thirty (30) days after written notice to Landlord and Landlord shall not thereafter cure such default (or does not within said period commence and diligently proceed to cure such default), Tenant shall be entitled at its election, in addition to all remedies otherwise provided in this Agreement and otherwise available at law or in equity under the laws of the United States or the Commonwealth of Virginia:

(a) To bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, without terminating this Agreement, and/or

(b) To terminate this Agreement upon thirty (30) days written notice to Landlord without waiving Tenant's rights to damages for Landlord's failure to perform its obligations hereunder. If Tenant elects to terminate this Agreement, all rights and obligations of Tenant, and of any permitted successors or assigns, shall cease and terminate, except that Tenant

shall have and retain full right to sue for and collect all amounts for the payment of which Landlord shall then be in default and all damages to Tenant by reason of any such breach.

13.3 Remedies Cumulative. All remedies of Landlord and Tenant herein created or remedies otherwise existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as either Landlord or Tenant shall, as applicable, deem necessary.

Section 14. Lender Protections.

14.1 Right to Mortgage. Without prejudice and in addition to any of Tenant's rights or Landlord's obligations in Section 10.1, Tenant may at any time and from time to time, without Landlord's prior written consent or approval (but with prior written notice to Landlord) (i) assign, encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument), or otherwise transfer all or any portion of its right, title or interest under this Agreement to a Lender designated by Tenant, as security for the repayment of any indebtedness and/or the performance of any obligation owned by Tenant to such Lender; and (ii) mortgage its leasehold interest hereunder and/or collaterally assign its interest in this Agreement and in any monies due under this Agreement in connection with obtaining financing from a Lender and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement, the Leased Premises, the Energy Storage Facility, interconnection facilities or transmission facilities (holders of these various security interests are referred to as "Leasehold Mortgagees").

14.2 Lender's Rights Following Default. Following an event of default under any financing documents relating to the Energy Storage Facility and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements), any Lender or Leasehold Mortgagee may (but shall not be obligated to) assume, or cause their designees to assume, all of the interests, rights and obligations of Tenant thereafter arising under this Agreement. Any Leasehold Mortgagee that has succeeded to Tenant's interests under this Agreement in accordance with the provisions of this Section 14 shall also have the right, without Landlord's prior written consent or approval (but with prior written notice to Landlord) to assign or sublet the whole or any portion or portions of its interest in this Agreement, the Leased Premises, the Energy Storage Facility, and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements) for the uses permitted under this Agreement, to one or more creditworthy persons or entities with experience owning and operating a battery storage facility commensurate to that of Tenant (each, an "Assignee"). Following any such sale, conveyance, lease, assignment or sublet, the term "Tenant" shall be deemed to include each "Assignee" then holding Tenant's interest in this Agreement. However, no Leasehold Mortgagee or Assignee shall by virtue of Tenant's conveyance to it acquire any greater interest in the Leased Premises or any easements created hereunder than Tenant then has under this Agreement. References to Tenant in this Agreement shall be deemed to include any Person that succeeds (whether by assignment or otherwise) to all of the then-Tenant's then-existing right, title and interest under this Agreement in accordance with the provisions of this Section 14.

14.3 Tenant Discharge. If the rights and interests of Tenant in this Agreement shall be assigned in accordance with this Section 14 and the assuming party shall agree in writing to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Landlord arising or accruing hereunder from and after the date of such assumption, Tenant shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and Landlord shall continue this Agreement with the assuming party as if such person had been named as Tenant under

this Agreement, provided, however, that the assuming party is creditworthy and has the experience required by this Section.

14.4 Landlord Consent. Landlord agrees to enter into a Non-disturbance, Consent and Recognition Agreement (or equivalent) customary for the financing of a project like the Energy Storage Facility by and among the Tenant's then chosen Lender or Leasehold Mortgagee, Landlord, and Tenant which shall include, without limitation, consent by Landlord to the Tenant's collateral assignment of this Agreement and Tenant's leasehold interest hereunder, cure rights and step in rights in favor of the Lender or Leasehold Mortgagee (such agreement, a "Landlord Consent").

14.5 No Lender Liability. Any Lender or Leasehold Mortgagee or Assignee who acquires Tenant's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure that does not directly hold an interest in this Agreement, or that holds an interest, lien or security interest in this Agreement solely for security purposes, shall have no obligation or liability under this Agreement for obligations arising prior to the time such Lender, Leasehold Mortgagee or Assignee directly holds an interest in this Agreement, or succeeds to title to such interest, or to this Agreement. Any such Lender, Leasehold Mortgagee or Assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or title.

14.6 Third-Party Beneficiaries. The provisions of this Section 14 are for the benefit of the Lenders, Leasehold Mortgagees and Assignees, as well as the Parties hereto, and shall be enforceable by the Lenders, Leasehold Mortgagees and Assignees as express third-party beneficiaries hereof. Landlord hereby agrees that none of the Lenders, Leasehold Mortgagees and Assignees, nor any Person for whom they may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Tenant or shall have any obligation or liability to Landlord with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this Section or through the exercise of its rights or remedies and the written assumption of the Agreement or the easements granted hereunder. Any exercise by the Lenders, Leasehold Mortgagees and Assignees of any rights and remedies hereunder shall be subject to all rights, defenses and remedies available to Landlord, in each case subject to the terms of any Landlord Consent.

14.7 Lender Enforcement. A Lender, Leasehold Mortgagee or Assignee shall have the absolute right: (a) enforce its lien and acquire title to Tenant's leasehold estate and easement rights by any lawful means; (b) to take possession of and operate the Leased Premises or any portion thereof, in accordance with the terms of this Agreement and to perform all obligations to be performed by Tenant under this Agreement, or to cause a receiver to be appointed to do so; and (c) to acquire such leasehold estate and easement rights by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer such leasehold estate to a third party.

14.8 Cure Rights; Non-Curable Defaults.

(a) To prevent termination of this Agreement or any partial interest in this Agreement, each Lender, Leasehold Mortgagee or Assignee shall have the right, but not the obligation, at any time prior to termination of this Agreement, to perform any act necessary to cure any breach or Event of Default and to prevent the termination of this Agreement or any partial interest in this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged breach or Event of Default by Tenant, Landlord shall give written notice of such default to each Lender, Leasehold Mortgagee or Assignee previously disclosed by Tenant, concurrently with delivery of notice to Tenant, specifying in detail the alleged event of default and the required remedy. Each such Lender, Leasehold Mortgagee or Assignee shall have the same amount of time to cure the default as to Tenant's interest in this Agreement as is given to Tenant. The cure period

for each Lender, Leasehold Mortgagee or Assignee shall begin to run at the end of the cure period given to Tenant in this Agreement.

(b) If any default by Tenant under this Agreement cannot be cured without the Lender, Leasehold Mortgagee or Assignee obtaining possession of all or part of the Leased Premises and/or all or part of the Energy Storage Facility and/or all or part of Tenant's interest in this Agreement, then any such default shall be deemed remedied if: (a) within ninety (90) days after receiving written notice from Landlord, either Lender, Leasehold Mortgagee or Assignee shall have acquired possession of all or part of the Leased Premises and/or all or part of the Energy Storage Facility and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or non-judicial proceedings to obtain the same; (b) the Lender, Leasehold Mortgagee or Assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (c) after gaining possession of all or part of the Leased Premises and/or all or part of the Energy Storage Facility and/or all or part of such interest in this Agreement, the Lender, Leasehold Mortgagee or Assignee performs all other obligations as and when the same are due in accordance with the terms of this Agreement, but only for the period attributable to its possession of the Leased Premises, provided, however, that the Lender, Leasehold Mortgagee or Assignee shall pay the rent and perform all the other obligations of Tenant hereunder as of the date that Landlord could have terminated this Agreement for an event of default. If a Lender, Leasehold Mortgagee or Assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Tenant or any defaulting Assignee, as the case may be, from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing such proceeding shall be extended for the period of such prohibition. During any period of possession of the Leased Premises by a Lender, Leasehold Mortgagee or Assignee and/or during the pendency of any foreclosure proceedings instituted by a Lender, Leasehold Mortgagee or Assignee, the Lender, Leasehold Mortgagee or Assignee shall pay or cause to be paid the fees, rent and all other monetary charges payable by Tenant under this Agreement which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Tenant's leasehold estate by the Lender, Leasehold Mortgagee or Assignee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale (all of which are included in the term "Assignee"), this Agreement shall continue in full force and effect and the Lender, Leasehold Mortgagee or Assignee shall, as promptly as reasonably possible, commence the cure of all defaults under this Agreement and thereafter diligently process such cure to completion, and upon such completion of the cure of all defaults under the Agreement Landlord's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, that the Lender, Leasehold Mortgagee or Assignee or such party acquiring title to Tenant's leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-curable defaults"). Non-curable defaults shall be deemed waived by Landlord upon completion of foreclosure proceedings or acquisition of Tenant's interest in this Agreement by such party.

14.9 Tenant Bankruptcy; Etc. Any Lender, Leasehold Mortgagee or Assignee who acquires Tenant's leasehold interest, pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Tenant by this Agreement incurred or accruing after the Lender, Leasehold Mortgagee or Assignee no longer has ownership of the leasehold estate or possession of the Leased Premises. Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Agreement as long as all rent and all other monetary charges payable by Tenant under this Agreement are promptly paid by the Lender, Leasehold Mortgagee or Assignee in accordance with the terms of this

Agreement. The acceptance of rent by Landlord shall not be deemed a waiver of any other rights or remedy it may have under the Agreement at law or in equity.

14.10 Replacement Agreement. If this Agreement terminates for any reason, including because of Tenant's default or if the leasehold estate is foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy applicable requirements or other applicable requirements affecting creditor's rights and, within ninety (90) days after such event, Tenant or any Lender, Leasehold Mortgagee or Assignee shall have arranged to the absolute satisfaction of Landlord for the payment of fees and other charges due and payable by Tenant as of the date of such event, then Landlord shall execute and deliver to such Lender, Leasehold Mortgagee or Assignee or designee, as the case may be, a new lease to the Leased Premises which (a) shall be for a term equal to the remainder of the Lease Term before giving effect to such rejection or termination; (b) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Tenant or any Lender, Leasehold Mortgagee or Assignee prior to rejection or termination of this Agreement); and (c) shall include that portion of the Energy Storage Facility in which Tenant had an interest on the date of rejection or termination.

14.11 Survival. The provisions of this section shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this section was a separate and independent contract made by Landlord, Tenant and each Lender, Leasehold Mortgagee or Assignee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such new lease, such Lender, Leasehold Mortgagee or Assignee may use and enjoy said Leased Premises in accordance with the terms of such new lease, provided that all of the conditions for a new lease as set forth above are complied with.

Section 15. Miscellaneous Provisions.

15.1 Memorandum. Landlord and Tenant shall execute in recordable form and Tenant shall then record in the land records of the locality where the Leased Premises are located a memorandum of this Agreement in the form attached to this Agreement as Exhibit C.

15.2 Notices. Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be delivered (i) personally to the Party to whom notice is to be given, (ii) by electronic mail to the Party to whom notice is to be given, (iii) by a recognized overnight delivery service to the Party to whom notice is to be given, or (iv) to the Party to whom notice is to be given, by first class registered or certified mail, return receipt requested, postage prepaid (with additional notice by regular mail), and addressed to the addressee at the address stated opposite its name below, or at the most recent address specified by written notice given to the other Party in the manner provided in this Section 15.2:

If to Landlord:
City of Danville, Virginia
1040 Monument Street
Danville, Virginia 24541
Attention: Jason Grey,
Utilities Director
Email: greyjc@danvilleva.gov

If to Tenant:
Doc Brown, LLC
c/o Delorean Power LLC
1201 Wilson Boulevard,
Arlington, VA 22209
Attention: Michael Herbert, Manager
Email: michaelherbert@deloreanpower.com

15.3 Entire Agreement; Amendments. This Agreement constitutes the entire Agreement between Landlord and Tenant respecting its subject matter. Any other agreement, understanding or

representation respecting the Leased Premises or any other matter not expressly set forth in this Agreement or a subsequent writing signed by both parties is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties.

15.4 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. Venue shall be the City of Danville, Virginia where the Leased Premises is located.

15.5 Partial Invalidity. Should any provision of this Agreement be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding.

15.6 Counterparts. This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

15.7 Cooperation. Landlord shall cooperate with Tenant in the conduct of their operations consisting of the Energy Storage Facility, and in otherwise giving effect to the purpose and intent of this Agreement, provided that Landlord shall not be required to bear any cost in doing so.

15.8 Relationship. Neither this Agreement nor any other agreements or transactions contemplated in this Agreement shall in any respect be interpreted, deemed or construed as constituting Landlord, Tenant as partners or joint venturers, or as creating any partnership, joint venture, association or other relationship other than of landlord and tenant.

15.9 Third Party Beneficiaries. There are no third-party beneficiaries, actual or intended, under this Agreement.

15.10 Captions. The captions used in this Agreement are for convenience only and do not limit or amplify the provisions hereof.

15.11 Force Majeure.

(a) “Force Majeure” or “Force Majeure Event” means any unforeseen cause or event beyond the reasonable control of the affected Party, and not due to the fault or negligence of the affected Party, and which could not have been avoided or overcome by due diligence and the use of reasonable efforts, including flood, tornado, hurricane, lightning, earthquake, fire, explosion, acts of the public enemy or terrorism, sabotage, civil disturbance, revolution, labor strikes, work stoppages, boycotts, walkouts and other labor difficulties that are national or regional in nature, impact of war or mobilization, impact of epidemics or pandemics (including COVID-19), national emergency and order by any governmental authority; provided that Landlord shall not constitute a governmental authority for purposes of this Agreement. Force Majeure Event shall not include any of the following, all of which are solely the responsibility of the affected Party: (i) any inability to pay amounts due under this Agreement, (ii) late delivery of machinery, equipment, spare parts and consumables for the Energy Storage Facility, except to the extent resulting from a cause or event described in the first sentence of this Section 15.11, (iii) a delay in performance or faulty performance by any of Tenant’s contractors or suppliers, except to the extent resulting from a cause or event described in the first sentence of this Section 15.11, or (iv) failure or breakdown of equipment or facilities comprising the Energy Storage Facility, except to the extent resulting from a cause or event described in the first sentences of this Section 15.11.

(b) As of the Effective Date, the novel coronavirus causing COVID-19 (“COVID-19”) is causing a global pandemic that may affect the production, supply and transportation of materials and equipment, as well as the ability of the Parties and their subcontractors to perform certain activities contemplated under this Agreement. The Parties agree that COVID-19-related events or developments occurring on or after the Execution Date shall not fail to qualify as beyond the reasonable control of a party, unforeseen, or unavoidable solely because of the existence of COVID-19 prior to the Effective Date.

(c) Neither Landlord nor Tenant shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. In no case shall Force Majeure excuse non-payment for amounts otherwise due and payable hereunder.

(d) If a Party is prevented or delayed in the performance of any obligation by a Force Majeure Event, then such Party shall provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof as soon as reasonably practicable after discovery of the Party’s inability to perform as result of the claimed Force Majeure Event. The recipient Party of any such notice shall confirm receipt in writing as soon as reasonably possible; provided that any failure to confirm shall not invalidate the notice provided by the affected Party. The suspension of or extension of time for performance shall be of no greater scope and of no longer duration than is required by the Force Majeure Event and the Party affected by a Force Majeure Event shall use commercially reasonable efforts to remove or repair the cause of the Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable, but shall not be required to make any concession in any labor negotiation or dispute. The Term shall be extended for each day performance is suspended due to a Force Majeure event.

(e) Notwithstanding the foregoing, if a Force Majeure Event prevents material performance by a Party under this Agreement for a period of 12 months or more, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.

15.12 Brokers. Each Party represents and warrants to the other that it has not retained anyone to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Lease Agreement effective as of the Effective Date.

LANDLORD:

City of Danville, Virginia

By: _____

Name:

Title:

COMMONWEALTH OF VIRGINIA
_____ COUNTY, SS.

At _____, Virginia this _____ day of _____, 20__, personally appeared _____, duly authorized signatory for the City of Danville, Virginia and acknowledged the foregoing instrument by him/her signed and sealed to be his/her free act and deed and the free act and deed of the City of Danville, Virginia.

Notary Public

My commission expires: _____

Commission Number: _____

TENANT:

DOC BROWN, LLC

By: _____

Name: Michael Herbert

Title: Managing Partner

COMMONWEALTH OF VIRGINIA
_____ COUNTY, SS.

At _____, _____ this _____ day of _____, 20__, personally appeared _____, duly authorized signatory for Doc Brown, LLC and acknowledged the foregoing instrument by him/her signed and sealed to be his/her free act and deed and the free act and deed of Doc Brown, LLC.

Notary Public

My commission expires: _____

Commission Number: _____

Exhibit A to Lease Agreement

Description of Landlord's Property

The Landlord's Property is located at 864 Monument Street. The Tax Map Number of the Landlord's Property is 2718-008-000001.001

Exhibit B to Lease Agreement

Depiction of Leased Premises, Construction Areas and Easement Areas

The Lease Premises is located at 864 Monument Street. The Tax Map Number of the Leased Premises is 2718-008-000001.001

Exhibit C to Lease Agreement

Memorandum of Lease Agreement

THIS MEMORANDUM OF LEASE AGREEMENT (this “Memorandum”), is made, dated and effective as of _____ (the “Effective Date”), by and between City of Danville, Virginia, a municipal corporation of the Commonwealth of Virginia having a mailing address of 1040 Monument Street, Danville, Virginia 24541 (“Landlord”), and Doc Brown, LLC , a Virginia limited liability company having a mailing address of c/o Delorean Power LLC, 1201 Wilson Boulevard, Arlington, Virginia 22209, its successors and assigns (“Tenant”), with regards to the following:

1. Lease Agreement. Landlord and Tenant did enter into that certain Lease Agreement (the “Agreement”), which affects certain real property located at 864 Monument Street, in the City of Danville, Commonwealth of Virginia (the “Leased Premises”), which is a portion of the real property particularly described in Exhibit A attached hereto (the “Landlord’s Property”). Capitalized terms used and not defined herein have the meaning given the same in the Agreement. The date of the execution of the Agreement is the Effective Date.

2. Grant of Rights. The Agreement grants Tenant an exclusive leasehold interest in the Leased Premises, and grants to Tenant the easements in, on, under, over or about the Landlord’s Property specified therein; such easement rights include, without limitation, (a) an access easement for access and ingress and egress to and from the Leased Premises and; (b) a distribution easement to extend distribution lines across a portion of the Landlord’s Property and to interconnect with a utility pole located on or adjacent to the Landlord’s Property.

3. Term. The Term of the Agreement shall commence on the Effective Date and expire on the twentieth anniversary of the date that the battery storage project to be constructed on the Leased Premises commences commercial operations; provided that the Term may be extended for successive one-year terms as described in the Lease. Tenant shall have a six-month period following the expiration of the Term or the earlier termination of the Agreement to decommission the battery storage project.

4. Assignment. The Agreement and Tenant’s rights and obligations thereunder may not be assigned without Landlord’s prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant may (i) assign, mortgage, pledge or otherwise collaterally assign its interests in the Agreement to any lender or other party providing financing for the battery storage project, (ii) directly or indirectly assign the Agreement to an affiliate of Tenant, (iii) assign the Agreement to any entity through which Tenant is obtaining financing or capital for the battery storage project, and (iv) assign the Agreement to any person succeeding to all or substantially all of the assets of Tenant, in each case without Landlord consent. The burdens of the Agreement and other rights contained in the Agreement shall run with and against the Leased Premises and easement areas and shall be a charge and burden thereon for the duration of the Agreement and shall be binding upon and against Landlord and its successors and assigns. Landlord shall notify Tenant in writing of any sale, assignment or transfer of any of Landlord’s interest in the Leased Premises, or any part thereof, and shall cause any such successor to agree to be bound by the terms of the Agreement.

5. Subordination. The Agreement provides that from and after its effective date, any right, title or interest created by Landlord in favor of or granted to any third party shall be subject to the Agreement and all of Tenant’s rights, title and interests created thereby; provided that Tenant will enter into certain commercially reasonable subordination and non-disturbance agreements.

6. Agreement Controls. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Agreement, and Landlord and Tenant executed and are recording this Memorandum solely for the purpose of providing constructive notice of the Agreement and Tenant's rights thereunder.

7. Addresses.

a. The mailing address of Landlord is:

City of Danville, Virginia
Department of Utilities
1040 Monument Street
Danville, Virginia 24541
Attn: Utilities Director

b. The mailing address of Tenant is:

Doc Brown, LLC
c/o Delorean Power LLC
1201 Wilson Boulevard,
Arlington, VA 22209
Attention: Michael Herbert
Email: michaelherbert@deloreanpower.com

8. Location of Original Agreement. A copy of the original Agreement is on file with Landlord and Tenant.

9. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Memorandum to be effective as of the date first written above.

LANDLORD:

City of Danville, Virginia

By: _____

Name:

Title:

COMMONWEALTH OF VIRGINIA

_____ COUNTY, SS.

At _____, Virginia this _____ day of _____, 20____, personally appeared _____, duly authorized signatory for the City of Danville, Virginia and acknowledged the foregoing instrument by him/her signed and sealed to be his/her free act and deed and the free act and deed of the City of Danville, Virginia.

Notary Public

My commission expires: _____

Commission Number: _____

TENANT:

DOC BROWN, LLC

By: _____

Name: Michael Herbert

Title: Managing Partner

COMMONWEALTH OF VIRGINIA

_____ COUNTY, SS.

At _____, _____ this _____ day of _____, 20____, personally appeared _____, duly authorized signatory for Doc Brown, LLC and acknowledged the foregoing instrument by him/her signed and sealed to be his/her free act and deed and the free act and deed of Doc Brown, LLC

Notary Public

My commission expires: _____

Commission Number: _____

Exhibit A to Memorandum of Lease Agreement

Description of the Landlord's Property

The Landlord's Property is located at 864 Monument Street. The Tax Map Number of the Landlord's Property is 2718-008-000001.001.

Council Letter

City of Danville, Virginia



CL-2814

New Business C.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Release of Existing City Tax Liens on Parcel 20165

From: W. Clarke Whitfield, Jr., City Attorney

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

City Staff is seeking approval from City Council to release two nuisance abatement liens, and associated costs and delinquencies, affecting one parcel of land on Stokes Street to facilitate its donation to a new owner for use as a non-profit community garden.

BACKGROUND

The City currently holds approximately \$18,570.00 in nuisance abatement liens and associated collection costs, and interest, against one Parcel on Stokes Street near its intersection with Jefferson Street, identified as Parcel #20165. The liens and costs greatly exceed the market value of the Parcel, which is presently assessed at \$800.00.

The nuisance abatement liens relate to the board-up and later demolition of a house previously located on the Parcel that was severely damaged in a house fire. The present owner of the Parcel lacked adequate insurance coverage, is elderly, and has no other financial assets to recover against. The owner has arranged a potential donation of the Parcel to the New Bethel Baptist Church which hopes to establish and operate a non-commercial Community Garden upon the Parcel. Partnering with local non-profits to reutilize vacant lots as non-commercial Community Gardens furthers the City's goals of blight eradication, promoting healthy outcomes to eliminate food scarcity, and encouraging the productive use of real property. The donation is dependent upon the City releasing the recorded nuisance abatement liens and associated costs to allow clear title to transfer.

Under State law, City Council can release nuisance abatement liens to facilitate the transfer of an otherwise unmarketable lot. City Staff has determined that releasing the outstanding nuisance abatement liens to facilitate the property transfer would be of benefit to the City by eliminating likely future maintenance costs, increasing the taxable value and productive use of the Parcel, and increasing the availability of healthy food in the community.

RECOMMENDATION

City staff recommends releasing existing liens and associated collection costs, and interest affecting Parcel #20165, contingent upon the actual transfer of the Parcel and the inclusion of a recorded Deed Restriction and the time of transfer that the Parcel may only be used as a non-commercial Community Garden for a period of no less than five (5) years.

Attachments

Resolution

PRESENTED: _____

ADOPTED: _____

RESOLUTION NO. 2022-____.____

A RESOLUTION APPROVING AND AUTHORIZING THE RELEASE OF CITY-HELD LIENS AGAINST REAL PROPERTY IDENTIFIED AS PARCEL #20165 STOKES STREET TO FACILITATE ITS TRANSFER TO NEW BETHEL BAPTIST CHURCH FOR USE AS A COMMUNITY GARDEN.

WHEREAS, The City of Danville, since 2020, in furtherance of its duty to protect the health and safety of the community, has recorded two (2) liens total at the Circuit Court against Parcel #20165 Stokes Street for nuisance abatement services which along with interest and associated collection agency fees valued at approximately \$18,570.00; and

WHEREAS, the city-held liens greatly exceed the tax assessed value of Parcel #20165, making the lot presently unmarketable; and

WHEREAS, the present owner of this Parcel desires to convey the property to the New Bethel Baptist Church, to facilitate its use and operation of a community garden upon the property; and

WHEREAS, given the size and location of this Parcel it is likely that future City abatement services will be required absent a transfer to a new owner and the transfer of such lot to a non-profit furthers the goals of the City of Danville; and

WHEREAS, under Va. Code § 15.2-906(4) a locality may release such liens and costs against a particular property in order to facilitate its sale or transfer to an unrelated, bona fide purchaser.

NOW THEREFORE, BE IT RESOLVED, by the City Council of Danville, Virginia, that all delinquent taxes, abatement charges, City-held liens, and associated collection agency fees recorded in the Danville Circuit Court Clerk's Office against Parcel #20165 Stokes Street be, and are hereby, released to facilitate its transfer to the New Bethel Baptist Church, provided such transfer actually occurs and the New Bethel Baptist Church agrees to be bound by a deed covenant to use such property for the exclusive purpose of operating a non-commercial community garden for no less than five (5) years.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to
Form and Legal Sufficiency:

Assistant City Attorney

Council Letter

City of Danville, Virginia



CL-2833

New Business D.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Locust Ridge Wind Energy Purchase Power Agreement

From: Jason Grey, Utilities Director

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

American Municipal Power (AMP) issued a bid for energy resources to help members with rising market prices this coming winter. The responses were short-listed and the best-rated and most economical project was chosen to negotiate a term sheet. The Avangrid project, the Locust Ridge Wind Project, was selected as the preferred project to pursue. The deadline for commitments is September 27, 2022. This three year contract will start October 1, 2022 and end on September 30, 2025.

BACKGROUND

Market energy prices over the past eight months have increased significantly because of various factors around the world. Approximately ten percent of the City's energy is purchased on the daily energy market. The City's energy needs are growing due to recent economic development announcements in 2023/2024 that will increase that market exposure from 10% to an estimated 17%. It is staff's recommendation to enter into this 3-year wind purchase power agreement to reduce the City's market exposure and take advantage of a low-cost resource that will benefit Danville Utilities electric customers. This energy contract is designed to end when the AMP solar project is supposed to become operation in fall 2025.

RECOMMENDATION

Staff recommends that City Council approve and authorize the City Manager to enter into a 3-year purchase power agreement with American Municipal Power for twenty megawatts of wind energy for \$47.75/megawatt-hour.

Attachments

Resolution

Presentation

PRESENTED: _____, 2022

ADOPTED: _____, 2022

RESOLUTION NO. 2022-____.____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANVILLE,
VIRGINIA APPROVING AND AUTHORIZING THE EXECUTION OF THE 2022 LOCUST
RIDGE WIND ENERGY SCHEDULE WITH AMERICAN MUNICIPAL POWER, INC. AND
TAKING OF OTHER ACTIONS IN CONNECTION THEREWITH .

WHEREAS, the City of Danville, Virginia (“Municipality”) owns and operates an
electric utility system for the sale of electric capacity and associated energy for the benefit of
its citizens and taxpayers; and

WHEREAS, in order to satisfy the electric energy requirements of its electric
utility system, Municipality has heretofore purchased, or desires to purchase in the future,
economical, reliable and environmentally sound energy and related services from, or
arranged by, American Municipal Power, Inc. (“AMP”), of which Municipality is a member;
and

WHEREAS, AMP is an Ohio nonprofit corporation, organized to own and
operate facilities, or to provide otherwise for the generation, transmission or distribution of
electric capacity and energy, or any combination thereof, and to furnish technical services on
a cooperative, nonprofit basis for the mutual benefit of AMP members (“Members”), such
Members, including Municipality, being political subdivisions that operate municipal electric
utility systems; and

WHEREAS, Municipality, acting individually and through AMP with other
political subdivisions of this and other states that own and operate electric utility systems,
jointly, endeavors to arrange for reliable, environmentally sound and reasonably priced

supplies of electric capacity and energy and related services for ultimate delivery to its customers; and

WHEREAS, it is efficient and economical to act jointly in such regard; and

WHEREAS, Municipality has previously entered into a Master Services Agreement with AMP, which contemplates that Municipality shall enter into various schedules for the provision of capacity and associated energy and related services from AMP to Municipality; and

WHEREAS, certain Members, including the Municipality have determined that they can utilize additional sources of reliable energy on a long-term basis at reasonable costs, and have requested that AMP arrange for the same by developing, purchasing or otherwise acquiring interests in certain energy facilities; and

WHEREAS, in furtherance of this purpose, AMP and Avangrid Renewables, LLC (“Avangrid”) have entered into a wind energy purchase power agreement (“Avangrid Wind PPA”) under the terms of which AMP is to purchase and Avangrid is to supply and sell up to approximately 100 MW of energy from the Locust Ridge Wind Farm located in Schuylkill Haven, Pennsylvania for a period of thirty-six (36) months; and

WHEREAS, it is necessary and desirable for Municipality to enter into the 2022 Locust Ridge Wind Energy Schedule to Municipality’s Master Services Agreement with AMP to provide for an additional source of energy; and

WHEREAS, Members now have the right, but not the obligation by the enactment of this resolution to authorize and request AMP to acquire energy from the Locust Ridge Wind Farm by approval and execution of the 2022 Locust Ridge Wind Energy Schedule authorized below; and

WHEREAS, prior to the execution of the 2022 Locust Ridge Wind Energy Schedule authorized through the adoption of this resolution AMP has (i) informed the Municipality of the terms of the Locust Ridge Wind Energy Schedule; (ii) provided the Municipality the opportunity to review the Avangrid Wind PPA terms and conditions (subject to price); and (iii) offered representatives of the Municipality the opportunity to ask such questions, review data and reports, conduct inspections and otherwise perform such investigations with respect to, as applicable, the acquisition of energy and the terms and conditions of the 2022 Locust Ridge Wind Energy Schedule authorized below as Municipality deems necessary or appropriate in connection herewith; and

WHEREAS, after due consideration, the Municipality has determined it is reasonable and in its best interests to proceed as authorized herein below and requests and authorizes AMP to acquire energy from the Locust Ridge Wind Farm upon those terms and conditions set forth in the 2022 Locust Ridge Wind Energy Schedule.

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

SECTION 1. That the 2022 Locust Ridge Wind Energy Schedule between Municipality and AMP, substantially in the form attached hereto or on file with the Clerk, including Exhibits thereto, are approved, and the City Manager of Municipality is hereby authorized to execute and deliver the 2022 Locust Ridge Wind Energy Schedule with such changes as the City Manager may approve as neither inconsistent with this resolution nor materially detrimental to the Municipality, his or her execution of the 2022 Locust Ridge Wind Energy Schedule to be conclusive evidence of such approval.

SECTION 2. That the City Manager is hereby authorized to (i) acquire under the 2022 Locust Ridge Wind Energy Schedule, authorized above, a Contract Amount as defined

in that Schedule of up to 20,000 kW with a price of up to \$47.75/MWh for energy only made available thereunder without bid, and (ii) make any determinations and approvals required thereunder, if any, as the City Manager shall deem necessary and advisable.

SECTION 3. If any section, subsection, paragraph, clause or provision or any part thereof of this resolution shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this resolution shall be unaffected by such adjudication and all the remaining provisions of this resolution shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

SECTION 4. That this resolution shall take effect at the earliest date allowed by law.

SECTION 5. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were taken in conformance with applicable open meetings laws and that all deliberations of this Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.

SECTION 6. That in order to take advantage of the pricing in the 2022 Locust Ridge Wind Energy Schedule, and to therefore protect the public welfare, this resolution is hereby declared an emergency measure, which shall take effect at the earliest period allowed by law.

BE IT FURTHER RESOLVED that the City Manager, Ken F. Larking, be and he is hereby authorized to execute on behalf of the City and all documents as may be necessary to complete the above referenced purchase and effect such conveyance to the City of Danville.

APPROVED:

Mayor

ATTEST:

Clerk

Approved as to

Form and Legal Sufficiency:

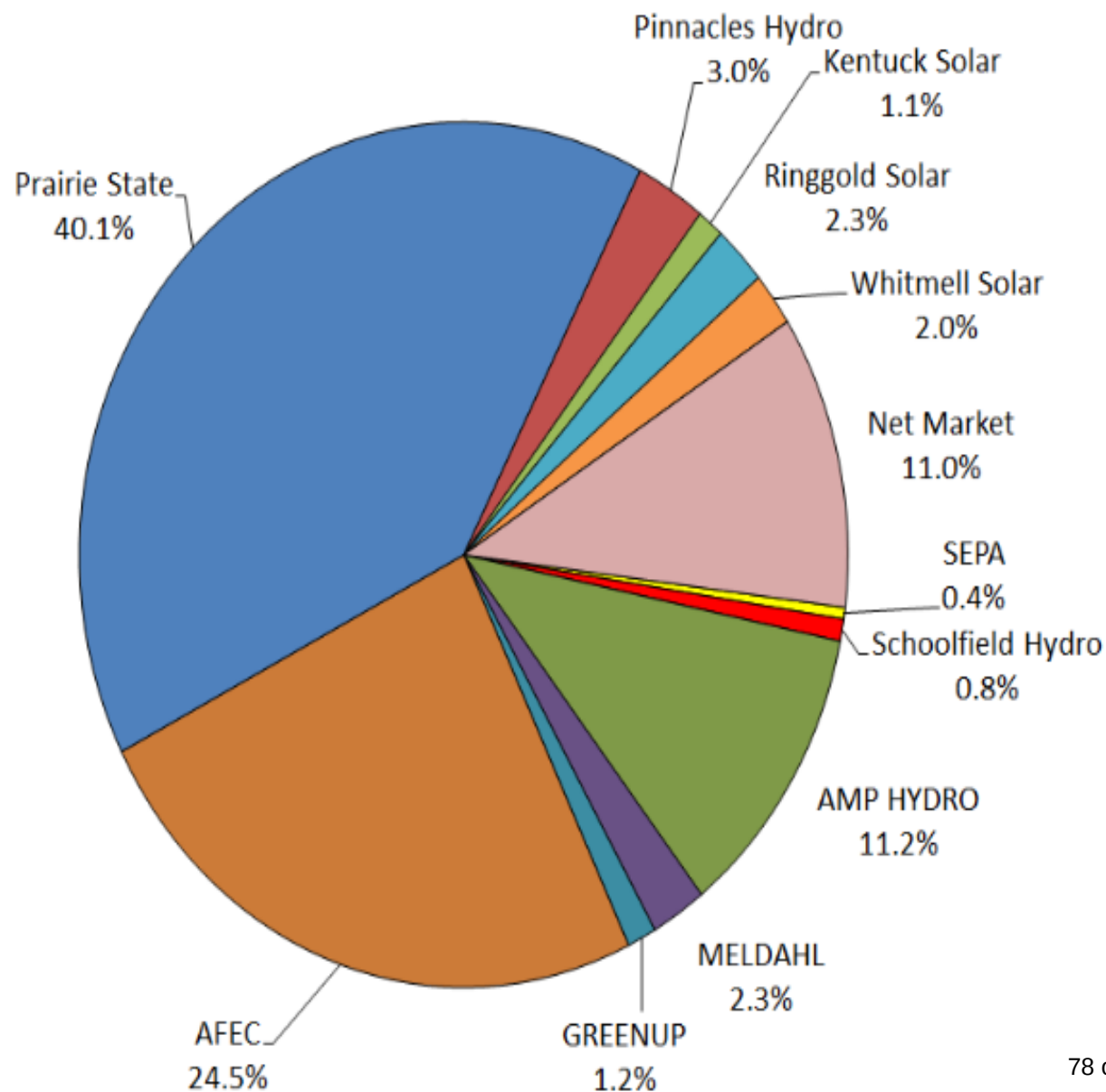
City Attorney



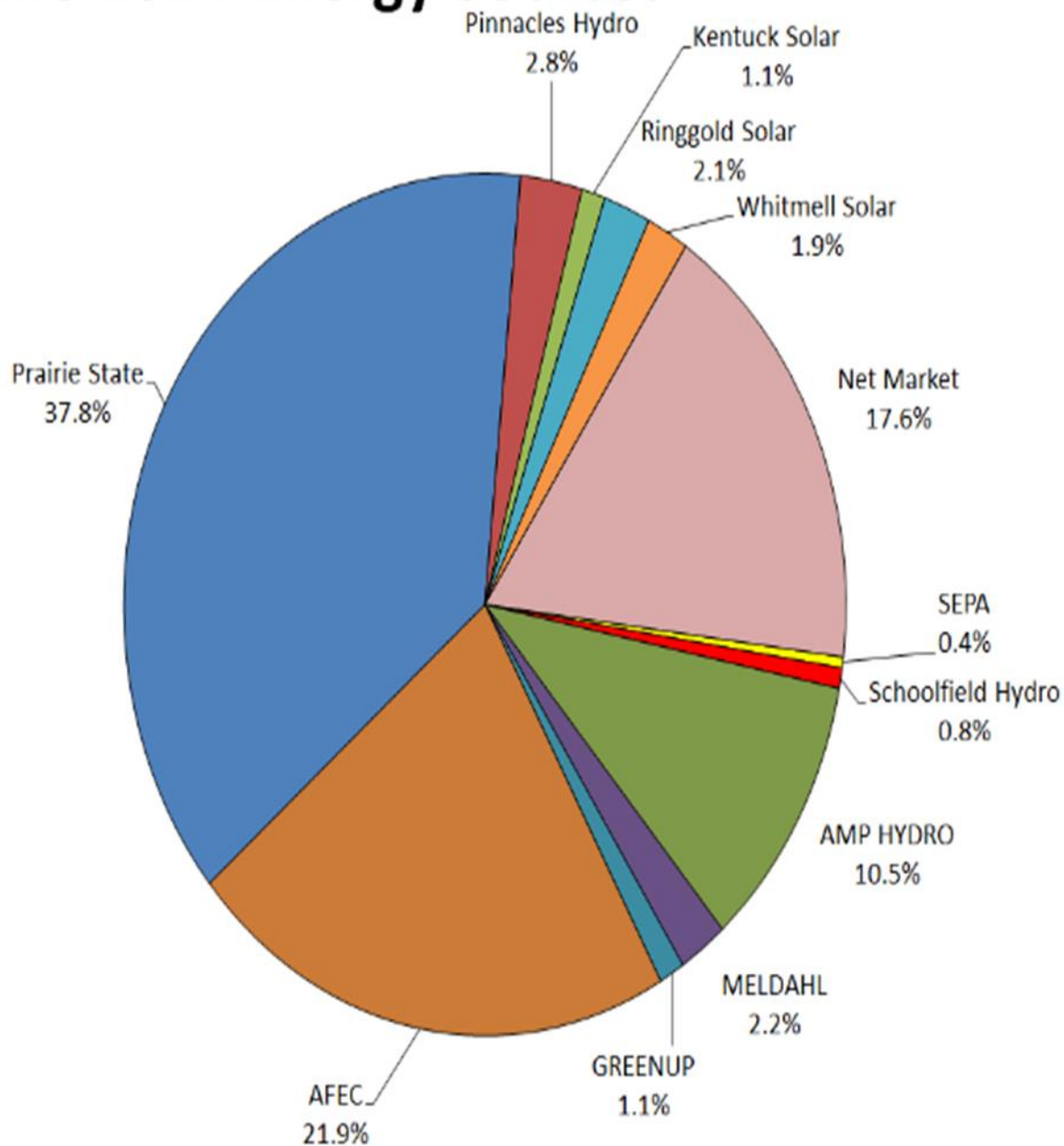
LOCUST RIDGE WIND ENERGY

Danville City Council
September 6, 2022

Danville 2023 Energy Sources

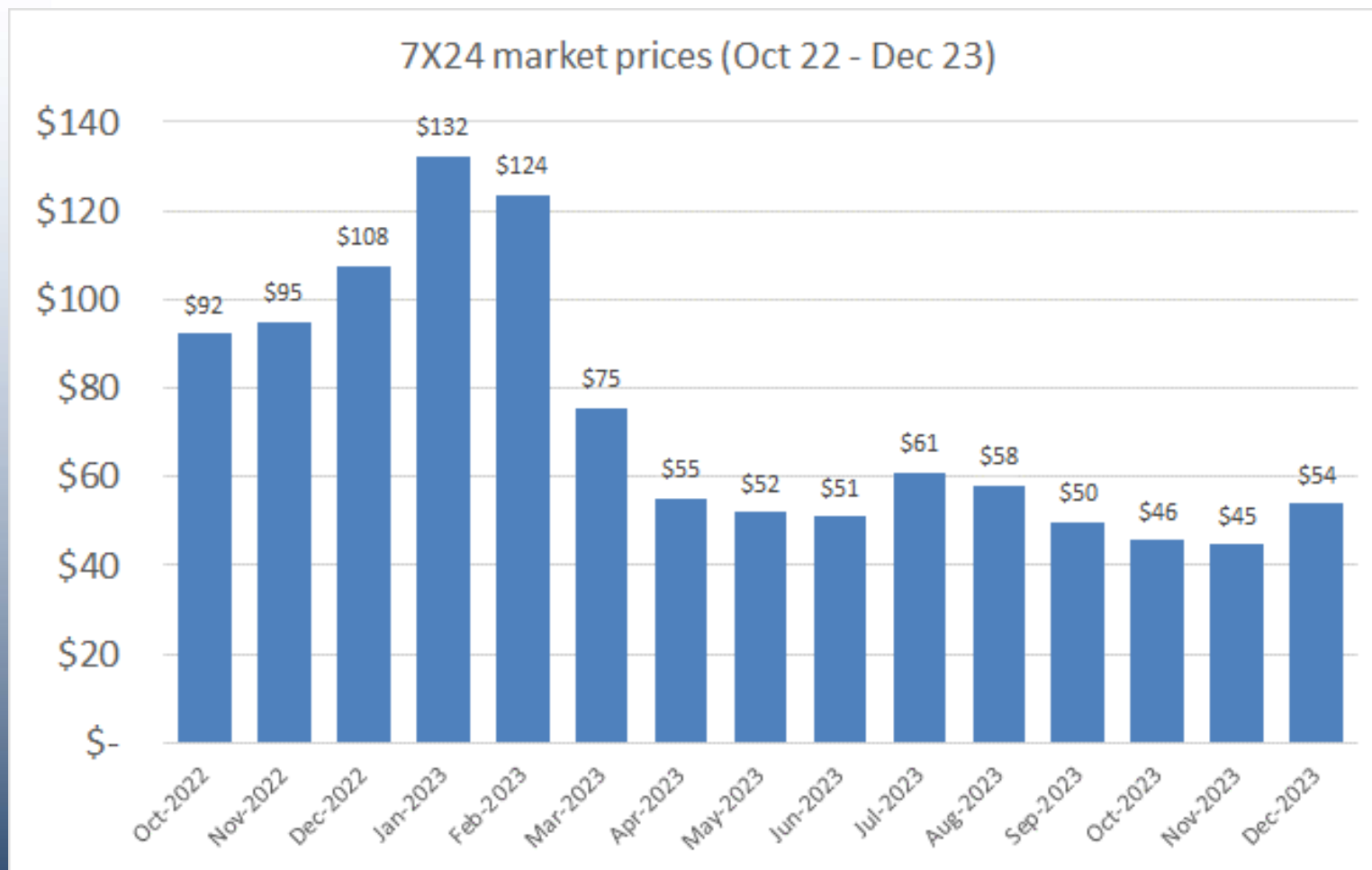


Danville 2024 Energy Sources





ELECTRIC MARKET PRICES

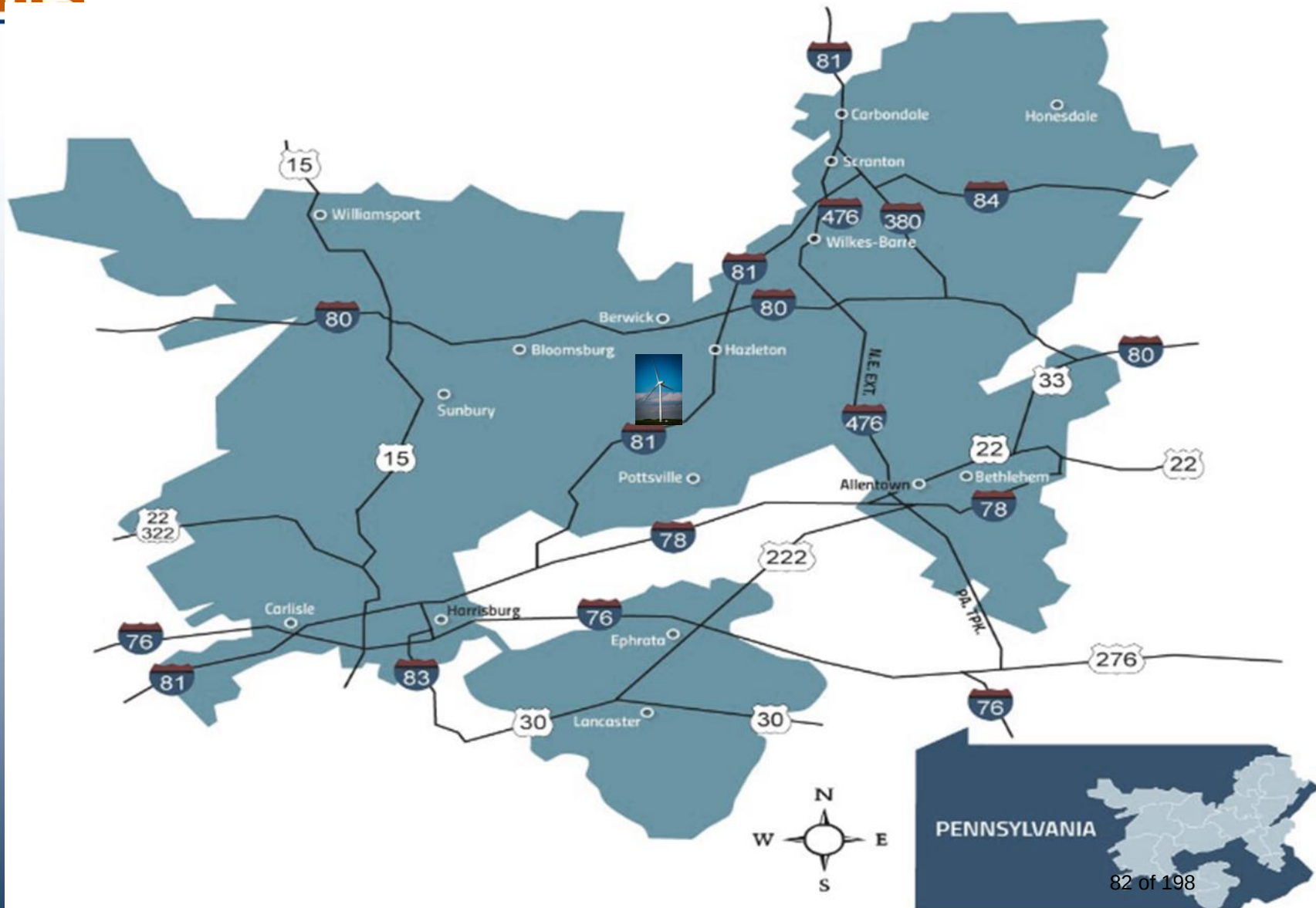




ELECTRIC STRATEGY

- Reduce market purchases to approximately 10% or less.
- Leave 10% or less on market to allow for daily fluctuations in load or additional solar. Longer term blocks typically sell as:
January – February
July – August

LOCUST RIDGE WIND FARM

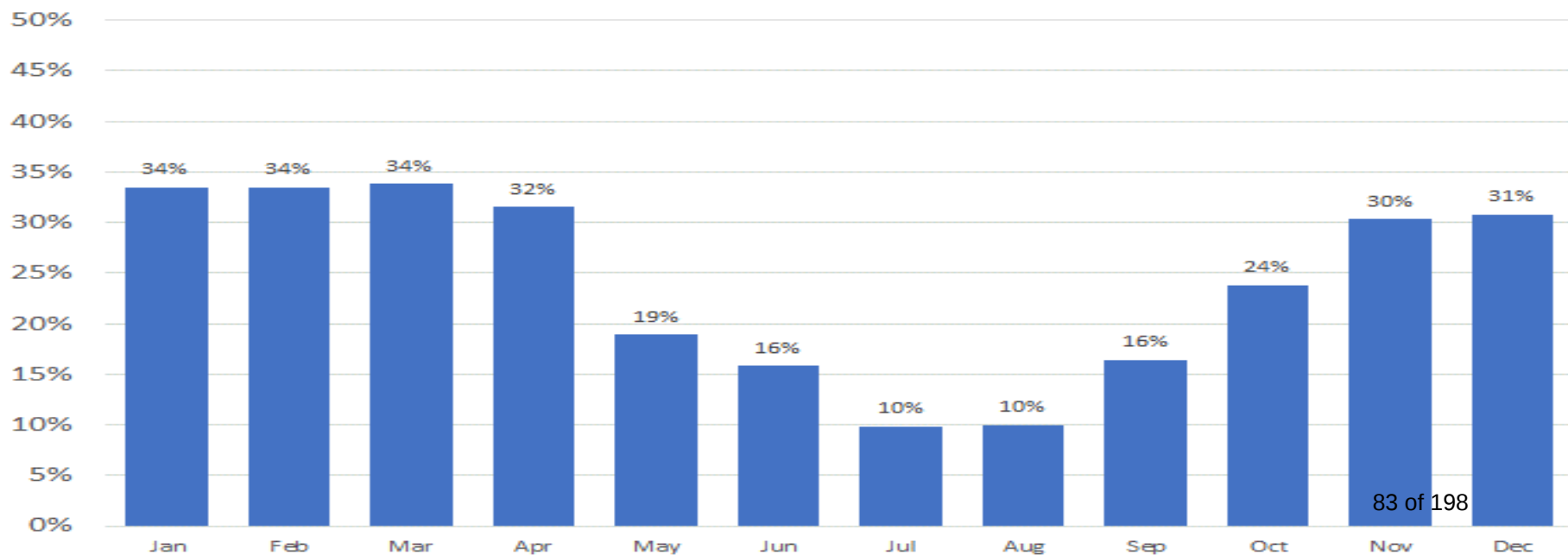




3-YEAR PURCHASE POWER AGREEMENT

- October 1, 2022-September 30, 2025
- Lower market exposure ~5%
- ~44,000 mWh/year
- Wind Farms=Winter resource
- \$47.50/mWh-Energy only

Average Locust Ridge Capacity Factor by Month (annual average of 25%)





Questions?

Council Letter

City of Danville, Virginia



CL-2842

New Business E.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Approval of Interim Agreements for Preliminary Design Services for George Washington High School and Johnson Elementary.

From: W. Clarke Whitfield, Jr., City Attorney

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

As a part of the school bond referendum held on November 2, 2021, construction projects are planned for both George Washington High School and G.L.H. Johnson Elementary School. There are two Interim Agreements that require City Council Approval.

One Interim Agreement is between the School Board of the City of Danville and English Construction Company, Inc. to perform preliminary design services for renovations and additions to George Washington High School, in accordance with Virginia Code § 56-575.16(5).

The other Interim Agreement is between the School Board of the City of Danville and Branch Builds, Inc. to perform preliminary design services for a newly constructed G.L.H. Johnson Elementary School in accordance with Virginia Code § 56-575.16(5).

BACKGROUND

The School Board of the City of Danville has chosen English Construction Company, Inc. to perform preliminary design services for renovations and additions to George Washington High School, and the School Board has chosen Branch Builds, Inc. to perform preliminary design services for a newly constructed G.L.H. Johnson Elementary School. Pursuant to Virginia Code § 56-575.16(5) City Council is required to approve the Interim Agreements between the Danville School Board and English Construction for George Washington High School and between the Danville School Board and Branch Builds for G.L.H. Johnson Elementary School.

RECOMMENDATION

It is recommended that the City Council adopt the accompanying Resolutions approving and authorizing:

(1) The Interim Agreement between the School Board of the City of Danville and English Construction Company, Inc. to perform preliminary design services for renovations and additions to George Washington High School, in accordance with Virginia Code § 56-575.16(5); and

(2) The Interim Agreement between the School Board of the City of Danville and Branch Builds, Inc. to perform preliminary design services for a newly constructed Johnson Elementary School, in accordance with Virginia Code § 56-575.16(5).

Attachments

Resolution GWHS

GWHS Interim Agreement

GWHS Interim Agreement Exhibit A

GWHS Interim Agreement Exhibit B

Resolution GLH Johnson

Johnson Interim Agreement

Johnson Interim Agreement Exhibit A

Johnson Interim Agreement Exhibit B

PRESENTED: _____

ADOPTED: _____

RESOLUTION NO. 2022 - _____._____

A RESOLUTION OF THE COUNCIL OF THE CITY OF DANVILLE VIRGINIA APPROVING AND AUTHORIZING THE INTERIM AGREEMENT BETWEEN THE SCHOOL BOARD OF THE CITY OF DANVILLE AND ENGLISH CONSTRUCTION COMPANY, INC. TO PERFORM PRELIMINARY DESIGN SERVICES FOR RENOVATIONS AND ADDITIONS TO GEORGE WASHINGTON HIGH SCHOOL, IN ACCORDANCE WITH VIRGINIA CODE § 56-575.16(5).

WHEREAS, as a part of the school bond referendum held on November 2, 2021, construction projects are planned for both George Washington High School and G.L. H. Johnson Elementary school; and

WHEREAS, pursuant to Virginia Code § 56-575.16(5) City Council is required to approve the Interim Agreement between the Danville School Board and English Construction Company, Inc. to perform preliminary design services for renovations and additions to George Washington High School.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Danville, Virginia that it hereby approves and authorizes the Interim Agreement and Exhibits between the School Board of the City of Danville and English Construction Company, Inc. to perform preliminary design services for renovations and additions to George Washington High School, substantially in the form attached hereto, in accordance with Virginia Code § 56-575.16(5).

APPROVED:

Mayor

ATTEST:

Clerk

Approved as to
Form and Legal Sufficiency:

City Attorney

INTERIM AGREEMENT

This Interim Agreement (this “Agreement”) is entered into as of September 21, 2022 by and among the **SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA** (“the “Owner” or “School Board”), a political subdivision of the Commonwealth of Virginia, and **ENGLISH CONSTRUCTION COMPANY, INC.**, (“the Design-Builder”). The Owner and the Design-Builder are referred to individually as a “Party” and collectively as “the Parties.”

Recitals

1. On January 27, 2022, the School Board adopted its Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 (“Guidelines”), which establish procedures for the development of public facilities through public-private partnerships. These procedures in the Guidelines satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code 56-575.1 et seq. (“PPEA”).

2. The Design-Builder submitted an unsolicited proposal for the development of public facilities through public-private partnerships under the PPEA. The projects addressed in the unsolicited proposal included additions and renovations to George Washington High School and Johnson Elementary School.

3. The School Board advertised the non-confidential portion of the Design-Builder’s proposal in accordance with the Guidelines and the PPEA and solicited competing proposals. One competing proposal was received, and the Design-Builder submitted a revised proposal.

4. The School Board determined at its April 21, 2022 meeting that, among other things, it would be advantageous to proceed with the proposed projects using procedures for competitive negotiation, rather than using sealed, competitive bids, given the probable scope, complexity and urgency of the proposed projects; the merits of risk-sharing and the potential for added value; and the economic benefit from the proposed projects that might otherwise not be available.

5. The Evaluation Committee, appointed by the School Board at its April 21, 2022 meeting, recommended proceeding to the Detail Phase under the Guidelines and the PPEA with the Design-Builder for the portion of Design-Builder’s proposal that related to additions and renovations to George Washington High School. The School Board voted at its July 14, 2022 meeting to proceed to the Detail Phase with the Design-Builder for the additions and renovations to George Washington High School.

6. The School Board held a public hearing concerning the Design-Builder’s proposal on August 4, 2022, in accordance with the Guidelines and the PPEA.

7. The School Board has negotiated this Agreement with the Design-Builder for the preliminary design of the renovations and additions to George Washington High School (the “Project”), which Agreement will be executed not sooner than thirty (30) days following the August 4, 2022 public hearing as required by Va. Code § 56-575.17.

8. The Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Guidelines, the Design-Builder's proposals, and discussions between representatives of the School Board and the Design-Builder.

9. The Parties acknowledge and agree that this Agreement will function as the Interim Agreement for purposes of this Project.

10. Having considered this Agreement and other information, the School Board has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4(C) and posted this Agreement for public inspection in accordance with the PPEA and Implementing Procedures.

11. In accordance with Va. Code § 56-575.16(5), the City Council of the City of Danville has approved the School Board's entering into this Agreement.

Now, therefore, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. PROJECT; SERVICES; DESIGN TEAM. The Project includes preliminary design services for renovations and additions to George Washington High School. The Design-Builder will furnish and provide, or cause to be furnished and provided, all architectural and engineering services for the Project through the completion of 35% Design Development Drawings, including, but not limited to, all architectural and engineering materials, labor and equipment necessary for programming, schematic design, and design development, to achieve the following tasks:

A. Programming. The Design-Builder will complete any programming that has not otherwise been completed during the Detail Phase. Whether completed in the Detail Phase or during Programming under this Agreement, the Design-Builder will prepare and present, for Owner's approval, a preliminary design for the Project. The Design-Builder (with input from the Owner) shall establish a detailed baseline schedule for the design phases of the project, based on the criteria established by the Owner. The Design-Builder shall furnish schedule information to the CMC (as defined below) who will create and maintain an electronic schedule during the design phase. The Design-Builder shall provide regular progress updates to the Owner and the CMC and shall report on schedule progress during each project meeting, and when reasonably requested, including status of all design, permitting and regulatory activities.

B. 10% Schematic Design Drawings. Based on Owner's approval of the preliminary design, the Design-Builder will prepare and submit to the Owner 10% Schematic Design Drawings. The Schematic Design will include blocking/stacking exercises, preparation of schematic drawings and construction specifications in sufficient detail to clearly define all items which may affect the Project cost. During the Schematic Design, the design will be refined and input will be solicited from the School Board and its construction management contractor ("the CMC"). In preparing Schematic Design documents, the Design-Builder will, among other usual and customary tasks, lead the Project team in developing building concepts and design parameters; conduct required research of codes

applicable to the Project; obtain existing drawings, documentation and files of existing site and buildings; provide topographic and boundary surveys; develop preliminary plans, elevations, and sections for review; review the construction schedule; and provide an estimate for construction costs for entire Project. The Schematic Design documents should identify major building systems and construction materials. The Design-Builder will consider the use of alternative materials, building systems and equipment in developing a design for the Project that is consistent with the program, the Project Schedule and the Project Budget. At the end of the Schematic Design Phase, the Design-Builder will present to the School Board a final schematic design package for review and approval, as well as revised construction cost estimates indicating that the Project is within budget. The Design-Builder will meet with City of Danville personnel and School Board personnel before the Schematic Design Drawings submission to determinate any necessary approvals from the City for planning and land use. The Design-Builder, Owner, and City will use the Schematic Design phase to test and validate or adjust the program.

C. 35% Design Development Drawings. Based on Owner's approval of the Schematic Design documents, the Design-Builder will furnish and provide, or cause to be furnished and provided, all professional architectural and engineering services and related services necessary to develop 35% Design Development Drawings for the renovations and additions to George Washington High School and to arrive at a Guaranteed Maximum Price ("GMP") for the completed renovations and additions to George Washington High School. In preparing Design Development documents, the Design-Builder will, among other usual and customary tasks, coordinate with local building authorities to assure design compliance; consult with Owner and the CMC to review design concepts; prepare the Design Development documents, which consist of plans, elevations and sections showing the development from the Schematic Design documents; refine cost estimates for the Project; and review the construction schedule. The Design Development phase shall include further definition of the Schematic Design. The Project team, including the CMC, will meet collectively to further develop program requirements. The 35% Design Development Drawings must include details and design narratives regarding structural and mechanical, electrical and plumbing (MEP) components of the design and a GMP so that the School Board may evaluate the proposed design and cost and make a decision whether to proceed to a Comprehensive Agreement. The Design-Builder will perform such additional design work as may be needed to arrive at a GMP.

In order to accommodate the critical path of activities that will lead to a timely substantial completion of the entire Project, the following portions of the Project will be developed to nearly full construction documents (minus limited coordination details) by the completion of the Design Development Phase:

- Civil Engineering & Site Plans
- Foundations, Structural Steel, Metal Decking, and Masonry Bearing Walls for Additions
- Under-slab Plumbing and Electrical for Additions
- Select Demolition
- Roofing

D. Prior to completion of the 35% Design Development drawings, the Design-Builder will hold at least three meetings with the School Board's internal design/evaluation team. The Design-Builder also will hold at least one public meeting where members of the public will be allowed to view and make comments on the Project. In addition, the Design-Builder will make at least one public briefing to the School Board, and if requested at least one public briefing to City Council, prior to completing the 35% Design Development drawings. The Design-Builder will coordinate scheduling of these meetings with the School Board.

E. Intentionally Blank.

F. The Services include all programming, architectural design, structural engineering, mechanical engineering, electrical engineering, plumbing engineering, civil engineering, surveying, subsurface utility engineering, landscape architecture, hazardous material testing and abatement planning (if required, this Service will be addressed as an allowance in the project budget), FF&E design, architectural interior design, kitchen design, technology improvements (including telecommunications, audiovisual and data conduit, cabling and testing (Owner will provide and install servers, WAP and setup)), and security and fire protection design for the achievement of the foregoing milestones/tasks.

G. Intentionally Blank.

H. The Design-Builder shall assign the design team identified in its proposal to perform Services under this Agreement. The Design-Builder shall not make changes to the composition of the design team without the School Board's consent, which consent will not be unreasonably withheld, conditioned, or delayed. In addition to this design team, the Design-Builder will provide such additional staff of licensed, certified, qualified, and experienced personnel as needed to complete the Services Project within the Schedule and Fixed Fee. If any of the Design-Builder's personnel fail to perform to the School Board's reasonable satisfaction, the School Board may, upon fifteen (15) days' written notice, cause the Design-Builder to remove such person(s) from the Project and replace them with other personnel of at least equivalent knowledge, skill and experience who are acceptable to the School Board.

I. Unless otherwise agree to, the Design-Builder shall perform all usual and customary tasks related to the Services that are reasonably required for the design of a complete, usable, and properly functioning Project, even if those tasks are not expressly enumerated in this Agreement.

J. The Design-Builder shall perform its services consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances. The Design-Builder shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Design-Builder under this Agreement. The Design-

Builder shall, without additional compensation, correct or revise any errors or deficiencies in its design, drawings, specifications, and other services.

K. Services also shall include the tasks enumerated in Exhibit A, which is attached hereto and incorporated herein.

L. The Design-Builder's amended unsolicited proposal for renovations and additions to George Washington High School, dated April 8, 2022, as amended June 8, 2022, and as further amended by the revised September 1, 2022 space needs program and meeting minutes ("Proposal"), also is incorporated herein by reference. The Design-Builder shall perform Services in a manner consistent with the Proposal. Whenever possible, this Agreement (including Exhibits A and B hereto) and the Proposal will be read as a whole with all parts being harmonized so as to avoid conflict. In the event of a conflict between this Agreement (including Exhibits A and B hereto) and the Proposal, this Agreement (including Exhibits A and B hereto) shall control over the Proposal. Incorporation of the Proposal into this Agreement shall not negate the protections for disclosure afforded to trade secrets, financial information, and other confidential and proprietary information contained in Volume II of the Proposal, as permitted by Virginia Code §§ 2.2-3705.6(11), 2.2-4342(F) and 56-575.4(G).

M. The Design-Builder shall assign the Design Team (including subcontractors and subcontractors' personnel) identified in the Proposal to furnish Services on the Project. The Design-Builder shall not make changes to the composition of the Design Team without the Owner's consent, which consent will not be unreasonably withheld, conditioned, or delayed. In addition to this Design Team, the Design-Builder will provide such additional staff of licensed, certified, qualified, and experienced personnel as needed to complete the Project within the Fixed Fee. If any of the Design-Builder's personnel fail to perform to Owner's satisfaction, the Owner may, upon fifteen (15) days' written notice, cause the Design-Builder to remove such person(s) from the Project and replace them with other personnel of at least equivalent knowledge, skill and experience who are acceptable to Owner.

2. FIXED FEE. The School Board shall pay the Design-Builder a fixed fee of TWO MILLION THREE HUNDRED SIXTY THOUSAND FIVE HUNDRED AND 00/100 Dollars (\$2,360,500.00) (the "Fixed Fee") for all of the Services under this Agreement. The components of the Fixed Fee are broken down as follows:

10% Schematic Design- \$	\$ 480,000
35% Design Development \$	\$1,192,500
Topographical, Utility and Site Survey	\$ 50,000
3D Building Survey for existing conditions	\$ 25,000
Early Site Package	\$ 304,000
Early Foundation and Steel Package	\$ 90,000
Early Roofing Package	\$ 164,000
Early Demolition Package	\$ 55,000

The Design-Builder agrees that the Fixed Fee is full and complete compensation for the Services to be performed by the Design-Builder under this Agreement based upon the scope, schedule, and budget agreed to on September 01, 2022 as described in attached Exhibit B, which includes meeting minutes, schedule, budget, and design concept presented. The Fixed Fee includes all costs and expenses to be incurred by the Design-Builder in performing the Services. No costs and expenses will be reimbursed over and above the amount of the Fixed Fee. The Design-Builder covenants and agrees that the Fixed Fee stated herein is full, complete, just and adequate compensation for the Services.

There shall be no increase in the amount of the Fixed Fee without the School Board's express prior written authorization.

3. INVOICE; PAYMENT. The Design-Builder will issue invoices to the Owner monthly based upon the percentage of completion of each phase of Services enumerated in Section 2 above. Each invoice shall include the Design-Builder's federal employer identification number and the School Board's purchase order number on the cover. Each invoice shall identify the Services that have been completed during the period since the last invoice. Each invoice shall state the amounts previously invoiced and, if different, the amounts approved for payment, the amounts paid previously, and the amount of the current invoice.

All payments will be due within thirty (30) days of receipt of the invoice. Any payment term requiring payment in less than thirty (30) days will be regarded as requiring payment within thirty (30) days after receipt of the invoice.

The School Board's review, approval or acceptance of, or payment for, any Services required under this Agreement shall not constitute acceptance of defective or nonconforming Services, nor shall it relieve the Design-Builder of any responsibility for any errors or omissions in connection with those Services, be construed as a waiver of any warranty, of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, or operate to release the Design-Builder from any obligation under the Agreement. Subject to Section 19, the Design-Builder shall be and remain liable to the School Board in accordance with applicable law and the Agreement for all damages to the School Board caused by the Design-Builder's negligent performance of any of the Services furnished under this Agreement or breach of this Agreement.

4. TERM; SCHEDULE.

A. This Term of this Agreement shall commence on the date first written above (the "Effective Date") and, unless otherwise terminated as provided herein, shall continue until all the Services have been provided

B. The Design-Builder will perform Services according to the following Schedule:

- i. The Design-Builder will complete the 10% Schematic Design documents by October 26, 2022.
- ii. The Design-Builder will complete the 35% Design Development documents by February 28, 2023.

iii. **Time is of the essence in completing the 10% Schematic Design and the 35% Design Development.**

5. **OWNER'S RIGHT TO TERMINATE.**

The School Board shall have the absolute and exclusive right to terminate or cancel the Agreement, stop the Services or the Project, or cease accepting the Services at any time, with or without cause or reason and without incurring any penalty, obligations, damages, costs or liability to the Design-Builder, except as set forth in this Section.

A. Upon receiving notice of Owner's termination of this Agreement, the Design-Builder must immediately cease and discontinue all Services (unless the notice directs otherwise) and deliver to Owner all data, drawings, specifications, reports, estimates, and such other data and records (whether completed or in progress) which may have been created or accumulated by the Design-Builder in performing the Agreement upon Design-Builder's receipt of final payment through the termination date specified in the notice.

B. If the termination is due to the breach by the Design-Builder of a material term of this Agreement, including without limitation a failure to meet the standard of care herein, which breach or failure continues for no less than seven (7) days after the School Board provides written notice to the Design-Builder of such breach or failure and an opportunity to cure, Owner may take over the Services and prosecute the same to completion by contract or otherwise. In such case, the Design-Builder shall be liable to Owner for any damages allowed by law.

C. Should the Agreement be terminated not due in any way to the fault of the Design-Builder, then the Design-Builder shall only be entitled to compensation for Services actually performed in accordance with the terms of this Agreement prior to termination and non-cancellable expenses incurred prior to termination and approved by Owner. No profit, overhead, or any other costs of any type are allowed after the date of such termination.

D. The rights and remedies of Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

6. **COMPREHENSIVE AGREEMENT.** Should the parties both conclude that the Project is feasible, the parties may proceed to negotiate a Comprehensive Agreement under the PPEA to address the completion of design, construction and commissioning of the Project without further procurement. The Owner's participation in negotiation of a Comprehensive Agreement, however, shall not constitute an obligation of or commitment by the Owner to execute such Comprehensive Agreement and may be granted, denied or conditioned in Owner's sole discretion. A final Comprehensive Agreement would also need approval by City Council in addition to approval by the School Board.

7. **STANDARD OF CARE.** The standard of care for all professional design services performed by the Design-Builder under this Agreement will be the standards of professional skill and care that prevail in the professions of architecture and engineering in the Commonwealth of

Virginia for similar projects at the time. Additionally, the Design-Builder represents and warrants that all design work on the Project under this Agreement will be supervised by licensed professionals in good standing with any applicable regulatory agency for the full duration of their work on the Project under this Agreement.

8. INTELLECTUAL PROPERTY. The Design-Builder represents and warrants that the Services being provided under this Agreement will not infringe on any United States or foreign patents, copyrights or other intellectual property rights, and that the Design-Builder has all requisite licenses and agreements from third parties for the provision of such Services. The Design-Builder shall obtain and provide to the School Board any and all rights, title, interests, licenses, copyrights, trademarks, and other intellectual property rights or interests in the Services being provided for the Project upon payment in accordance with the terms of this Agreement. The Design-Builder warrants that the use of any designs, drawings, plans, specifications, instructions, materials, or information provided to the School Board by the Design-Builder shall not infringe upon any United States or foreign patents, copyrights, or other intellectual property rights.

9. OWNERSHIP OF WORK PRODUCT. All documents, plans, specifications, diagrams, schematics, and other deliverables produced by the Design-Builder for the School Board under this Agreement and all reports, studies, plans, drawings, specifications, designs, renderings and other documents which the Design-Builder delivers to the School Board pursuant to this Agreement shall become and remain the School Board's exclusive property upon payment in accordance with the terms of this Agreement and shall be used exclusively for the School Board's benefit from the date of creation forward unless express written permission is given by the School Board. The Design-Builder shall not publish or disclose those reports, studies, plans or other documents to any entities or persons other than the School Board and its representatives without the prior written consent of the School Board. Notwithstanding anything to the contrary, the School Board expressly acknowledges and agrees that the drawings, specifications and other documents to be provided by the Design-Builder under the Agreement may contain certain design details, features and concepts from the Design-Builder's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of the Design-Builder. Nothing herein shall be construed as a limitation on the Design-Builder's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients. This provision shall not be construed as relieving the Design-Builder from the sole responsibility for all Services upon which payments have been made, or as waiving the right of the School Board to require the fulfillment of all the terms of the Agreement.

10. CLAIMS.

A. Claims by the Design-Builder, whether for money or other relief, shall be submitted in writing no later than sixty (60) consecutive calendar days after final payment. However, written notice of Design-Builder's intention to file such a claim must be given to the person to whom Notice must be given under this Agreement within ten (10) days of the occurrence or the beginning of the work upon which the claim is based. Such notice must state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of Owner or its agents that allegedly caused or may cause damage to the Design-Builder and the nature of the claimed damage. Verbal

notice, Owner's actual knowledge, or a written notice given more than twenty-one (21) days after the occurrence or beginning of the work upon which the claim is based, are not sufficient to satisfy the requirements of this Section. All claims must state that they are "claims" pursuant to this Section, be submitted along with all practically available supporting evidence and documentation, and request a final decision. Certificates for payment, applications for payment, vouchers, invoices, and similar requests for payment submitted for work done by the Design-Builder in accordance with the expected contract performance are routine submissions and are not claims under this Section. Proposed or requested change orders, demands for monetary compensation or other relief, and correspondence and e-mails to Owner or its representatives, which do not strictly comply with the requirements of this Section, are not claims under this Section. Such notice is a condition precedent to the assertion of any such claim by the Design-Builder. Failure to provide timely notice of intent to submit a claim precludes any relief to the Design-Builder.

B. A written decision upon any such claims will be made by the Superintendent on behalf of the Owner within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required or requested by Owner. The Design-Builder may not institute legal action prior to receipt of Owner's decision on the claim unless Owner fails to render such decision within the One Hundred Twenty (120) consecutive calendar days from submittal of its claim. Owner's decision shall be final and conclusive unless the Design-Builder within six (6) months of the date of Owner's final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in § 2.2-4364 of the Code of Virginia (1950), as amended. Failure of Owner to render a timely decision on a claim will not result in the Design-Builder being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of Owner's failure to render a timely decision is the Design-Builder's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Code of Virginia (1950), as amended, has been established for contractual claims under this Agreement.

C. If a claim is made prior to completion of the Services, the Design-Builder shall proceed diligently with performance of the Services and Owner shall continue to payments in accordance with the Agreement, except for any amount in dispute.

D. The compensation expressly provided for by this Agreement is the Design-Builder's sole available compensation for the acts, omissions, or breaches by Owner. These remedies will survive termination or breach of the Agreement.

11. INSURANCE.

The Design-Builder will, at its sole expense, obtain and maintain during the life of the Agreement insurance policies of the type, in the amount, and subject to the terms required by the School Board, including without limitation: (i) commercial general liability (CGL) insurance with minimum limits of liability of \$2,000,000 combined single limit for any one occurrence; (ii) CGL broad form contractual liability insurance, which shall include the indemnification obligations set forth in this Agreement; (iii) workers' compensation and employer's liability insurance covering the Design-Builder's statutory obligations under the laws of the

Commonwealth of Virginia; (iv) automobile liability insurance with at least a \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this contract; (v) professional liability and errors and omissions insurance with minimum limits of \$2,000,000 per claim and \$5,000,000 policy aggregate (professional liability insurance coverage shall be maintained for five years after completion of the project); and (vi) cybersecurity insurance for the recovery of any lost intellectual property, ransomware, or the like. Any required insurance policies shall be effective prior to the beginning of any work under the Agreement. All insurance except professional liability shall be written on an occurrence basis. If the Design-Builder has professional liability insurance on a claims made basis, then is must provide proof of an agreement that coverage will be maintained for at least five years beyond the expiration date of the policy in force at the time of this Agreement.

In addition, (i) the Design-Builder shall furnish the School Board a certificate or certificates of insurance showing the type, amount, effective dates, and date of expiration of the policies; (ii) the required certificate or certificates of insurance, excluding those for workers' compensation and professional liability, shall name the School Board and its officers, trustees, directors, volunteers, employees, and agents as additional insureds; (iii) the required certificate or certificates of insurance shall require 30 days advance, written notice to the School Board before being cancelled; and (iv) any insurance company providing coverage under the contract shall be authorized to do business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.

12. INDEMNIFICATION. Except the extent prohibited by law, including Virginia Code § 11.1-4.4, the Design-Builder shall indemnify, defend, and hold harmless the School Board and its officers, agents, trustees, directors, and employees from and against any and all liability, losses, damages, claims, causes of action, suits of any nature (including suits by the School Board against the firm), costs, and expenses, including reasonable attorney's fees and consultant's fees, resulting from or arising out of the Design Builder's or its agent's, and/or subcontractor's errors, acts, or omissions in the performance of services under the Agreement or any subcontract or any breaches of the Agreement or any subcontract. This indemnity provision shall cover and include, without limitation, fines and penalties for violations of federal, state or local laws or regulations; personal injury, wrongful death or property damage claims; breach of contract claims; indemnity claims; and other damages, losses and claims of any kind.

13. NOTICES.

A. All notices to the Design-Builder required or permitted under this Agreement shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the Design-Builder addressed to:

William Alex Amos, Vice President
English Construction Company, Inc.
615 Church Street (24504)
P. O. Box P-7000
Lynchburg, VA 24505
Tel: (434) 845-0301
email: wamos@englishconst.com

B. All notices to the School Board required or permitted under this Agreement shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the School Board addressed to:

Dr. Wayne Lyle, Chief Operations Officer
Danville Public Schools
341 Main Street, Suite 100
Danville, Virginia 24541
cc. wlyle@mail.dps.k12.va.us

C. Where, under the terms of this Agreement, a notice is sent by certified U.S. mail, postage prepaid, return receipt requested, such notice shall be deemed to have been given five (5) days after the date of mailing such notice provided such notice was also e-mailed to the noticed Party. Each Party to this Agreement shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in subsections (A) or (B) above.

14. PAYMENTS TO SUBCONTRACTORS.

A. The Design-Builder shall take one of the two following actions within seven (7) consecutive, calendar days after receiving amounts paid to the Design-Builder by the School Board for work performed by any subcontractor under this Agreement:

1. Pay the subcontractor for the proportionate share of the total payment received from the School Board attributable to the work performed by the subcontractor under that subcontract; or
2. Notify the School Board and the subcontractor, in writing, of the Design-Builder's intention to withhold all or a part of the subcontractor's payment and explain the reason for nonpayment.

B. The Design-Builder shall pay interest at the rate of one (1) percent per month to the subcontractor on all amounts owed by the Design-Builder that remain unpaid after seven (7) consecutive, calendar days following receipt by the Design-Builder of payment from the School Board for work performed by the subcontractor under that subcontract, except for amounts withheld as allowed in subsection A.2. above.

C. The Design-Builder shall insert in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

D. The Design-Builder's obligation to pay an interest charge to a subcontractor pursuant to this section shall not be construed to be an obligation of the School Board. This Agreement may not be modified for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

E. So long as the failure of the Design-Builder to make prompt payments is not due to the failure of the School Board to pay the Design-Builder, the Design-Builder shall indemnify and hold the School Board harmless for any lawful claims resulting from failure of the Design-Builder to make prompt payments to all persons supplying the Design-Builder with equipment, labor, tools or materials in prosecution and completion of the work provided for in the Agreement. In the event of such claims, the School Board may, after providing written notice to the Design-Builder, withhold from any progress and/or final payment the unpaid sum of money deemed sufficient to pay all lawful claims.

15. ANTI-DISCRIMINATION. The Design-Builder will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginia Human Rights Act, the Virginians with Disabilities Act, the Americans With Disabilities Act, Section 2.2-4311 of the Virginia Public Procurement Act (VPPA), and all other applicable federal, state and local anti-discrimination laws, codes, rules, and regulations. Without limiting the foregoing, during the performance of this contract, the Design-Builder agrees as follows:

1. The Design-Builder will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Design-Builder. The Design-Builder agrees to post in conspicuous places, available to employees, notices setting forth the provisions of this nondiscrimination clause.
2. The Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, will state that the Design-Builder is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
4. The Design-Builder will include the provisions of the above 1, 2 and 3 in every subcontractor or purchase order over \$10,000 in connection with this Agreement, so that the provisions will be binding upon each subcontractor or vendor.

16. DRUG-FREE WORKPLACE. During the performance of the Agreement, the Design-Builder agrees to (i) comply with the drug-free workplace provisions of Virginia Code 2.2-4312; (ii) provide a drug-free workplace for its employees; (iii) post in conspicuous places, available to employees, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Design-Builder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iv) state in all advertisements or solicitations for employees that the Design-Builder maintains a drug-free workplace; and (v) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 in connection with this Agreement, so that the provisions will be binding upon each subcontractor or vendor.

17. IMMIGRATION REFORM AND CONTROL ACT OF 1986. The Design-Builder represents and warrants that it does not and will not during the performance of this

Agreement employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

18. **NONWAIVER.** The School Board's waiver or failure to enforce or require performance of any term or condition of this Agreement or the School Board's waiver of any particular breach of this Agreement by the Design-Builder extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Agreement or a waiver of any other breaches of the Agreement by the Design-Builder and does not bar the School Board from requiring the Design-Builder to comply with all the terms and conditions of the Agreement and does not bar the School Board from asserting any and all rights and/or remedies it has or might have against the Design-Builder under this Agreement or at law or in equity.

19. **LIMITATION ON LIABILITY.** **NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF REVENUE, BUSINESS INTERRUPTION, COST OF REPAIR OR REPLACEMENT SERVICES (INCLUDING THE COST OF LABOR AND MATERIALS), OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES RESULTING FROM ANY CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY) RELATED TO OR ARISING OUT OF THIS CONTRACT, NO MATTER THE FORM OF THE CLAIM AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

20. **NO THIRD-PARTY BENEFICIARIES.** The Parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the School Board or the Design-Builder; (iii) no other individual or entity shall obtain any right to make any claim against the School Board or the Design-Builder under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

21. **NO COLLUSION.** The Design-Builder represents and warrants that this Agreement has been awarded without collusion or fraud and it has not offered or received any kickbacks or inducements from any other offeror, supplier, or subcontractor in connection with its proposal, and that it has not conferred on any School Board employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. Furthermore, the Design-Builder acknowledges that the provisions, requirements, and prohibitions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Code, pertaining to bidders, offerors, contracts, and subcontractors, are applicable to this Agreement, as are the provisions, requirements, and prohibitions contained in Sections 2.2-3100 through 2.2-3131 of the Virginia Code.

22. **DEBARMENT.** The Design-Builder represents and warrants that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this Agreement, nor is it an agent of any person or entity that is currently so debarred.

23. APPLICABLE LAWS AND COURTS. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the Commonwealth of Virginia. Any litigation with respect to the Agreement or the Services provided hereunder will be brought only in a court of appropriate jurisdiction in the City of Danville, Virginia.

24. COMPLIANCE WITH ALL LAWS. The Design-Builder shall comply with all federal, state and local statutes, ordinances, and regulations, now in effect or hereafter adopted, in the performance of the Services. The Design-Builder represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for the performance of the Agreement prior to the initiation of Project. If the Design-Builder is a corporation, it further expressly represents that it is a corporation in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the Agreement. The Design-Builder shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of the Project.

25. FAITH BASED ORGANIZATIONS. Pursuant to Va. Code § 2.2-4343.1, the School Board does not discriminate against faith-based organizations.

26. AUDIT. The Design-Builder shall retain all books, records, and other documents relative to this Project for five (5) years after final payment or until audited by the School Board, the City of Danville, or the Commonwealth of Virginia, whichever is sooner. The School Board or its authorized agents may, at the School Board's option and expense, audit the Design-Builder's records related to the Project at any time during the term of the Agreement or for a period of five (5) years thereafter. The Design-Builder shall cooperate with Owner's auditor and provide the documentation the auditor deems necessary in a timely and organized manner at no additional cost to Owner. Auditors from the School Board, the City of Danville, and/or the Commonwealth of Virginia shall have full access to, and the right to examine, all such books, records, and other documents relative to this Agreement during said period. Upon request from the School Board, all such documents shall be turned over to the School Board.

27. ASSIGNMENT OF CONTRACT. Neither this Agreement nor the Design-Builder's obligations under this Agreement may be assigned, delegated or transferred without the School Board's prior written consent, which consent may be withheld in the School Board's discretion.

28. SCC REGISTRATION. Pursuant to Virginia Code § 2.2-4311.2, each entity executing this Agreement as part of the Design-Builder must be registered with the State Corporation Commission if so required by Title 13.1 or Title 50 of the Virginia Code or otherwise required by law.

29. AVAILABILITY OF FUNDS. It is understood and agreed between the Parties that the School Board shall be bound hereunder only to the extent of the funds available and duly appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling the School Board's obligations under the Agreement.

30. Intentionally Blank.

31. CORRECTION OF DEFECTIVE WORK. The Design-Builder shall promptly replace or correct any work or materials which the School Board rejects as failing to conform to the requirements of the Agreement. If the Design-Builder does not do so within a reasonable time, the School Board shall have the right to replace or correct the defective work or materials and the Design-Builder shall be liable to the School Board for the cost thereof. If, in the opinion of the School Board, it is not expedient to correct or replace all or any part of rejected work or materials, then the School Board, at its option, may deduct from the payment due, or to become due, to the Design-Builder such amounts as, in the School Board's judgment, will represent the higher of: (i) the difference between the fair value of the rejected work and materials and the value thereof, if the work had complied with the Agreement; or (ii) the cost of correction.

32. NO CRIMES AGAINST CHILDREN.

A. The Design-Builder acknowledges that the provision of Services under the Agreement may require the Design-Builder, its employees or other persons that will provide services under this Agreement to have direct contact with Danville Public Schools students. Therefore, Design-Builder hereby certifies that neither Design-Builder, its employees nor any person that will provide Services on its behalf under this Agreement who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of: (i) any violent felony set forth in the definition of barrier crime in Va. Code § 19.2-392.02(A); (ii) any offense involving the sexual molestation or physical or sexual abuse or rape of a child; or (iii) any crime of moral turpitude.

B. The Design-Builder understands that, pursuant to Va. Code §22.1-296.1, making a materially false statement regarding offenses referenced in Section (A) above is a Class I misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. Danville Public Schools shall not be liable for materially false statements regarding the certifications required under the Agreement.

33. SEVERABILITY. If any provision of the Agreement, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall not be affected and all other terms and conditions of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

34. FURTHER ASSURANCES. It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Contract shall be and is inserted herein. Furthermore, if through mistakes and otherwise, any such provision is not inserted in correct form, then this Agreement shall upon application of either Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

35. INDEPENDENT CONTRACTORS. The Parties hereto are independent contractors and are not agents, partners, or joint venturers. Neither Party shall have the ability to bind the other to any contract with a third party and neither Party shall hold itself out to any third party as having the right to bind the other Party to any contract.

36. REMEDIES CUMULATIVE. The rights and remedies of the School Board provided for under this Agreement are in addition to any other rights and remedies provided by law.

37. SUCCESSORS. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective executors, administrators, heirs, successors-in-title, successors and assigns.

38. SOVEREIGN IMMUNITY. Nothing contained in the Agreement is intended to waive, or shall be construed as a waiver of, the School Board's sovereign immunity.

39. ENTIRE CONTRACT. This Agreement constitutes the entire and integrated agreement between the Parties. No representations, inducements, promises or agreements, oral or written, between the parties not embodied herein shall be of any force or effect. No amendment to the Agreement shall be binding on any of the Parties unless such amendment is in writing and such amendment is executed by the Parties.

40. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together constitute one and the same instrument.

41. AUTHORIZED REPRESENTATIVES. The Design-Builder's Authorized Representative is William Amos (434-845-0301; wamos@englishconst.com). DPS's Authorized Representative is Dr. Wayne Lyle (434-799-6400 ext. 232; wlyle@mail.dps.k12.va.us). Each party may provide notice to the other party of a new or additional authorized representative(s) using the procedure outlined in the Notices Section.

IN WITNESS WHEREOF the undersigned have executed this contract on the dates set forth beside their respective signatures.

[Remainder of page blank. Signatures follow.]

SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA

By: _____
Title: Superintendent
Date: _____

ENGLISH CONSTRUCTION COMPANY, INC.

By: _____
Title: _____
Date: _____

Approved as to form: _____

School Board Attorney _____

GWHS– RENOVATIONS AND ADDITIONS TO HIGH SCHOOL

Exhibit A –DESCRIPTIONS OF SERVICES INCLUDED IN INTERIM AGREEMENT

1.1 Schematic Design Phase. To be considered acceptable for final Schematic Design Phase submittal, the documents shall contain all of the following unless otherwise agreed in writing:

1.1.1 Architectural

- (i) Plans (at 1/16" scale) showing complete building layout, and identifying areas, room by room, showing square footage with comparisons to program standards, and core areas and their relationships.
- (ii) Preliminary building section and exterior elevations indicating location and size of fenestration and sufficient to determine overall building height.
- (iii) Intentionally Blank
- (iv) Gross and net area calculations separated to show conformance with the Program of Requirements.
- (v) Preliminary Building Code Summary.

1.1.2 Civil & Landscaping

- (i) Site plan with building located and overall grading plan with a minimum of 5'- 0" contour lines. All major site development such as orientation, access road paving, walls and outside support buildings, structured parking facilities, programmed play areas, vehicle stacking, and paved parking lots shall be shown.

1.1.3 Structural

- (i) Narrative of structural systems and materials planned for all major components of the structure (load bearing walls, columns, floor systems, roof systems, shear walls, braced frames, etc.)
- (ii) Identification of foundation requirements (fill requirements, piles, caissons, spread, footings, retaining walls within the building footprint, etc.). As complete as possible without having the geotechnical report completed.

1.1.4 Mechanical, Controls, and Plumbing

- (i) Narrative of mechanical systems and materials planned for all major components.
- (ii) Intentionally Blank
- (iii) Intentionally Blank
- (iv) Location of all service entrances.

1.1.5 Electrical

- (i) Narrative of electrical systems and materials, lighting fixtures roughly scheduled showing types of fixtures to be used.
- (ii) Intentionally Blank
- (iii) Preliminary one-line electrical distribution diagrams of new addition only.
- (iv) Description of specialized electrical systems (fire alarm, intercom, voice/data).
- (v) Legend showing all symbols used on drawings.

1.2 Documents not complying with Section 1.1 shall be returned to the Design Builder for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

2.1 Design Development Phase.

2.1.1 The Design Builder shall prepare from the approved Schematic Design Phase Submittal, for further approval by the Owner, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.

2.1.2 Design Development Documents prepared by the Design Builder shall include drawings and a written report in more detail than the Schematic Design Documents and shall take into account the Owner's and the Construction Manager's comments on the previous submittal. The report shall include the status of the work in accordance with the Milestone Schedule, a summary of programmed versus actual square footage by room or area in a format defined by the Owner, such discussion of design factors, if any, as are pertinent in the opinion of the Design Builder; and outline descriptions of proposed engineered systems, construction methods, materials and work to be included in the construction contracts. Drawings shall include dimensioned site development plan, building plans, elevations, and typical sections indicating proposed construction. Drawings shall also include information on major finishes as well as diagrammatic drawings illustrating fundamentals of major engineered systems, i.e., structural, mechanical and electrical. The Design Builder shall submit an estimate and breakdown of the Guaranteed Maximum Price (GMP) no later than two (2) business days in advance of the scheduled DD review meeting. The Design Builder, shall prepare such estimates in the form prescribed by the Owner to ensure that the project cost is within the GMP.

2.1.3 Intentionally Blank

2.1.4 Intentionally Blank

2.1.5 A statement from the Design Builder with the final Design Development Phase submittal shall be included that acknowledges that Design Builder has reviewed all of the applicable Design Guidelines and Educational Specifications and confirms that they have been incorporated

in the documents unless specifically noted in writing. The Design Builder shall not incorporate asbestos-containing materials in the Project.

2.1.6 The Design Builder shall submit the final Design Development package, meeting minutes, etc. to show how review comments made in Schematic Design have been addressed. It should be clear from the notes where the specific item was incorporated into the Design Development submittal or an explanation if it was not incorporated.

2.1.7 The Design Builder shall provide the Owner's Representative and the Construction Manager periodically with copies of in-progress Design Development Documents during the Design Development Phase. The Design Builder shall review any recommendations from the Construction Manager and Owner's Representative, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Work, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Builder's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction Manager Agreement. At the end of the Design Development Phase the Design Builder shall provide the Owner's Representative and the Construction Manager drawings and documents including a design phase report. The report shall incorporate the status of the work in accordance with the Milestone Schedule and a summary of programmed versus actual square footage in a format defined by the Owner by room or area. The Design Builder shall seek approval of the submitted deliverables from the Owner. The documents for this final Design Development Phase submittal shall contain all of the following unless otherwise agreed in writing:

2.1.7.1 Architectural

- (i) Project phasing plan.
- (ii) Building Code Summary Sheet.
- (iii) Life safety plans showing all fire walls and egress calculations.
- (iv) Floor plans (at 1/8" scale) with final room locations including all openings.
- (v) Roof plan (at 1/8" scale) indicating structural slope, drainage areas and drain locations.
- (vi) Wall sections showing components for major types of exterior and interior walls, final dimensional relationships, materials and component relationships.
- (vii) Diagrammatic location and identification of typical room types fixed and loose equipment, furniture, and furnishings .
- (viii) The Owner will provide room inventory data sheets to the Design Builder for use in populating the furniture and equipment plans. The Design Builder shall include typical furniture and equipment plans for all room types with the DD submittal.
- (ix) Finish schedule identifying all finishes.

- (x) Preliminary door and window and hardware schedule showing final quantity plus type and quality levels.
- (xi) Preliminary development of details, including 3/4" scale millwork details and large scale blow-ups.
- (xii) Legend showing all symbols used on drawings.
- (xiii) Outline of materials to be specified in the CD phase.
- (xiv) Reflected ceiling development including ceiling grid and all devices that penetrate the ceiling (i.e., light fixtures, speakers, WAP, ceiling register or diffusers, etc.).

2.1.7.2 Civil/Site

- (i) Virtually complete site plans including grading and drainage.
- (ii) Sufficient details of all site utilities and improvements as required to initiate the site plan submittals for approval by the AHJ.
- (iii) Intentionally Blank
- (iv) Copy of the Site Survey.

2.1.7.3 Structural

- (i) Plan drawings with all structural members located and sized.
- (ii) Final building elevations.
- (iii) Outline of materials to be specified in the CD phase.
- (iv) Foundation drawings.

2.1.7.4 Plumbing

- (i) Piping, fixtures and equipment substantially located and sized.

2.1.7.5 Mechanical

- (i) Heating and cooling load calculations for each space and major duct or pipe runs sized to interface structural.
- (ii) Major mechanical equipment scheduled indicating size and capacity.
- (iii) Ductwork and piping substantially located and sized trunk lines and loops.
- (iv) Above ceiling and/or mechanical room layouts to verify all, structural, mechanical, plumbing, electrical and fire protection systems fit in available spaces.
- (v) Devices in ceiling located, including all areas to receive access panels in GWB ceilings.
- (vi) Legend showing all symbols used on drawings.

- (vii) Outline of materials to be specified in the CD phase.
- (viii) Completed life cycle cost analysis.

2.1.7.6 Electrical

- (i) All power consuming equipment and load characteristics.
- (ii) Total electric load.
- (iii) Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned and drawn to scale into the space allocated.
- (iv) Preliminary site lighting design coordinated with the power company.
- (v) Outline of materials to be specified in the CD phase.
- (vi) Lighting, power, telecommunications and office automation devices and receptacles shown in plan.
- (vii) Preliminary light fixture schedule.
- (viii) One line diagram of specialized electrical systems (fire alarm, intercom, voice/data, security, access control) showing location of control equipment/panels and devices.
- (ix) Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas, etc. Coordinate with Owner FF&E.

2.1.7.7 Fire Protection

- (i) Provide flow test information
- (ii) Provide narrative of proposed fire protection system, including determining whether or not fire pumps will be required for the project.
- (iii) Floor plans indicating occupancy and hazard classifications for all areas requiring fire protection, and location of riser room.

2.1.8 Specifications: Provide table of contents listing all specifications anticipated for the work.

2.1.9 Upon Owner acceptance and approval of the Design Development Phase, the structural bay sizes, floor elevations and exterior wall locations (building "footprint") may not be changed except by a Design Phase Change Order. Interior wall locations shall not be changed unless approved in writing by the Owner.

2.1.10 Documents not complying with Subparagraph 2.1.7 (including all subparts) shall be returned to the Design Builder for correction at no additional charge to the Owner and with no change to the overall Project design schedule.



MEETING MINUTES CONFERENCE

PROJECT: George Washington High School
COMM. No.: 22155-00

DATE: September 1, 2022 11:00 AM – 4:00 PM

Attendees:

Dr. Angela Hairston, DPS; Walter Lucas, DPS; Dr. Wayne Lyle, DPS;
Mike Burriss, MBP, Chris Phillips, RRMM; Ben Motley, RRMM; Michael Mauceri,
RRMM; Alex Amos, English Construction; Robert Lee, English Construction; Trevor
Kimzey, Foresight Design;

Below summarizes conversations held by the parties listed above. If any information contained below requires revision, review comments must be provided to the author within 7 days of issuance.

1. **Design Concept Overview:** RRMM presented the most recent conceptual floor and site plans. These preliminary design concepts were well received by DPS and the overall approach to the new gym addition and renovations to the existing gym were approved. The concept of expanding the cafeteria and kitchen from within the existing areas by stretching the dining areas into the existing corridors was approved with the understanding that the culinary program will also be in this region with shared dining areas. The proposed light monitors within this dining expansion will be implemented in the design process as careful analysis will be required at the existing structure to determine the extent of the light monitor openings. The site plan diagram with locations of the proposed drop-off lane, faculty/visitor parking, stadium parking, and bus loop were approved.
2. **Detailed Design Concept / Program Fit Test:** RRMM presented the fit test analysis where the most recent program (attached as appendix) was carefully investigated with the existing floor plans to see if the quantities of proposed programs could fit within the existing walls of the main school, CTE and JROTC. The analysis indicated that there is a surplus of approx. 5 classrooms on the second floor of the existing building. The fit test also revealed other spatial opportunities within the existing floor plans; Drama classroom will be located to the west of the existing small stage ("Little Theatre") which will also allow for band storage expansion immediately west of the band room; the program indicated a need for a wellness / nutrition lab which the team agreed to change this from a separate needed space and allow 2 life skill labs to meet the needs of the wellness /

nutrition lab; this means the program will include 2 separate life skills lab where one is designated for an apartment/studio layout for teaching students the house keeping requirements like making beds while the second life skills lab will contain the kitchen layout (this lab needs to also include washer/dryer with a typical kitchen layout); DPS is open to allowing a shared varsity home team room/locker room with the PE locker room on the north end of the floor plan which will allow for the proposed weight room location to be accompanied by another smaller weight room (cardio based functions, etc) and additional storage at the southeast corner of the proposed floor plan; location for the bookstore / business north of new dining expansion is approved; the culinary program's location was approved with a desire to explore outdoor seating areas and possible canopy addition to address casino representatives interests in hospitality functions/venues; The CTE building will have the Health Care Classroom as part of the Nursing CR / Lab instead of the proposed, separate Health Care CR. Within the JROTC, the Art Department (3 Labs/Classrooms) will be located within the unused areas at the north end of the facility.

3. **Project Budget:**

- a. The current cost estimation for the project's construction cost subtotal is approx. \$1M over the project's \$65M construction cost. English explained the approach to the current allowances and clarifications. The current budget estimate and scope of work summary is appended to these minutes.
- b. DPS will pick up the Geotechnical Engineering services and Environmental (ESA Phase 1) study. RRMM will share a few companies that can handle both services with DPS.
- c. English has included an allowance for Hazmat abatement, however there is no allowance for the design (licensed permit dwgs) for the actual abatement design; English will adjust the allowance accordingly to accommodate the abatement design if required. DPS mentioned that since no renovations have taken place since the last asbestos report (2019), this report can be used to determine areas requiring abatement from a cost estimation standpoint.
- d. English and Foresight explained the conceptual approach to the stormwater system and detention allowance of \$1.5M; it is anticipated that the entire campus will not be required to be brought up to the level of complete stormwater management when defining the total project limits. Foresight's Trevor Kimzey explained he will be meeting with local agency to discuss these stormwater requirements in further detail.
- e. The FF&E/IT Allowance of \$3.5M may be able to be reduced if certain furniture is purchase outside the project's funding. RRMM will coordinate with DPS and MBP any existing CAD files or existing floor plans that furniture vendors may require. Also discussed was the fact that the heavy machinery with CTE has already been installed within programs such as precision machining.
- f. The Restroom Renovations Allowance of \$900,000 can be reduced if some components remain such as fixtures have only automatic sensors added.

4. Project Schedule:

- a. Within the Interim Agreement, the schematic design will include an initial GMP on 10/26/2022 and design development phase will include a final GMP on 02/28/2023. Early Trade packages (site, structural, roof, demolition) will be delivered on 3/3/2023 with site plan permit and early permits by 4/7/2023; construction materials and equipment subcontracts are to be released on 4/7/2023. Construction Documents of remaining disciplines will be due on 5/31/2023 with an anticipated overall building permit by 6/13/2023.

5. Contract:

- a. The Interim agreement needs to be posted by 9/13 to allow for the Board to vote on it 9/21.
- b. RRMM, DPS, MBP and English walk-through each section of the proposed interim agreement and reached agreement on the sections as proposed in the revised interim agreement document that is appended to these minutes.
- c. All parties agreed that the accelerated design schedule for the entire project meant some trades/design components such as site, demolition, roof and structural will need to be more advanced in the interim agreement stage which means the fees for design need to be assigned appropriately within the interim agreement stage; all parties also agreed to start working on the framework for the comprehensive agreement which should have terms and conditions finalized by 11/1/2022.
- d. Exhibit A has been modified to include revised deliverables in the Schematic Design Phase; this is also appended to these meeting minutes.

6. Other Topics of Discussion:

- a. Foodservice Consultant Amy Hegarty met with staff to discuss initial conceptual plans and programmatic needs required for the new food court and fully renovated kitchen; these detailed items of discussion will be shared in a separate memo.
- b. Field House (New and Existing/Renovated): The proposed, new 4,000 SF field house will be located to the east of the track and its location will be the most cost-effective solution to reduce wall retainage. The proposed design will include a roof terrace for occupants. The existing field house will be renovated for restrooms, contain visitor's concessions, visitor locker room and additional storage. These floor plans are appended to these meeting minutes.
- c. Monday, September 12 has been set to meet with school board to discuss conceptual design; RRMM will have floor plans and preliminary exterior rendering of the gym addition ready to share.

7. Appendix:

- a. Documents include:
 - i. Interim Agreement agreed-upon terms and conditions with Exhibit A
 - ii. English Project Schedule, Budget and Scope of work summary
 - iii. Program dated 08-18-2022
 - iv. Conceptual floor plans dated 09-01-2022



GEORGE WASHINGTON PROPOSED SITE PLAN

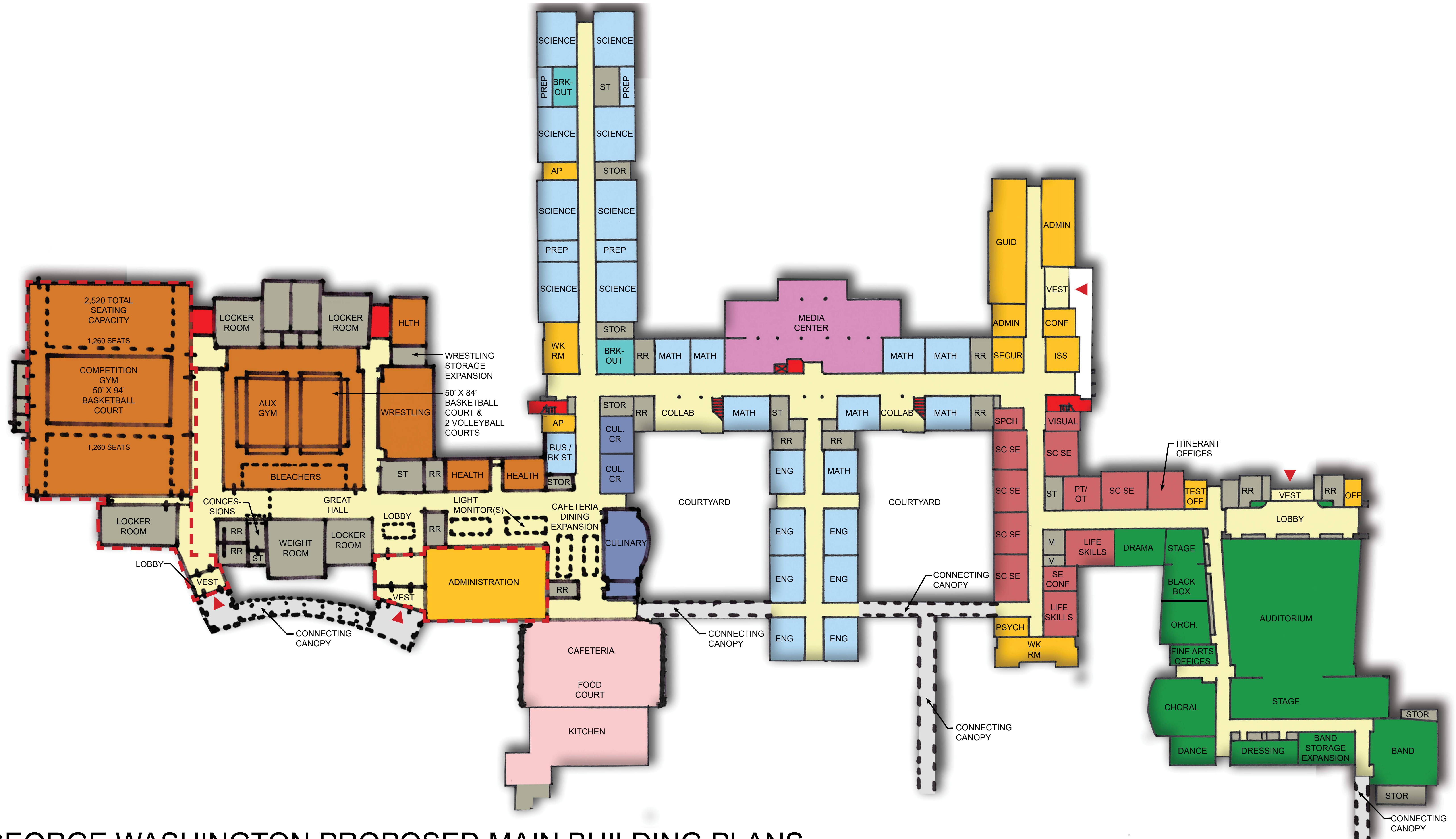
DANVILLE CITY PUBLIC SCHOOLS - GWHS - ADDITIONS AND RENOVATIONS
DANVILLE, VIRGINIA

SCALE: 1" = 100'-0"

RRMM PROJECT NO: 22155-00

DATE: 09/01/2022





GEORGE WASHINGTON PROPOSED MAIN BUILDING PLANS

DANVILLE CITY PUBLIC SCHOOLS - GWHS - ADDITIONS AND RENOVATIONS
DANVILLE, VIRGINIA

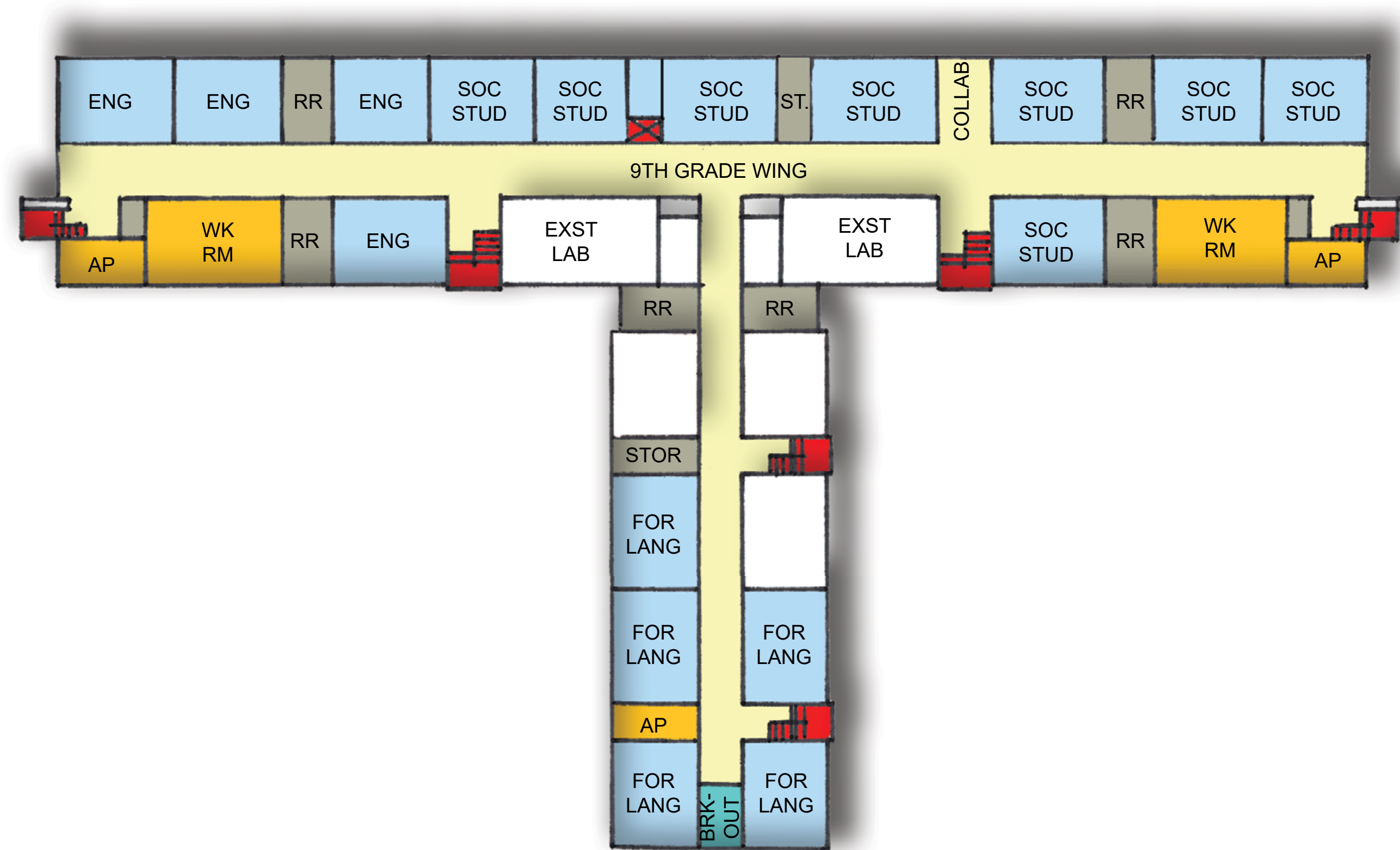
FIRST FLOOR

SCALE: 1/32" = 1'-0"

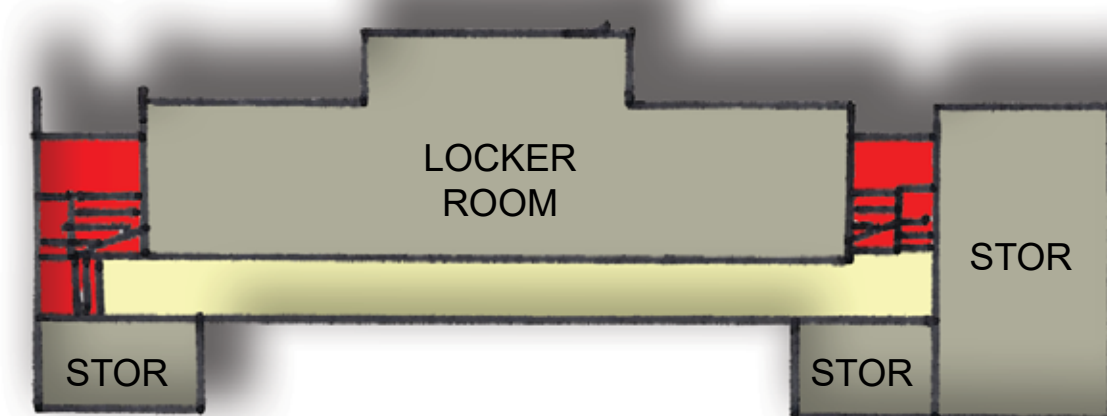
RRMM PROJECT NO: 22155-00

DATE: 09/01/2022

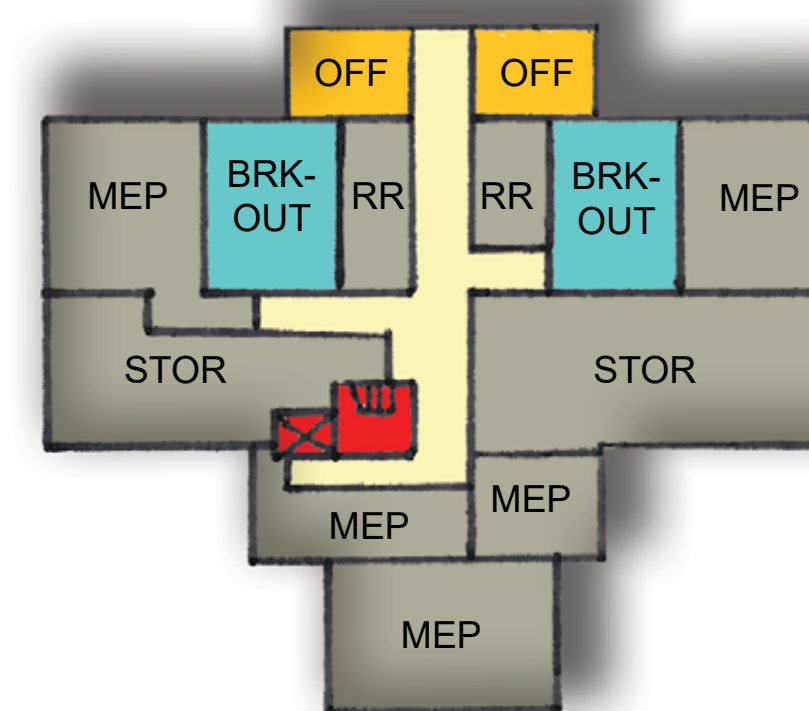




SECOND FLOOR



BASEMENT



BASEMENT

GEORGE WASHINGTON PROPOSED MAIN BUILDING PLANS

DANVILLE CITY PUBLIC SCHOOLS - GWHS - ADDITIONS AND RENOVATIONS
DANVILLE, VIRGINIA

SCALE: 1/32" = 1'-0"

RRMM PROJECT NO: 22155-00

DATE: 09/01/2022



Area Schedule (Programming)		
Name	Area	Level
NURSING	2371 SF	CTE FIRST FLOOR
AG/COSMOTOLOGY	2416 SF	CTE FIRST FLOOR
BUSINESS LAB	1674 SF	CTE FIRST FLOOR
ACCESSORY	708 SF	CTE FIRST FLOOR
GRAPHICS LAB	1253 SF	CTE SECOND FLOOR
NETWORKING & CYBER SEC	1306 SF	CTE SECOND FLOOR
ROBOTICS	2510 SF	CTE SECOND FLOOR
BUSINESS LAB	1671 SF	CTE SECOND FLOOR
ACCESSORY	543 SF	CTE SECOND FLOOR
DENTISTRY	1973 SF	CTE SECOND FLOOR
BUSINESS LAB	1238 SF	CTE SECOND FLOOR
BUSINESS LAB	1119 SF	CTE SECOND FLOOR
HEALTH CARE CLASSROOM	1178 SF	CTE SECOND FLOOR
EMPTY	639 SF	CTE FIRST FLOOR
WELDING	1218 SF	02-CTE SHOP FIN FLOOR
MACHINING	11046 SF	02-CTE SHOP FIN FLOOR
BUILDING TRADES	4431 SF	02-CTE SHOP FIN FLOOR
AUTOMOTIVE TECH	5335 SF	02-CTE SHOP FIN FLOOR
ACCESSORY	223 SF	02-CTE SHOP FIN FLOOR
ACCESSORY	185 SF	CTE SECOND FLOOR
ACCESSORY	24 SF	CTE SECOND FLOOR
ACCESSORY	295 SF	CTE SECOND FLOOR
ACCESSORY	439 SF	CTE FIRST FLOOR
ACCESSORY	1753 SF	CTE FIRST FLOOR
ACCESSORY	305 SF	CTE FIRST FLOOR
CHANGING	302 SF	CTE FIRST FLOOR
COMMON LAUNDRY	259 SF	CTE FIRST FLOOR
PATHS	3590 SF	CTE FIRST FLOOR

Programming

- ACCESSORY
- BUSINESS LAB
- EMPTY
- NURSING
- PATHS
- CHANGING
- COMMON LAUNDRY
- AG/COSMO

1 CTE FIRST FLOOR
CTE P1 SCALE: 1/16" = 1'-0"

Programming

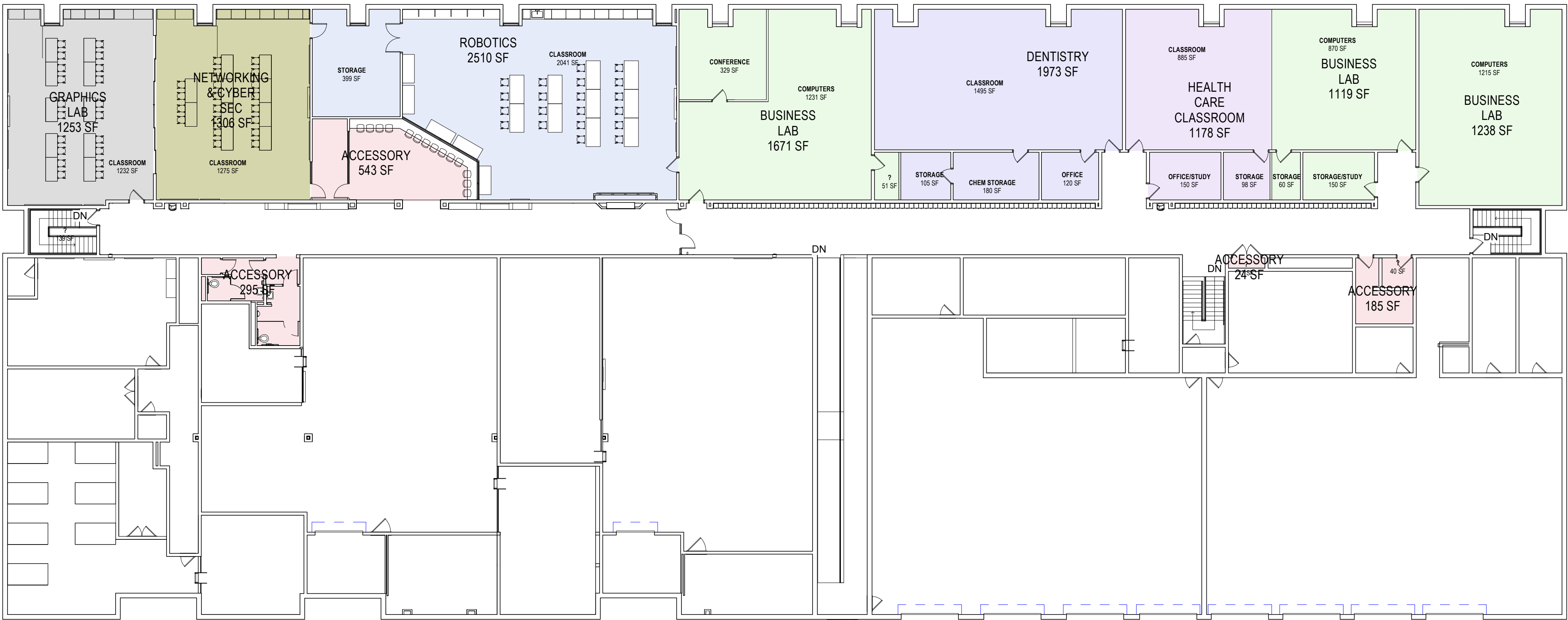
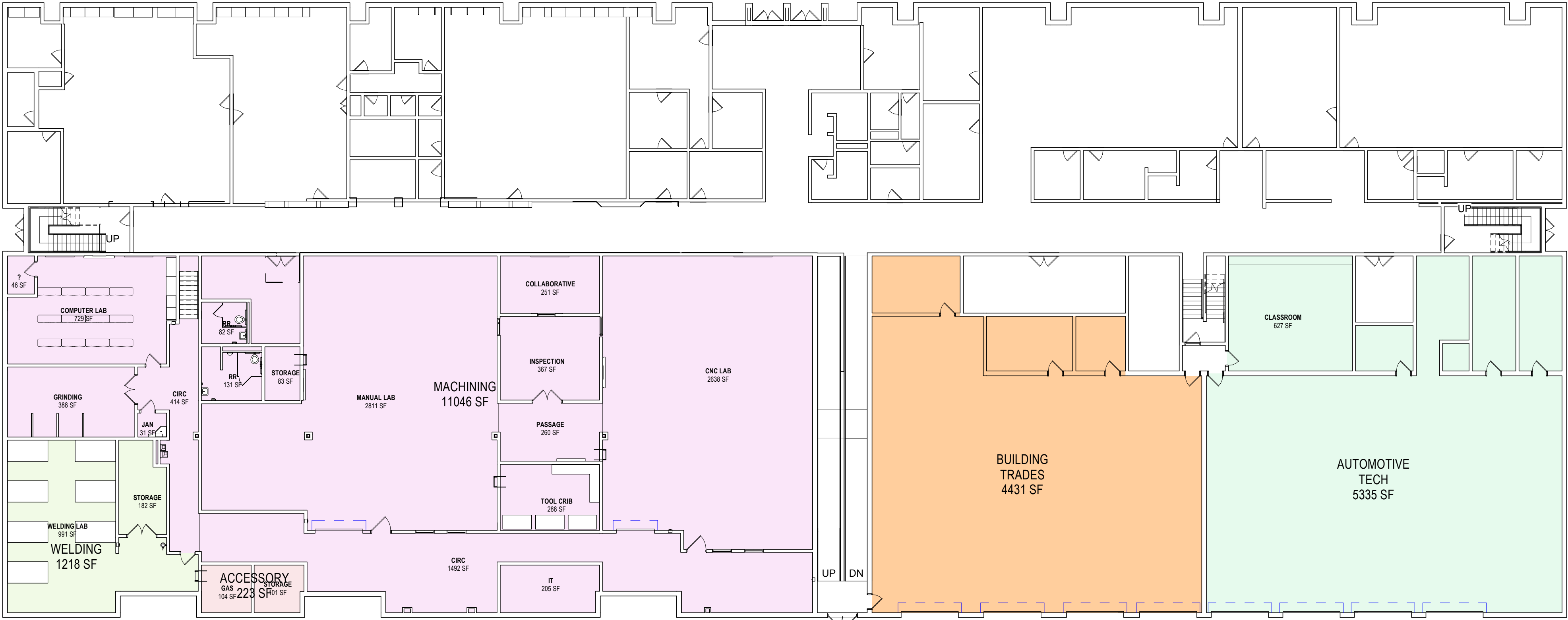
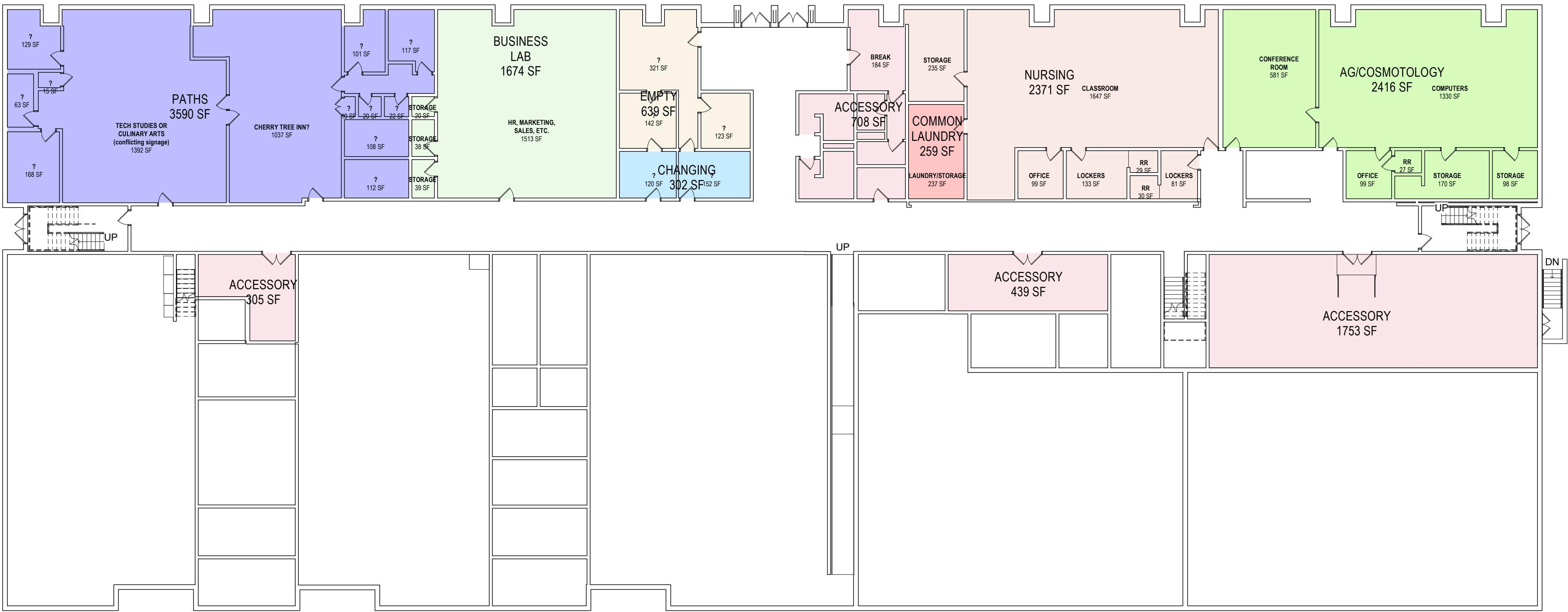
- ACCESSORY
- AUTOMOTIVE TECH
- MACHINING
- WELDING
- BUILDING TRADES

2 02-CTE SHOP FIN FLOOR
CTE P1 SCALE: 1/16" = 1'-0"

Programming

- ACCESSORY
- BUSINESS LAB
- DENTISTRY
- HEALTH CARE CLASSROOM
- ROBOTICS
- GRAPHICS LAB
- NETWORKING & CYBER SEC

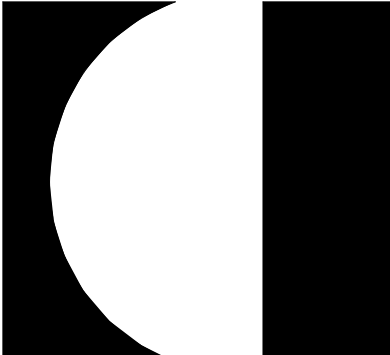
3 CTE SECOND FLOOR
CTE P1 SCALE: 1/16" = 1'-0"



DESCRIPTION	BY	MARK	DATE	REVISIONS

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DATE	ISSUE	DATE	PROJECT	DESIGNED	DRAWN	CHECKED



RRMM
ARCHITECTS, PC
28 Church Ave SW
Roanoke, Virginia 24011
(540)344-1212



OWNER	DCPS George Washington High School
PROJECT	Enter address here
DRAWING	Unnamed

SHEET	CTE P1
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8/31/2022 3:33:55 PM Autodesk Docs://22155-00 DCPS George Washington HS/22155-00 DCPS George Washington HS_ARCH.rvt

Area Schedule (JROTC Programming)	
Name	Area
ACCESSORY	71 SF
ACCESSORY	91 SF
ART	821 SF
ART	1092 SF
ART	1764 SF
ART STORAGE	109 SF
ART STORAGE	208 SF
ART STORAGE	254 SF
CIRCULATION	2090 SF
JROTC ARMORY	206 SF
JROTC CLASSROOM	948 SF
JROTC CONFERENCE ROOM	430 SF
JROTC DRILL LAB	2106 SF
JROTC MENS DRESSING & LOCKERS	667 SF
JROTC OFFICE	123 SF
JROTC OFFICE	140 SF
JROTC UNISEX DRESSING	96 SF
JROTC WOMENS DRESSING & LOCKERS	668 SF
KILN ROOM	83 SF
RESTROOM	129 SF
RESTROOM	168 SF
STORAGE	127 SF
STORAGE	184 SF
STORAGE	198 SF

Programming

- ACCESSORY
- ART
- ART STORAGE
- CIRCULATION
- JROTC ARMORY
- JROTC CLASSROOM
- JROTC CONFERENCE ROOM
- JROTC DRILL LAB
- JROTC MENS DRESSING & LOCKERS
- JROTC OFFICE
- JROTC UNISEX DRESSING
- JROTC WOMENS DRESSING & LOCKERS
- KILN ROOM
- RESTROOM
- STORAGE



JROTC FIRST FLOOR
SCALE: 1/8" = 1'-0"

DESCRIPTION
BY
DATE
REVISIONS

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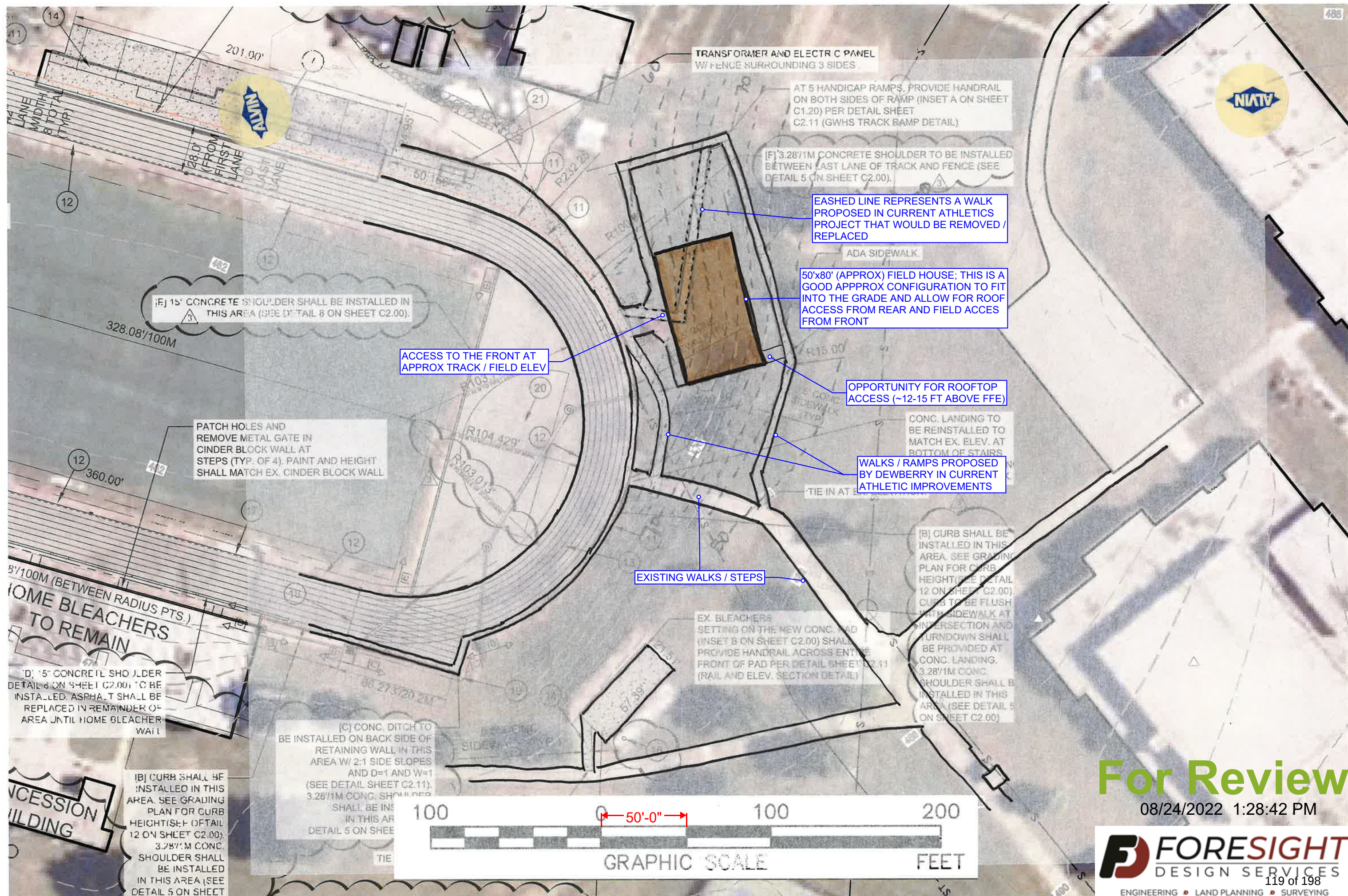
DATE	Issue Date	PROJECT	22155-00	DESIGNED	Designer	DRAWN	Author	CHECKED	Checker
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RRMM
ARCHITECTS, PC
28 Church Ave SW
Roanoke, Virginia 24011
(540)344-1212



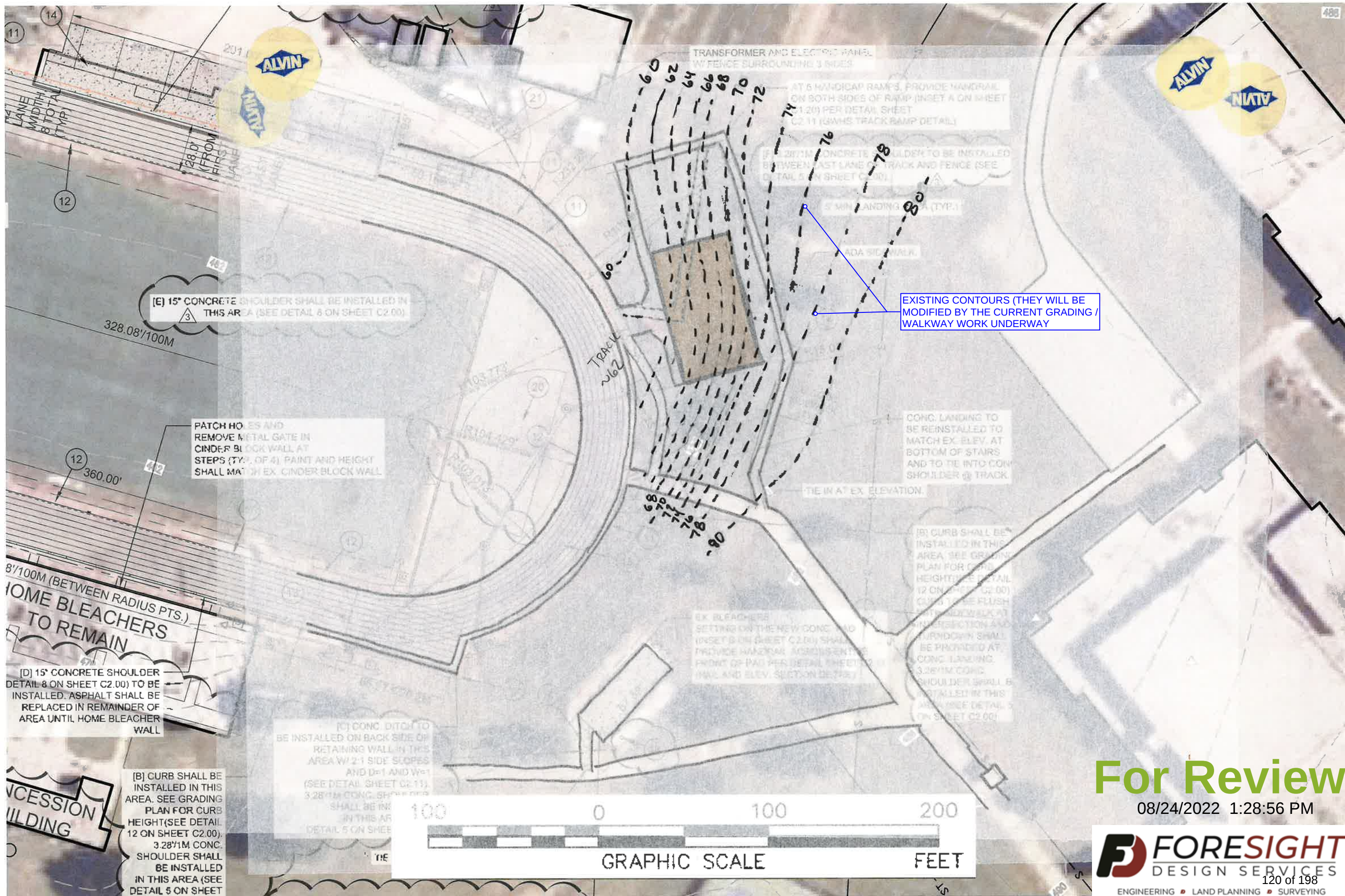
PROJECT
GEORGE WASHINGTON HIGH SCHOOL ADDITIONS AND RENOVATIONS
DANVILLE CITY PUBLIC SCHOOLS
701 BROAD STREET
DANVILLE, VA 24041
DRAWING

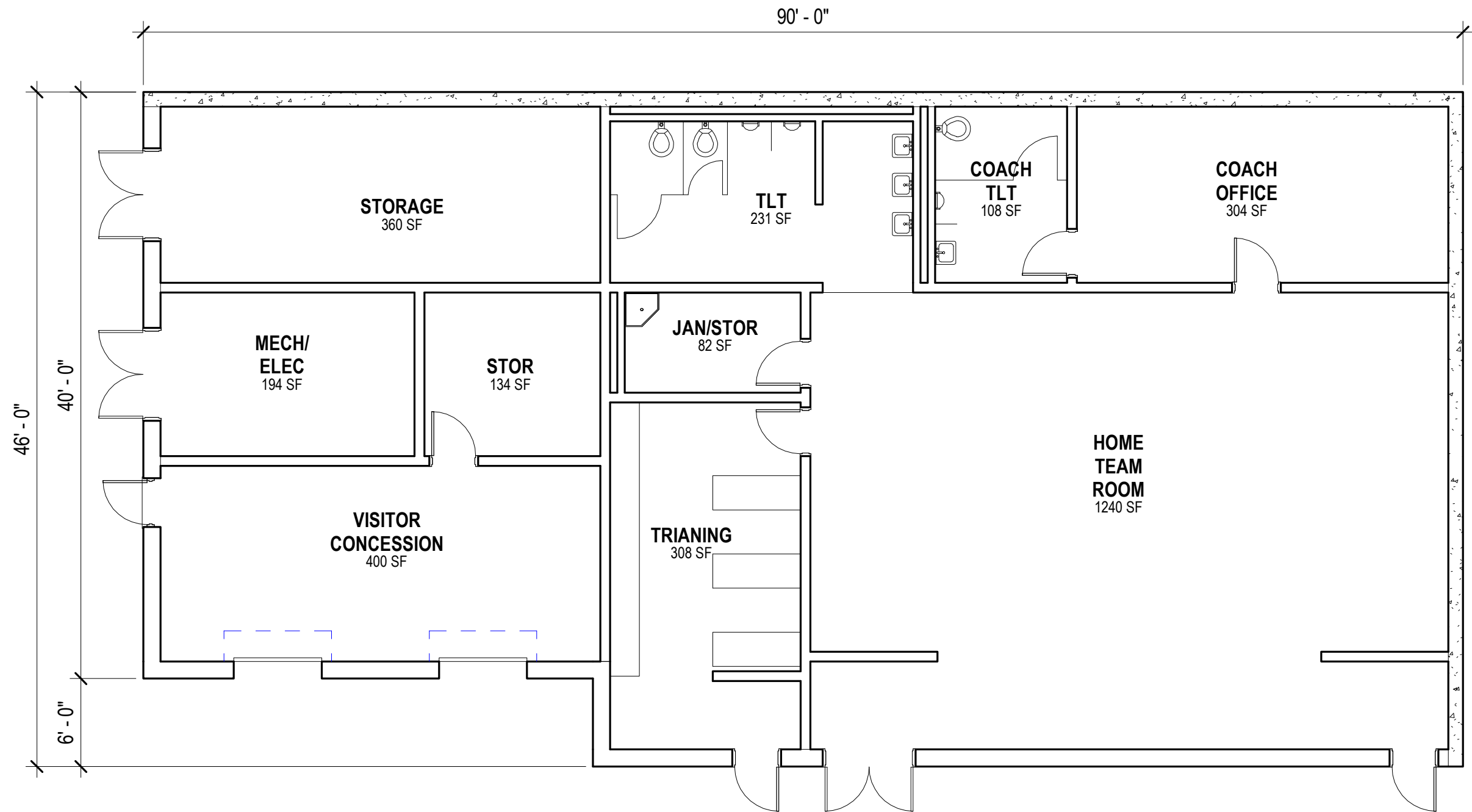
SHEET
JROTC
P1

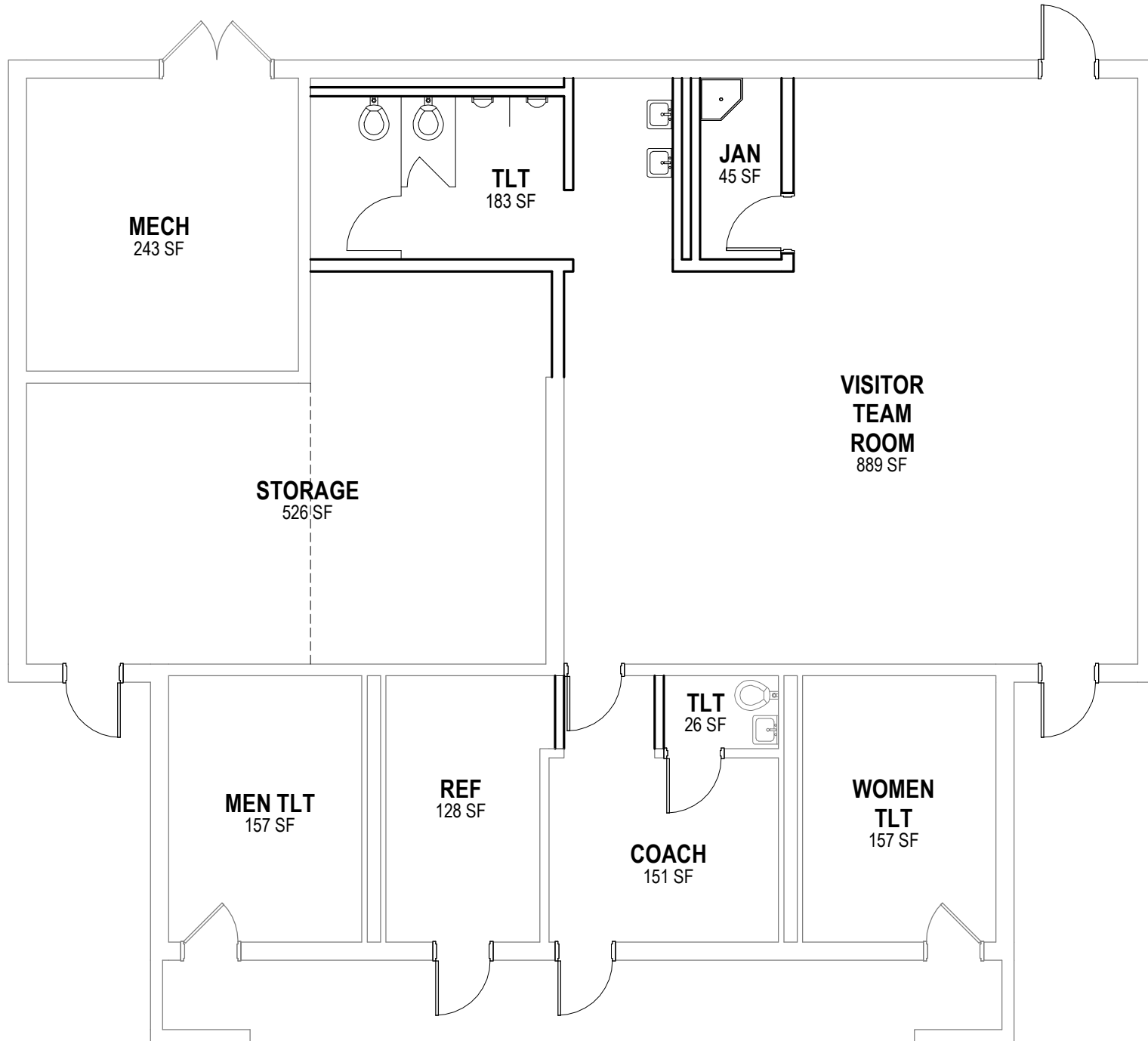


For Review

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High School Program Chart

George Washington Grades 9-12

DANVILLE CITY PUBLIC SCHOOLS
RRMM ARCHITECTS
08.18.22

# Students 1800					# Students			
SPACE DESCRIPTION	QTY	VDOE REC	SF	SUBTOTAL	QTY	SF	JBTOTAL	REMARKS
General Information /Site Data								
School Capacity - INITIAL	1800	1800			1800			1000+200
School Capacity - FUTURE	1800	1800			1800			
School Capacity per DOE (25/classrm)	0							
Students Per Basic Classroom	24	25			25			
Number of Core Subject Classrooms								
Number of Self contained Sp. Ed								
Acreage								
Staff Parking / Visitor Parking	210				210			
Student Parking	150				150			CONFIRM W / ZONING
Bus Parking	25				40			Drop off and leave - no permanent parking
Spec. Ed. Bus Parking	5				5			At existing front loop
Other Special Site Features	Yes				Yes			JROTC Drill Pad (100x100) Use existing parking area, but w/ mod. to slope and drain
Raised Loading Dock (Yes or No)	-				Yes			Existing to be renovated
Bus Canopy? (Yes or No)	no				no			
Service Area Parking	25				15-20			
Number of Dumpsters	3				3			2+1 recycling(discuss with City & Custodial for process)
Baseball Field (provide radius)	yes				?			Existing to be rebuilt. reseed field, field fencing, scoreboard, dugouts, lighting, press box, etc. Review Dant Clayton Option for backstop/press/dugouts
Softball Field (provide radius)	no				?			Existing located off-site to remain as-is
Baseball Stadium	yes				no			Bleacher seating only- Dant Clayton option
bull pen	yes				yes			(1) existing to remain, (1) existin to relo.
Indoor Batting Cage	no				no			existing no change
Tennis Courts	yes				yes			keep existing - ck, adding access gate to retrieve balls - separate school site
Soccer (competition)	no				no			
Soccer Practice Field	no				no			
Soccer / Multi-purpose Field (dims.)	no				no			Shared with Football. if needed.
Football / Track Stadium	-							improvements to existing, press boxes, field house, etc. See narrative - visitor concessions in new field house, and new field house, remove old drivers ed booth, existing fieldhouse to be renovated for visitors and storage and track office / referee, track and field mat storages w/ roll up door. Need definition of mats
Track (provide dimensions)/practice field	-							existing
Football Practice Field	no							existing
Outdoor Basketball Courts	no				no			
Field House	yes				yes			football home team room, trainers room, visitors concessions, coaches offices, restrooms team and coaches (no lockers, no showers)
Golf Driving Range, Putting Green	no				no			
Multi-Use Hard Surface (dimensions)	no				no			See ROTC
Outdoor Learning Area	yes				yes			where opportunity is available
Field Games Area	no				no			practice field existing
Fitness Dev. Equipment Area	no				no			
Core Subjects Classrooms								
English 10-12	8	11	700	5600	11	700	7700	verify existing spaces
English 9	4	0	700	2800				
Foreign Language 10-12	5	5	700	3500	5	700	3500	
Foreign Language 9	1	0	700	700				
Math 10-12	8	8	700	5600	8	700	5600	
Math 9	4	0	700	2800				
Combined Science Lab/Classrooms 10-12	4	4	1400	5600	4	1400	5600	Prep Room , 1400 SF - 8 total two rooms with prep in between, acid tanks under sink- scope all existing drains.
Combined Science Lab/Classrooms 9	4	4	1400	5600	4	1400	5600	Upgraded recently- review, minor changes
Resource Rooms		4	750		4	700	2800	Ask about these vs. extra CR space
Science Classroom 10-12	8	0	700	5600	0	0	0	See above
Social Studies 10-12	8	8	700	5600	8	700	5600	if extra cr spaces are need otherwise stick to the 8 per HS VDOE
Social Studies 9	4	0	700		0			
Subtotal Core Subject Classrooms	58			43400			36400	
Other Instructional Spaces								
Health/PE 9	1	3	800	800	3	800	2400	Or designated resource room
Health/PE/Drivers Ed 10-12	1		800	800				
Self-Contained Special Ed.	5		750	3750	4	750	3000	5 with toilet, 3 also with shower and changing area
Self-Contained Special Ed.Life Skills Core	1		750	750	2	750	1500	disperse SE programs
Conference Room					1	150	150	For Spec Ed Suite
Itinerant office					4	100	400	
Psychologists office					1	100	100	
Testing office					1	100	100	
Sensory	1		800	800	1	800	200	These may mix or substitute with these above.
OT/PT	1		600	600	1	600	600	
Speech / Language Therapy	1		200	200	1	200	200	
Visually Impaired	1		200	200	1	200	200	
Breakout Spaces	4		400	1600	4	200	800	dispersed
Resource Classrooms	2		350	700	2	400	800	NO leave for this area
Subtotal Other Instructional Spaces				10200			10450	
								no classroom space in the basement areas NO STORAGE IN THE MECH ROOMS OR LOFTS

High School Program Chart

George Washington Grades 9-12

DANVILLE CITY PUBLIC SCHOOLS
RRMM ARCHITECTS
08.18.22

# Students 1800					# Students			REMARKS
SPACE DESCRIPTION	QTY	VDOE REC	SF	SUBTOTAL	QTY	SF	JBOTAL	
Fine Arts Center								List spaces and assignments - renovation and relocation of materials,refurb
Auditorium/Stage/Catwalks/Control rooms								
Art	3		900	2700	2	1400	2800	
Art Storage	3		300	900	2	300	600	
Kiln Room	1		100	100	1	200	200	
Art Classroom	0		700	0	1	700	700	
Art Storage					1	200	200	
Black Box Theatre	1		2700	2700	1	1800	1800	Existing - Use "Little Theater"
Orchestra	1		3000	3000	1	3000	3000	Expand into little theater, 2800 to 3400 possible
Instrumental Band	1		3000	3000	1	3000	3000	expand with new addition
Music Offices	3		120	360	3	120	360	Use existing spaces
Music Library	2		120	240	2	120	240	Use existing spaces
Practice Rooms	3		100	300	4	100	400	use existing spaces, expand band, use (2)CR in existing near CTE expansion
Uniform Storage	2		250	500	2	500	1000	1 band, 1 choral
Choral (Vocal Music)	1		1550	1550	1	1500	1500	Existing room is adequate size, needs acoustical study'
Recording Studio	1		800	800	1	700	700	control room included-use existing
Instrumental Storage	1		500	500	1	1000	1000	MORE STORAGE expansion existing band
Dressing Rooms	2		500	1000	2	500	1000	New in expansion
Subtotal Fine Arts Center				17650			18500	
Career and Technical Center (Vocational)								
Agriculture Lab/CR	1		2400	2400	1	1700	1700	REVISE TO COSMOTOLOGY - Delete Ag
Greenhouse	1		1200	1200	0	0	0	4-6 booths/chairs/mirrors
Agriculture Classrooms	1		700	700	1	700	700	Cosmo classroom
Cyber Security / Networking	1		1200	1200	1	1200	1200	2500 existing, but could be combined into one 1200 sf space
Robotics	1		2040	2040	1	2040	2040	Existing
Robotics Storage	1		400	400	1	400	400	Existing
Multi-Purpose Labs	4		1400	5600	4	1000	4000	Business Labs
Graphics /TV Lab / Editing / Control	1		1200	1200	1	1200	1200	adjacent to cyber
PATHS	1		3550	3550	1	3550	3550	Clinic at end of existing areas
Auto Service Technology Lab	1		5400	5400	1	5400	5400	Existing, all new equipment
Auto Service Technology Classroom	1		700	700	1	700	700	
Building Trades	1		3800	3800	1	3400	3400	confirm size, electrical, plumbing,HVAC
Building Trades Classroom	1		700	700	1	700	700	
Building Trade Storage					1	800	800	ADDED
Precision Machning	1		11600	11600	1	11600	11600	All recently renovated. Does not include existing welding area
Welding Lab	1		2000	2000	1	820	820	820 square feet existing.
Common Project Area	1		2000	2000				covered outdoor area, outside bldg program, IR heating
Dental Lab	1		1000	1000	1	700	700	4-5 dental chairs, share with nursing spaces
Dental Classroom	1		700	700	1	700	700	
Dental Storage	1		300	300	1	300	300	
Common Changing Room	2		120	240	2	120	240	
Common Laundry Room	1		120	120	1	120	120	
Nursing Lab	1		1600	1600	1	1400	1400	6-8 beds - 2 ICU/ 4-6 headboards
Nursing Classroom	1		700	700	1	700	700	
Nursing Storage	1		300	300	1	300	300	Similar suite setup as Dental
Health Care Classroom	1		900	900	0	0	0	- use nursing CR
JROTC Drill Lab / Firing Range	1		1600	1600	1	1600	1600	existing - replace flooring
JROTC Classroom	1		700	700	1	700	700	
JROTC Armory	1		150	150	1	200	200	overhead door - internal secured.
JROTC Supply Room	1		700	700	1	700	700	
JROTC Dressing Rooms	2		200	400	2	400	800	w/ lockers
JROTC Offices	2		150	300	2	150	600	
JROTC Conference Room	1		300	300	1	300	300	
Culinary Arts Kitchen	1		3600	3600	1	2400	2400	confirm size(office, locker/changing room, cold storage, etc) cold storage
Culinary Arts Dining (Café)	1		1600	1600	1	600	600	reach in cooler freezer not FC units
Culinary Arts Classroom	2		700	1400	2	700	1400	How many seats - Outside school use possible
Culinary Storage					1	300	300	
Culinary Washer/Dryer					1	120	120	
Culinary Changing/toilets					2	400	800	
Food, Nutrition, & Wellness Classroom / Lab	1		800	800	1	1200	1200	2 residential kitchens
				0	0	0	0	
Subtotal Other Instructional Spaces				61900			54390	

High School Program Chart

George Washington Grades 9-12

DANVILLE CITY PUBLIC SCHOOLS
RRMM ARCHITECTS
08.18.22

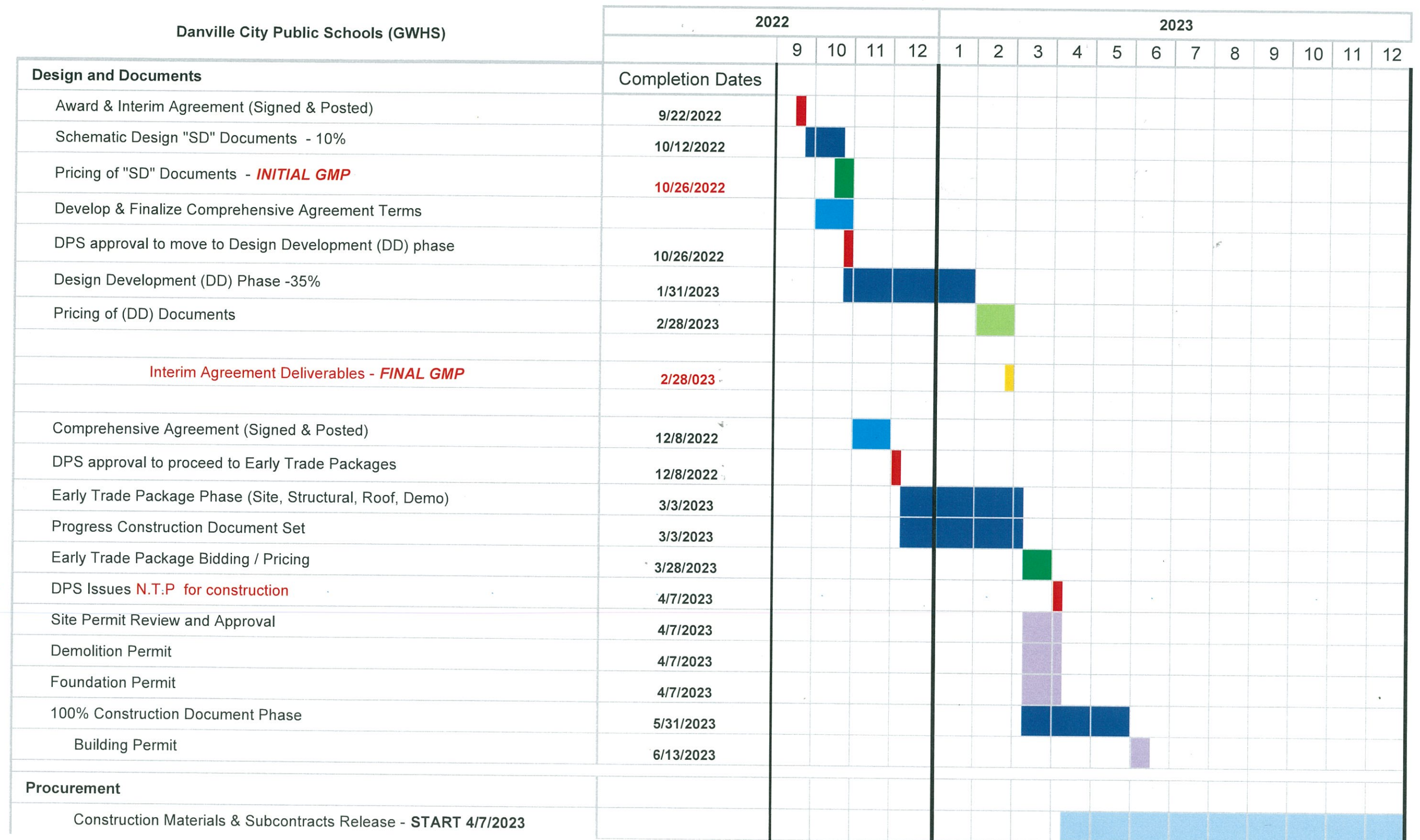
# Students 1800					# Students			REMARKS
SPACE DESCRIPTION	QTY	VDOE REC	SF	SUBTOTAL	QTY	SF	UBTOTAL	
Administrative Facilities								
Waiting / Reception	1		200	200	1	200	200	
General Office Area (Secretary)	1		200	200	1	200	200	
Secretary Office	1		150	150	1	150	150	
Work Room	1		200	200	1	200	200	
Principal	1		200	200	1	200	200	
Principal's Toilet	1		50	50	1	50	50	
Resource Officer	2		150	300	2	150	300	
Athletic Director	1		150	150	1	150	150	
Bookkeeper	1		120	120	1	120	120	
In-School Suspension	1		600	600	1	600	600	
Clinic	1		250	250	1	250	250	
Separate Nurses Office	1		150	150	1	150	150	
Male Cot Room	1		50	50	1	50	50	
Female Cot Room	1		50	50	1	50	50	
Clinic Toilet	1		75	75	1	75	75	
Unisex Staff Toilet	2		0	0	2	0	0	
Records Vault	1		100	100	1	100	100	With Guidance / Records storage in basement receiving
Closet	1		50	50	1	50	50	
Book Storage	0		0	0	0	0	0	Included in Other Spaces
Supply Closet	1		50	50	1	50	50	
Conference Room	1		350	350	1	350	350	
Small Conference Room	1		200	200	1	200	200	
Guidance Waiting / Reception	1		200	200	1	200	200	
Registrar	1		150	150	1	150	150	NOT linked in Admin are - can be dispersed with AP offices
Guidance Office	5		150	750	5	150	750	
Guidance Storage / Records	1		200	200	1	200	200	
Guidance Conference	1		250	250	1	250	250	
Career Center	1		350	350	1	350	350	
Guidance Unisex Toilet	1		60	50	1	60	50	
Security Camera Room	1		120	120	1	120	120	review with Security - SRO office central monitoring at new Central Office
Attendance Office	1		120	120	1		120	
Guidance part of Admin?(yes or no)	Yes			NO				
Main Admin Office Circulation				0				
Main Admin Office Subtotal				6500			6500	
Teacher Work Room	4		1000	4000	4	1000	4000	No spaced out around school , workroom near AP's regular CR size
Staff only Toilets	4		60	240	4	60	240	
Assistant Principal	4		150	600	6	150	900	Dispersed around school
Subtotal Administrative Spaces				11340			11640	
Auxiliary Support Spaces								
Library / Media Center								
Media Center	1		8420	8420	REVISED			1000 + (3x1800) per VDOE. Use existing but update and redesign, tech based, research based, color space. Reading areas and lounge. Repurpose existing space
Subtotal Library				8420	1	8420	8420	

High School Program Chart

George Washington Grades 9-12

DANVILLE CITY PUBLIC SCHOOLS
RRMM ARCHITECTS
08.18.22

# Students 1800					# Students			REMARKS
SPACE DESCRIPTION	QTY	VDOE REC	SF	SUBTOTAL	QTY	SF	JBTOTAL	
Cafeteria / Food Service								
Dining Area	1		6400	6400	1	6400	6400	3 shifts @ 600 w/ way to separate seniors with different seating (418 current). Use 600 X 11SF per student per VDOE. Food service kiosks. Multiple choices, outdoor dining, flexible seating, pizza line, hot foods lines, salad / fruit bars. Bookstore / business outside cafeteria. Existing is not big enough. 3 serving line
Faculty Dining	1		300	300	1	300	300	
Vending	1		200	200	1	200	200	Yes, but need a way to secure
Business Area / Store	1		200	200	1	200	200	May already be an existing space. Retail area for student sales
Kitchen / Serving Area	1		4200	4200	1	4200	4200	(7200 x 25% +/-) + (1,000 + 1 x 1,800) per VDOE
600 pupil								
Kitchen Office	1		200	200	1	200	200	
Mop Closet	1		100	100	1	100	100	
Trash / Recycled Material/Can Wash	1		150	150	1	150	150	
Loading Dock								Included in Circulation and Support Factor
Chair / Table Storage	1		450	450	1	450	450	
Subtotal Food Service				12200			12200	
Gymnasium/P.E./Athletics								
PE Gym - Aux Gym existing	1		12700	12700	1	12700	12700	New Auxiliary Gym
New Competition Gym	1		20000	20000	1	20000	20000	10000 Per DOE; includes seating area and indoor track. NCAA size court (50x94)
Seating capacity			2500			2500		Current is approx. 2000 seats (magna vista reference) host playoffs. Access to the seats from concourse level and not floor if possible.
Stage with Gym? (yes or no)					NO			no
Existing PE Male / Female Lockers	1		4100	4100	1	4100	4100	Refurbish as new team locker room
Varsity Male & Female Locker / Team Rm	1		4100	4100	1	4100	4100	Part of new gym expansion - No use or review existing
Existing Team Locker Room (basement)	1		4100	4100	1	4100	4100	Existing in basement. To be refurbished for Football
Weight Room	1		1500	1500	1	1500	1500	Existing but to be renovated and increase visibility for safety. Customize for basketball, track, PE, etc.
Wrestling Room - SHOW NUMBERS	1		2567	2567	1	2567	2567	in exist Aux Gym, but need to add mat storage. Need to separate concessions from Aux Gym
Hall of Fame	1		500	500	1	500	500	Additional factored into circulation
PE Office Suite	1		500	500	1	500	500	(4)100 per DOE; shared open office space for 3-4 PE teachers
Head Coaches Office Suite	2		120	240	2	120	240	Boys / Girls Basketball Head Coaches
Football Locker Room and Storage								NO - storage on existing areas downstairs or in Aux Gym area
Outdoor Phys. Ed. Storage	1		250	250	1	250	250	250 per DOE
Indoor Phys. Ed. Storage	1		600	600	1	800	800	800 per DOE
Auxiliary Gymnasium	0		2525	0	0	0	0	Wrestling Room
New Concessions	-		-	-				Repurpose portion of existing locker rm area. No additional SF include.
Field House	1		4000	4000	1	1	4000	
Subtotal Gymnasium / P.E./Athletics				55157			55357	
Other Spaces								
Auditorium, Stage, Lobby, Dressing, Story	1		15300	15300	1	15300	15300	Existing SF. DOE for 1 grade of 625, w 2000 sf stage, Existing 900 OK. Stage floor needs to be redone. Need to update restrooms. Check lighting for stage and auditorium.
Prop Storage				0				Included in Circulation and Support Factor
Receiving Room				0				Included in Circulation and Support Factor
Maint Office				0				Included in Circulation and Support Factor
Maint Toilet				0				Included in Circulation and Support Factor
Janitors Closets								
Subtotal Other Spaces				15300			15300	
Subtotal All Programmed Spaces for 1800				235,567			222,657	
Corridors, Toilets, Structure, Support			50.0%	117,784			111,329	
Building Efficiency Ratio (Net/Gross)			67%					
Grand Total - 1800 Students				353,351			333,986	
Square Feet Per Student				196.3			185.5	
Total New SF Needed				38,354			18,306	Gym and fieldhouse additions



Danville Public Schools

Renovations and Additions to George Washington High School

8/31/2022



CONSTRUCTION COSTS				Cost Per		Cost
GWHS Renovation						
Heavy	95311	SF		\$184.07		\$17,543,991.87
Light	200899	SF		\$116.72		\$23,448,336.13
No work included (newly renovated CTE areas)	18790	SF				\$0.00
GWHS Additions	35000	SF		\$400.00		\$14,000,000.00
GWHS Exterior Athletics Improvements	1	LS		\$4,545,100.00		\$4,545,100.00
GWHS Sitework Improvements	1	LS		\$6,389,880.00		\$6,389,880.00
GWHS Construction Cost Subtotal						\$65,927,308.00
SOFT COST						
GWHS Geotechnical/Environmental Study						\$50,000.00
GWHS Testing and inspections Allowance (Special Inspections)						
Hazmat Reort						\$10,000.00
Geotech Report						\$12,000.00
Construction Testing/ Special Inspections						\$272,874.00
GWHS Arch/Eng Design Services						\$4,547,907.00
GWHS Other Design Services						
Civil Engineering Design						\$392,000.00
Surveying						\$50,000.00
Food Service Design						\$75,000.00
Acoustical / AV Consultant						\$20,000.00
Daylighting Consultant						\$20,000.00
3 D Building Scanning						\$25,000.00
GWHS Rock/Unsuitable Material Removal					Allowance	\$100,000.00
GWHS Hazardous Material Removal					Allowance	\$100,000.00
GWHS Commissioning services					Allowance	\$100,000.00
GWHS FF&E/IT/AV Allowance					Allowance	\$3,533,496.00
FF&E Design Service						\$140,000.00
FFE & Techology CTE					Allowance	\$1,400,000.00
GWHS Utility Connection fees					Allowance	\$100,000.00
GWHS Permitting fees					By Owner	
GWHS Moving expenses					Allowance	\$100,000.00
GWHS Legal					Allowance	\$30,000.00
GWHS Soft Cost Subtotal						\$11,078,277.00
GWHS Design Builder's Contingency						\$2,200,000.00
Total Project Cost						\$79,205,585.00



Scope of Work

8/31/2022

Division

- 1 General Conditions AIA A232 -2019
See cost proposal for allowances for testing, commissioning, connection fees, etc.
All allowances include material, labor, taxes, equipment, general conditions, overhead, profit, bonds and insurance.
- 2 Demolition of site items as required and shown on the site plan to allow for new construction
Selective demolition as shown on clarifications as heavy and light renovations
Heavy Renovation to include new ceilings, flooring and paint. Some wall removal as required and shown. Any new partitions will be metal stud and drywall. MEP per LPA scope listed below. New sprinkler, new door locks,
Light Renovation to include new ceiling tile (existing grid), new paint, flooring to remain in 90% of this area. New locksets.
- 3 The concrete is based on using 3500 psi concrete in all locations. 4" SOG with Fiber, Footings with reinforcing reinforcing. No hardeners or special curing. All normal weight concrete.
- 4 The masonry is based on the exterior walls being constructed of a 8" or 12" CMU with 2" of spray insulation/air barrier, 1" air space and modular brick. Brick is priced as \$600 per thousand and colored brick mortar at \$18 per bag.
- 5 Standard structural steel package. No special loads. Standard primer. AISC or independent inspection allowed. Standard deck and bar joist. All rails to be standard steel painted.
No light gauge trusses included. Bearing cold form to be delegated design.
- 6 All casework to meet AWI standards, no other requirements.
No GFRC included. Exterior trim to be FRP or EIFS.
- 7 No exterior waterproofing included
Standard insulation details to meet energy code requirements.
Air Barrier is part of the spray insulation carried in Division 4.
Flat roofing is priced as .060 TPO over average R30 insulation. Cover board is included.
Standing seam roof panels will be equal to AEP Span Span Lok hp Metal roofing installed over the metal decking per the manufactures recommendations. 24 gauge and 16" panels.
Gutters and downspouts are required and shall be aluminum.
Fascias will be aluminum clad and soffits will be vented aluminum panels.
No fire proofing in this pricing
Fire stopping to be provided by the MEP trades as needed.
Drywall contractors to include acoustical sealants at the base and top of walls where needed.
- 8 Hollow metal is standard 16g frames and 18 g doors
Wood doors to be lifetime 5 or 7 ply prefinished doors
Hardware is to match and locks by Newman.
OH Doors to be insulated and manually operated.
OH Coiling doors to be powder coated and manually operated.
Storefronts and curtainwall to be standard equal to Kawneer. 1" insulated Low e glazing.
- 9 All drywall to be 5/8" type X , bathroom and mechanical rooms to have 5/8" moisture/mold resistant X. All level 4 finish except where not exposed.
All hard tile is based on \$14 per SF furnished and installed, including and waterproofing and crack isolation.
All ceilings with be a 2x2 rival edge acoustical with standard grid. Exterior walkway ceilings will be exterior gypsum, finished and painted.
Athletic wood gym flooring over sleepers
All other flooring is based on \$7 SF furnished and installed including vinyl base.
No wall covering or acoustical panels have been included.
Interior to be painted with primer and 2 coats.
- 10 Visual Display- existing will remain. At new additions they will be equal to Claridage

- Signage is an allowance
- Toilet partitions will be plastic
- There is no door or wall protection
- Toilet accessories will be equal to Liberty Hardware
- Fire protection specialties - existing to remain, new for addition only
- Metal shelving other than at kitchen is by the FF&E
- No lockers included at the existing building. Other equal to Lyon
- Flag poles to be 25', two are included
- 11 No new projection screens
- Gym Equipment to include basketball goals, scoreboard, volley ball inserts only
- No new gym equipment for existing gym spaces
- Food service equipment. Reuse existing equipment where possible
- 12 Roller blinds only for new addition windows, none included for storefronts/curtainwalls
- Telescoping bleachers for the new gym only. Refurbished bleachers at renovated existing gym.
- 21 Sprinkler is a delegated design and will be a wet system. No fire pump is included.
- 22 Replace 25LF of 4" dia exterior underground PVC piping at each of 30 roof drain downspouts.
- Install new reduced pressure backflow preventers (RPZ) at three domestic water entrance locations.
- Replace all accessible galvanized domestic water piping with new PEX piping up to 1" and copper for larger.
- Replace all accessible cast iron hub and spigot sanitary piping with new cast iron no-hub piping
- Replace existing domestic hot water storage tank and heat exchanger.
- Replace two existing central thermostatic mixing valves (in boiler room).
- Replace four existing sump pumps.
- Replace existing exterior building mounted hose bibs (estimate 12) and remote yard hydrants (6)
- 23 Replace existing boiler flue system and provide new combustion air ductwork.
- Replace failed boiler master controller and connect to Trane BAS.
- Replace secondary CW pumps in main building.
- Replace all HVAC including ductwork and diffusers (except recently renovated advanced machining labs) in Vo-Tech Building.
- Demolishing abandoned chiller, cooling tower, pumps, piping, and accessories in Vo-Tech building.
- Replace unit ventilators on Science Wing and connect to building chilled water (12 units).
- Replace Science Lab fan coil units.
- Replace 4 DX RTU's serving existing Administration area.
- Replace HW/CW air handling units serving the main building.
- Replace grilles, registers, and diffusers throughout the existing building, ductwork to remain, provide allowance for insulation repairs.
- 26 Install new emergency egress lighting throughout existing buildings.
- Install new building mounted exterior emergency egress lighting.
- Replace all exterior building mounted receptacles with new GFI weatherproof in-use devices.
- Replace existing 1950's era electrical feeders to each building wing (cloth insulated wiring).
- 27 Replace existing intercom system.
- Replace existing IT hub (switch), one per classroom, and data jacks (six per classroom). Existing Cat5 wiring to remain.
- New cabling to be in the addition area only.
- All other equipment and IT is by the FF&E/IT allowance
- 28 Existing Siemens Horn-Strobe FA system to remain, system shall be expanded to serve new additions
- Intrusion/security is to be covered by the FF&E/IT Allowance
- 31 Grading and E&S as required for new building and new parking only.
- All storm drainage and storm detention is an allowance.
- No credits for nutrients are included.
- 32 Heavy duty asphalt based on 6" stone, 3" base and 1.5" of topping.
- Light duty asphalt based on 6" stone and 2" topping
- Walks are 4" with wire or mesh
- Concrete paving is 6" with rebar
- All stripping and traffic signage is typical
- Seeding and landscaping is an allowance
- 33 Fire lines are only included as needed for run in for the new sprinkler.
- Site fire lines, and hydrants are not included in this budget.
- Domestic water is to tie into existing lines, no new meters are included.
- Tie in to existing sanitary for the new addition only



Clarifications and Assumptions (Revised scope and program, meeting on 8/18/2022)

8/31/2022

General Notes all areas of additions.

- Builders risk is included for new additions only.
- An Allowance for rock, unsuitable material or hazardous material removal has been included
- An Allowance for utility connect fees has been included
- All Permit cost are to be by the Owner.
- FF&E /Technology included to the extent identified in the "Soft Cost"
- All utility and consumption cost to be paid for by the Owner.

General Notes all renovated areas.

- Builders Risk Insurance to be carried by DPS on existing school and site
- Renovation Work to take place through the school year and summers
- An Allowance is included for DPS to move all existing furniture/ items in and out of the areas to be renovated.
- An Allowance for hazardous material abatement of testing has been included.
- No abatement or work included in the existing utility tunnels.
- An Allowance is included for utility connect fees
- All Permit cost are to be by the Owner.
- All utility and consumption cost to be paid for by the Owner.
- An allowance for masonry and load bearing partitions included.
- Electrostatic painting of all existing locker exteriors (exterior only). No new lockers. No repair of existing lockers
- An Allowance is included for changes of bathrooms toilet fixtures or finishes
- No in wall or interior underground existing piping (water/sewer) to be changed. Only Exposed will be replaced water and sewer.
- An Allowance has been included for new casework. No millwork is included.
- Existing terrazzo flooring to stay in place, no new work other than patching (allowance)
- See narrative for Mechanical, Electrical and Plumbing work included in Renovated areas.
- No window work or changes
- No blinds or roller shades. If required this is covered in the FF&E
- Removal of existing roof down to deck and installation of new EPDM/TPO roofing with average R-30 insulation.
- An Allowance has been included for existing roof deck or structure replacement
- Repair and repaint all existing exterior soffits.
- ADA Signage as required
- Bring existing railing up to ADA standards
- FF&E /Technology included to the extent identified in the "Soft Cost"
- An Allowance for commissioning and test and balance of the existing Mechanical is included.
- An Allowance for sprinkler in the existing school has been included. Includes Fire lines and plastic pipe where code allowed.

Light Renovation includes (GWHS 200,899 SF)

- Painting of all walls, less glazed tile.
- Teaching wall to have all exposed items painted, no drywall.
- New ceiling tile in existing grid. Grid and light fixtures to be reused.
- An Allowance for replacement flooring is included. Majority 90% of Flooring to remain.
- New locksets in existing doors, Owner to furnish and install cylinders and keys
- Upper locker rooms to have tile replaced, but reuse existing fixtures and partitions/accessories

Heavy Renovation includes (GWHS 95,311 SF)

- Areas included in this work are Existing Office, Existing CTE, lower locker rooms, Library, Cafeteria and gym area.
- Some partition wall removal. No corridor wall removal except if required for new door opening.
- Ceiling removal.
- Floor removal except for terrazzo to remain
- New metal stud and drywall partitions as required.
- New flooring with rolled 4" rubber base, flooring to be VCT/LVT, no tile or terrazzo.
- New ceilings ACT with standard grid.
- New doors as required, new locksets in existing doors, Owner to furnish and install cylinders and keys.
- Renovated kitchen and kitchen equipment.

Lower Locker rooms to have new fixtures and finishes
An Allowance for new library or media shelving or casework is included
Library and media to have revised layout and finishes.
Existing Gym to be reconfigured for Great Hall and Aluxillary Gym (1 Basketball Court, 2 volleyball courts, small bleachers)

Mechanical, Electrical and Plumbing

Only work included is that stated in the scope of work by LPA dated 4/1/2022

Exceptions and Clarifications to the Program

Fine Arts Center

No expansion to the Orchestra
No new addition for Instrumental Band
Practice rooms will not be in the CTE
No acoustical study included or change to or new acoustical panels
Dressing rooms no new expansion

Career and Technical Center

Cosmetology – Chairs and booths to be FF&E
No new equipment for Auto Service Technology or Welding
Dental Lab – Dental chairs and equipment to be FF&E
Nursing Lab – beds and headboards are to be FF&E
JROTC – no new lockers
Food and nutrition – Appliances are to be FF&E

Gymnasium/PE /Athletics

New gym does not have an indoor track
No new equipment for the existing gym or existing aux. gym.

Exterior Athletic Items

Baseball area to include the following:

Dugouts- CMU with metal roof, no water or toilets
Field Lights (30 Foot Candle) and electrical feed
No work to the fieldhouse
New backstop and field fencing
Dress up infield and overseed existing field, no irrigation
Score board
No new Batting Cages, or work on the existing batting cages
Bull pin work to include relocation of 1 bull pin and no work to the other
Bleacher (Alum 2 sets seat 100 each)

No tennis court work

No work to the existing gravel road between baseball and football field, to be by owner

Renovate existing field house for bathrooms, visitor locker room and storage for football/track

New field house (4000 SF) for football team room and concessions.

VIP Viewing Area at the new field house is an add alternate and not in the program.

Renovate existing home restrooms

All work related to the press box is to be by the owner

Exterior Site Items

Add stone for parking behind the science wing for 35 spaces plus ADA

Rebuild the existing service area at the kitchen

New parking (Heavy duty drives, light duty parking, walks, C&G) and utility relocation at the new entrance

Site lighting at new lot at entrance

Storm water piping/Detention and nutrient credits

Rebuild the existing drive way, northwest side to auxiliary lots (light duty)(not included in base price, this is an add alternate)

Fill asphalt cracks and seal existing asphalt lots to remain

Add yard inlets and drainage along roadways/ storm

Replace water service from 3 existing meters

Landscaping and top soil

Courtyard Walks rated for fire trucks

Modified canopies to allow for fire trucks

Rework utilities as required to include electrical, plumbing, storm and drainage

New canopies as required

New 100 space lot between tennis and baseball (all light duty, except drive to Football Concessions Heavy Duty)

No new visitor parking included

PRESENTED: _____

ADOPTED: _____

RESOLUTION NO. 2022 - _____._____

A RESOLUTION OF THE COUNCIL OF THE CITY OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING THE INTERIM AGREEMENT BETWEEN THE SCHOOL BOARD OF THE CITY OF DANVILLE AND BRANCH BUILDS, INC. TO PERFORM PRELIMINARY DESIGN SERVICES FOR A NEWLY CONSTRUCTED G.L.H. JOHNSON ELEMENTARY SCHOOL, IN ACCORDANCE WITH VIRGINIA CODE § 56-575.16(5).

WHEREAS, as a part of the school bond referendum held on November 2, 2021, construction projects are planned for both George Washington High School and G.L. H. Johnson Elementary school; and

WHEREAS, pursuant to Virginia Code § 56-575.16(5) City Council is required to approve the Interim Agreement between the Danville School Board and Branch Builds, Inc. to perform preliminary design services for a newly constructed G.L.H. Johnson Elementary School in accordance with Virginia Code § 56-575.16(5).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Danville, Virginia that it hereby approves and authorizes the Interim Agreement and Exhibits between the School Board of the City of Danville and Branch Builds, Inc. to perform preliminary design services for a newly constructed G.L.H. Johnson Elementary School, substantially in the form attached hereto, in accordance with Virginia Code § 56-575.16(5).

APPROVED:

Mayor

ATTEST:

Clerk

Approved as to
Form and Legal Sufficiency:

City Attorney

INTERIM AGREEMENT

This Interim Agreement (this “Agreement”) is entered into as of September __, 2022 (the “Effective Date”) by and among the **SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA** (“the “Owner” or “School Board”), a political subdivision of the Commonwealth of Virginia, and **BRANCH BUILDS, INC.** (collectively “the Design-Builder”). The Owner and the Design-Builder are referred to individually as a “Party” and collectively as “the Parties.”

Recitals

1. On January 27, 2022, the School Board adopted its Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 (“Guidelines”), which establish procedures for the development of public facilities through public-private partnerships. These procedures in the Guidelines satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code 56-575.1 et seq. (“PPEA”).

2. On April 8, 2022, the School Board received an unsolicited proposal for the development of public facilities through public-private partnerships under the PPEA. The projects addressed in the unsolicited proposal included additions and renovations to George Washington High School and additions and renovations to Johnson Elementary School.

3. The School Board advertised the non-confidential portion of the unsolicited proposal in accordance with the Guidelines and the PPEA and solicited competing proposals. The Design-Builder submitted a competing proposal for additions and renovations to George Washington High School, additions and renovations to Johnson Elementary School, and a newly constructed Johnson Elementary School on June 13, 2022.

4. The School Board determined at its April 21, 2022 meeting that, among other things, it would be advantageous to proceed with the proposed projects using procedures for competitive negotiation, rather than using sealed, competitive bids, given the probable scope, complexity and urgency of the proposed projects; the merits of risk-sharing and the potential for added value; and the economic benefit from the proposed projects that might otherwise not be available.

5. The Evaluation Committee, appointed by the School Board at its April 21, 2022 meeting, recommended proceeding to the Detail Phase under the Guidelines and the PPEA with the Design-Builder for the portion of Design-Builder’s proposal that related to new construction for Johnson Elementary School. The School Board voted at its July 14, 2022 meeting to proceed to the Detail Phase with the Design-Builder for the new construction for Johnson Elementary School.

6. The School Board held a public hearing concerning the Design-Builder’s proposal on August 4, 2022, in accordance with the Guidelines and the PPEA.

7. The School Board has negotiated this Agreement with the Design-Builder for the preliminary design of a newly constructed Johnson Elementary School (the “Project”), which Agreement will be executed not sooner than thirty (30) days following the August 4, 2022 public hearing as required by Va. Code § 56-575.17.

8. The Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Guidelines, the Design-Builder's proposals, and discussions between representatives of the School Board and the Design-Builder.

9. The Parties acknowledge and agree that this Agreement will function as the Interim Agreement for purposes of this Project.

10. Having considered this Agreement and other information, the School Board has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4(C) and posted this Agreement for public inspection in accordance with the PPEA and Implementing Procedures.

11. In accordance with Va. Code § 56-575.16(5), the City Council of the City of Danville has approved the School Board's entering into this Agreement.

Now, therefore, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **PROJECT; SERVICES; DESIGN TEAM.** The Project includes preliminary design services for a newly constructed Johnson Elementary School to be located at the site of the existing Johnson Elementary School. The Design-Builder will furnish and provide, or cause to be furnished and provided, all architectural and engineering services for the Project, including, but not limited to, all architectural and engineering materials, labor and equipment necessary for programming, schematic design, and design development, to achieve the following tasks:

A. **Programming.** The Design-Builder will complete any programming that has not otherwise been completed during the Detail Phase. Whether completed in the Detail Phase or during Programming under this Agreement, the Design-Builder will prepare and present, for Owner's approval, a preliminary design for the Project. The Design-Builder shall establish a detailed baseline schedule for the design phases of the project, based on the criteria established by the Owner. The Design-Builder shall furnish schedule information to the CMC (as defined below) who will create and maintain an electronic schedule during the design phase. The Design-Builder shall provide regular progress updates to the Owner and the CMC and shall report on schedule progress during each project meeting, and when reasonably requested, including status of all design, permitting and regulatory activities.

B. **10% Schematic Design Drawings.** Based on Owner's approval of the preliminary design, the Design-Builder will prepare and submit to the Owner 10% Schematic Design Drawings. The Schematic Design will include the beginning of subsurface investigations (to be completed prior to the submission of the GMP (as defined below)), blocking/stacking exercises, preparation of schematic drawings and construction specifications in sufficient detail to clearly define all items which may affect the Project cost. During the Schematic Design, the design will be refined and input will be solicited from the School Board and its construction management contractor ("the CMC"). In preparing Schematic Design documents, the Design-Builder will, among other usual and

customary tasks, lead the Project team in developing building concepts and design parameters; conduct required research of codes applicable to the Project; obtain existing drawings, documentation and files of existing site and buildings; provide topographic and boundary surveys; develop preliminary plans, elevations, and sections for review; review the construction schedule; and provide an estimate for construction costs for entire Project. The Schematic Design documents should identify major building systems and construction materials. The Design-Builder will consider the use of alternative materials, building systems and equipment in developing a design for the Project that is consistent with the program, the Project Schedule and the Project Budget. At the end of the Schematic Design Phase, the Design-Builder will present to the School Board a final schematic design package for review and approval, as well as revised construction cost estimates indicating that the Project is within budget. The Design-Builder will meet with City of Danville personnel and School Board personnel before the Schematic Design Drawings submission to determinate any necessary approvals from the City for planning and land use. The Design-Builder, Owner, and City will use the Schematic Design phase to test and validate or adjust the program.

C. 35% Design Development Drawings. Based on Owner's approval of the Schematic Design documents, the Design-Builder will furnish and provide, or cause to be furnished and provided, all professional architectural and engineering services and related services necessary to develop 35% Design Development Drawings for the newly constructed Johnson Elementary School and to arrive at a Guaranteed Maximum Price ("GMP") for the completed newly constructed Johnson Elementary School. In preparing Design Development documents, the Design-Builder will, among other usual and customary tasks, coordinate with local building authorities to assure design compliance; consult with Owner and the CMC to review design concepts; prepare the Design Development documents, which consist of plans, elevations and sections showing the development from the Schematic Design documents; refine cost estimates for the Project; and review the construction schedule. The Design Development phase shall include a traffic study and any recommended construction on or off-site. The Design Development phase shall include further definition of the Schematic Design. The Project team, including the CMC, will meet collectively to further develop program requirements. The 35% Design Development Drawings must include details and design narratives regarding structural and mechanical, electrical and plumbing (MEP) components of the design and a GMP so that the School Board may evaluate the proposed design and cost and make a decision whether to proceed to a Comprehensive Agreement. The Design-Builder will perform such additional design work as may be needed to arrive at a GMP.

D. Construction Drawings. If funds are sufficient and the Parties agree in writing, this Interim Agreement may be amended to include the development of 65% Construction Documents.

E. The Services include all programming, architectural design, structural engineering, mechanical engineering, electrical engineering, plumbing engineering, civil engineering, surveying, geotechnical investigation, subsurface utility engineering, landscape architecture, hazardous material testing and abatement planning, FF&E design, architectural interior design, kitchen design, technology improvements (including

telecommunications, audiovisual and data), and security and fire protection design for the achievement of the foregoing milestones/tasks.

F. The Services include an environmental analysis and a site survey (Topographical survey suitable for design). These services will be performed in conjunction with the 10% Schematic Design Drawings.

G. Prior to completion of the 35% Design Development drawings, the Design-Builder will hold at least three meetings with the School Board's internal design/evaluation team. The Design-Builder also will hold at least one public meeting where members of the public will be allowed to view and make comments on the Project. In addition, the Design-Builder will make at least one public briefing to the School Board, and if requested at least one public briefing to City Council, prior to completing the 35% Design Development drawings. The Design-Builder will coordinate scheduling of these meetings with the School Board.

H. The Design-Builder shall assign the design team identified in its proposal to perform Services under this Agreement. The Design-Builder shall not make changes to the composition of the design team without the School Board's consent, which consent will not be unreasonably withheld, conditioned, or delayed. In addition to this design team, the Design-Builder will provide such additional staff of licensed, certified, qualified, and experienced personnel as needed to complete the Services Project within the Schedule and Fixed Fee. If any of the Design-Builder's personnel fail to perform to the School Board's satisfaction, the School Board may, upon fifteen (15) days' written notice, cause the Design-Builder to remove such person(s) from the Project and replace them with other personnel of at least equivalent knowledge, skill and experience who are acceptable to the School Board.

I. The Design-Builder shall perform all usual and customary tasks related to the Services that are reasonably required for the design of a complete, usable, and properly functioning Project, even if those tasks are not expressly enumerated in this Agreement.

J. The Design-Builder shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Design-Builder under this Agreement. The Design-Builder shall, without additional compensation, correct or revise any errors or deficiencies that deviate from the Standard of Care in its design, drawings, specifications, and other services.

K. Services also shall include the tasks enumerated in Exhibit A and Exhibit B, both of which are attached hereto and incorporated herein.

L. The Design-Builder's competing proposal for a newly constructed Johnson Elementary School, dated June 13, 2022 ("Proposal"), also is incorporated herein by reference. The Design-Builder shall perform Services in a manner consistent with the Proposal. Whenever possible, this Agreement (including Attachments A and B hereto) and the Proposal will be read as a whole with all parts being harmonized so as to avoid conflict. In the event of a conflict between this Agreement (including Attachments A and B hereto) and the Proposal, this Agreement (including Attachments A and B hereto) shall

control over the Proposal. Incorporation of the Proposal into this Agreement shall not negate the protections for disclosure afforded to trade secrets, financial information, and other confidential and proprietary information contained in Volume II of the Proposal, as permitted by Virginia Code §§ 2.2-3705.6(11), 2.2-4342(F) and 56-575.4(G).

M. The Design-Builder shall assign the Design Team (including subcontractors and subcontractors' personnel) identified in the Proposal to furnish Services on the Project. The Design-Builder shall not make changes to the composition of the Design Team without the Owner's consent, which consent will not be unreasonably withheld, conditioned, or delayed. In addition to this Design Team, the Design-Builder will provide such additional staff of licensed, certified, qualified, and experienced personnel as needed to complete the Project within the Fixed Fee. If any of the Design-Builder's personnel fail to perform to Owner's satisfaction, the Owner may, upon fifteen (15) days' written notice, cause the Design-Builder to remove such person(s) from the Project and replace them with other personnel of at least equivalent knowledge, skill and experience who are acceptable to Owner.

2. FIXED FEE. The School Board shall pay the Design-Builder a fixed fee of Eight Hundred Eighty Three Thousand Six Hundred Dollars (\$883,600.00.00) (the "Fixed Fee") for all of the Services under this Agreement. The components of the Fixed Fee are broken down as follows:

10% Schematic Design - \$245,000.00

35% Design Development - \$528,000.00

Topographic Survey - \$25,100.00

Subsurface Utility Engineering (SUE) - \$13,400.00

Environmental Analysis - \$5,100.00

Geotechnical Investigation - \$27,900.00

Traffic Impact Analysis (TIA) - \$39,100.00

The Design-Builder agrees that the Fixed Fee is full and complete compensation for the Services to be performed by the Design-Builder under this Agreement. The Fixed Fee includes all costs and expenses to be incurred by the Design-Builder in performing the Services. No costs and expenses will be reimbursed over and above the amount of the Fixed Fee. The Design-Builder covenants and agrees that the Fixed Fee stated herein is full, complete, just and adequate compensation for the Services.

There shall be no increase in the amount of the Fixed Fee without the School Board's express prior written authorization.

3. INVOICE; PAYMENT. The Design-Builder will issue invoices to the Owner only upon completion of each phase of Services enumerated in Section 2 above. Each invoice

shall include the Design-Builder's federal employer identification number and the School Board's purchase order number on the cover. Each invoice shall identify the Services that have been completed during the period since the last invoice. Each invoice shall state the amounts previously invoiced and, if different, the amounts approved for payment, the amounts paid previously, and the amount of the current invoice.

All payments will be due within thirty (30) days of receipt of the invoice. Any payment term requiring payment in less than thirty (30) days will be regarded as requiring payment within thirty (30) days after receipt of the invoice.

The School Board's review, approval or acceptance of, or payment for, any Services required under this Agreement shall not constitute acceptance of defective or nonconforming Services, nor shall it relieve the Design-Builder of any responsibility for any errors or omissions in connection with those Services, be construed as a waiver of any warranty, of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, or operate to release the Design-Builder from any obligation under the Agreement. The Design-Builder shall be and remain liable to the School Board in accordance with applicable law and the Agreement for all damages to the School Board caused by the Design-Builder's negligent performance of any of the Services furnished under this Agreement or breach of this Agreement.

4. TERM; SCHEDULE.

A. This Term of this Agreement shall commence on the date first written above (the "Effective Date") and, unless otherwise terminated as provided herein, shall continue until all the Services have been provided

B. The Design-Builder will perform Services according to the following Schedule:

- i. The Design-Builder will complete the 10% Schematic Design documents within thirty (30) days of the Effective Date.
- ii. The Design-Builder will complete the 35% Design Development documents within ninety (90) days of the Effective Date.
- iii. **Time is of the essence in completing the 10% Schematic Design and the 35% Design Development.**

5. OWNER'S RIGHT TO TERMINATE.

The School Board shall have the absolute and exclusive right to terminate or cancel the Agreement, stop the Services or the Project, or cease accepting the Services at any time, with or without cause or reason and without incurring any penalty, obligations, damages, costs or liability to the Design-Builder, except as set forth in this Section.

A. Upon receiving notice of Owner's termination of this Agreement, the Design-Builder must immediately cease and discontinue all Services (unless the notice directs otherwise) and deliver to Owner all data, drawings, specifications, reports, estimates, and such other data and records (whether completed or in progress) which may have been created or accumulated by the Design-Builder in performing the Agreement upon

Design-Builder's receipt of final payment through the termination date specified in the notice.

B. If the termination is due to the breach by the Design-Builder of a material term of this Agreement, including without limitation a failure to meet the standard of care herein, which breach or failure continues for no less than seven (7) days after the School Board provides written notice to the Design-Builder of such breach or failure and an opportunity to cure, Owner may take over the Services and prosecute the same to completion by contract or otherwise. In such case, the Design-Builder shall be liable to Owner for any damages allowed by law and upon demand of Owner shall promptly pay those damages to Owner.

C. Should the Agreement be terminated not due in any way to the fault of the Design-Builder, then the Design-Builder shall only be entitled to compensation for Services actually performed prior to termination and approved by Owner and non-cancellable expenses incurred prior to termination and approved by Owner. No profit, overhead, or any other costs of any type are allowed after the date of such termination.

D. The rights and remedies of Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

6. COMPREHENSIVE AGREEMENT. Should the parties both conclude that the Project is feasible, the parties may proceed to negotiate a Comprehensive Agreement under the PPEA to address the completion of design, construction and commissioning of the Project without further procurement. The Owner's participation in negotiation of a Comprehensive Agreement, however, shall not constitute an obligation of or commitment by the Owner to execute such Comprehensive Agreement and may be granted, denied or conditioned in Owner's sole discretion. A final Comprehensive Agreement would also need approval by City Council in addition to approval by the School Board.

7. STANDARD OF CARE. The standard of care for all professional design services performed by the Design-Builder under this Agreement will be the standards of professional skill and care that prevail in the professions of architecture and engineering in the Commonwealth of Virginia for similar projects at the time, and the Services will, at a minimum, be consistent with the Design-Builder's best work. Additionally, the Design-Builder represents and warrants that all persons performing any work on the Project under this Agreement shall be licensed and in good standing with any applicable regulatory agency for the full duration of their work on the Project under this Agreement.

8. INTELLECTUAL PROPERTY. The Design-Builder represents and warrants that the Services being provided under this Agreement will not infringe on any United States or foreign patents, copyrights or other intellectual property rights, and that the Design-Builder has all requisite licenses and agreements from third parties for the provision of such Services. The Design-Builder shall obtain and provide to the School Board any and all rights, title, interests, licenses, copyrights, trademarks, and other intellectual property rights or interests in the Services being provided for the Project. The Design-Builder warrants that the use of any designs, drawings, plans, specifications, instructions, materials, or information provided to the School

Board by the Design-Builder shall not infringe upon any United States or foreign patents, copyrights, or other intellectual property rights.

9. OWNERSHIP OF WORK PRODUCT. All documents, plans, specifications, diagrams, schematics, and other deliverables produced by the Design-Builder for the School Board under this Agreement and all reports, studies, plans, drawings, specifications, designs, renderings and other documents which the Design-Builder delivers to the School Board pursuant to this Agreement shall become and remain the School Board's exclusive property and shall be used exclusively for the School Board's benefit from the date of creation forward unless express written permission is given by the School Board. The Design-Builder shall not publish or disclose those reports, studies, plans or other documents to any entities or persons other than the School Board and its representatives without the prior written consent of the School Board. Notwithstanding anything to the contrary, the School Board expressly acknowledges and agrees that the drawings, specifications and other documents to be provided by the Design-Builder under the Agreement may contain certain design details, features and concepts from the Design-Builder's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of the Design-Builder. Nothing herein shall be construed as a limitation on the Design-Builder's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients. This provision shall not be construed as relieving the Design-Builder from the sole responsibility for all Services upon which payments have been made, or as waiving the right of the School Board to require the fulfillment of all the terms of the Agreement.

10. CLAIMS.

A. Claims by the Design-Builder, whether for money or other relief, shall be submitted in writing no later than sixty (60) consecutive calendar days after final payment. However, written notice of Design-Builder's intention to file such a claim must be given to the person to whom Notice must be given under this Agreement within ten (10) days of the occurrence or the beginning of the work upon which the claim is based. Such notice must state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of Owner or its agents that allegedly caused or may cause damage to the Design-Builder and the nature of the claimed damage. Verbal notice, Owner's actual knowledge, or a written notice given more than ten (10) days after the occurrence or beginning of the work upon which the claim is based, are not sufficient to satisfy the requirements of this Section. All claims must state that they are "claims" pursuant to this Section, be submitted along with all practically available supporting evidence and documentation, and request a final decision. Certificates for payment, applications for payment, vouchers, invoices, and similar requests for payment submitted for work done by the Design-Builder in accordance with the expected contract performance are routine submissions and are not claims under this Section. Proposed or requested change orders, demands for monetary compensation or other relief, and correspondence and e-mails to Owner or its representatives, which do not strictly comply with the requirements of this Section, are not claims under this Section. Such notice is a condition precedent to the assertion of any such claim by the Design-Builder. Failure to provide timely notice of intent to submit a claim precludes any relief to the Design-Builder.

B. A written decision upon any such claims will be made by the Superintendent on behalf of the Owner within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required or requested by Owner. The Design-Builder may not institute legal action prior to receipt of Owner's decision on the claim unless Owner fails to render such decision within the One Hundred Twenty (120) consecutive calendar days from submittal of its claim. Owner's decision shall be final and conclusive unless the Design-Builder within six (6) months of the date of Owner's final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in § 2.2-4364 of the Code of Virginia (1950), as amended. Failure of Owner to render a timely decision on a claim will not result in the Design-Builder being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of Owner's failure to render a timely decision is the Design-Builder's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Code of Virginia (1950), as amended, has been established for contractual claims under this Agreement.

C. If a claim is made prior to completion of the Services, the Design-Builder shall proceed diligently with performance of the Services and Owner shall continue to payments in accordance with the Agreement, except for any amount in dispute.

11. INSURANCE.

The Design-Builder will, at its sole expense, obtain and maintain during the life of the contract insurance policies of the type, in the amount, and subject to the terms required by the School Board, including without limitation: (i) commercial general liability insurance with minimum limits of liability of \$2,000,000 combined single limit for any one occurrence; (ii) broad form contractual liability insurance, which shall include the indemnification obligations set forth in this Agreement; (iii) workers' compensation and employer's liability insurance covering the Design-Builder's statutory obligations under the laws of the Commonwealth of Virginia; (iv) automobile liability insurance with at least a \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this contract; (v) professional liability and errors and omissions insurance with minimum limits of \$2,000,000 per claim and \$5,000,000 policy aggregate (professional liability insurance coverage shall be maintained for five years after completion of the project) and (vi) cybersecurity insurance for recovery or replacement of lost intellectual property, against ransomware, and the like. Any required insurance policies shall be effective prior to the beginning of any work under the Agreement. All insurance except professional liability shall be written on an occurrence basis. If the Design-Builder has professional liability insurance on a claims made basis, then it must provide proof of an agreement that coverage will be maintained for at least five years beyond the expiration date of the policy in force at the time of this Agreement.

In addition, (i) the Design-Builder shall furnish the School Board a certificate or certificates of insurance showing the type, amount, effective dates, and date of expiration of the policies; (ii) the required certificate or certificates of insurance, excluding those for workers' compensation and professional liability, shall name the School Board and its officers, trustees, directors, volunteers, employees, and agents as additional insureds; (iii) the required certificate or certificates of insurance shall require 30 days advance, written notice to the School Board before being cancelled; and (iv) any insurance company providing coverage under the contract

shall be authorized to do business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.

12. INDEMNIFICATION. Except the extent prohibited by law, including Virginia Code § 11.1-4.4, the Design-Builder shall indemnify, defend, and hold harmless the School Board and its officers, agents, trustees, directors, employees, and affiliates from and against any and all liability, losses, damages, claims, causes of action, suits of any nature (including suits by the School Board against the firm), costs, and expenses, including reasonable attorney's fees and consultant's fees, resulting from or arising out of the firm's or its agent's, and/or subcontractor's errors, acts, or omissions in the performance of services under the contract or any subcontract or any breaches of the contract or any subcontract. This indemnity provision shall cover and include, without limitation, fines and penalties for violations of federal, state or local laws or regulations; personal injury, wrongful death or property damage claims; breach of contract claims; indemnity claims; and other damages, losses and claims of any kind.

13. NOTICES.

A. All notices to the Design-Builder required or permitted under this Agreement shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the Design-Builder addressed to:

Mrs. Heather Bowman
Branch Builds
3635 Peters Creek Rd.,
Roanoke, VA 24019
540-989-5215
Heather.bowman@branchbuilds.com

B. All notices to the School Board required or permitted under this Agreement shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the School Board addressed to:

Dr. Wayne Lyle, Chief Operations Officer
Danville Public Schools
341 Main Street, Suite 100
Danville, Virginia 24541
cc. wlyle@mail.dps.k12.va.us

C. Where, under the terms of this Agreement, a notice is sent by certified U.S. mail, postage prepaid, return receipt requested, such notice shall be deemed to have been given five (5) days after the date of mailing such notice. Each Party to this Agreement shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in subsections (A) or (B) above.

D. Where, under the terms of this Agreement, a notice is required or permitted to be sent by certified U.S. mail, postage prepaid, return receipt requested, and such notice is

not sent in such manner, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

14. PAYMENTS TO SUBCONTRACTORS.

A. The Design-Builder shall take one of the two following actions within seven (7) consecutive, calendar days after receiving amounts paid to the Design-Builder by the School Board for work performed by any subcontractor under this Agreement:

1. Pay the subcontractor for the proportionate share of the total payment received from the School Board attributable to the work performed by the subcontractor under that subcontract; or
2. Notify the School Board and the subcontractor, in writing, of the Design-Builder's intention to withhold all or a part of the subcontractor's payment and explain the reason for nonpayment.

B. The Design-Builder shall pay interest at the rate of one (1) percent per month to the subcontractor on all amounts owed by the Design-Builder that remain unpaid after seven (7) consecutive, calendar days following receipt by the Design-Builder of payment from the School Board for work performed by the subcontractor under that subcontract, except for amounts withheld as allowed in subsection A.2. above.

C. The Design-Builder shall insert in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

D. The Design-Builder's obligation to pay an interest charge to a subcontractor pursuant to this section shall not be construed to be an obligation of the School Board. This Agreement may not be modified for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

E. So long as the failure of the Design-Builder to make prompt payments is not due to the failure of the School Board to pay the Design-Builder, the Design-Builder shall indemnify and hold the School Board harmless for any lawful claims resulting from failure of the Design-Builder to make prompt payments to all persons supplying the Design-Builder with equipment, labor, tools or materials in prosecution and completion of the work provided for in the Agreement. In the event of such claims, the School Board may, after providing written notice to the Design-Builder, withhold from any progress and/or final payment the unpaid sum of money deemed sufficient to pay all lawful claims and associated costs in connection with the Agreement.

15. ANTI-DISCRIMINATION. The Design-Builder will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginia Human Rights Act, the Virginians with Disabilities Act, the Americans With Disabilities Act, Section 2.2-4311 of the Virginia Public Procurement Act (VPPA), and all other applicable federal, state and local anti-discrimination laws, codes, rules, and regulations. Without limiting the foregoing, during the performance of this contract, the Design-Builder agrees as follows:

1. The Design-Builder will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Design-Builder. The Design-Builder agrees to post in conspicuous places, available to employees, notices setting forth the provisions of this nondiscrimination clause.
2. The Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, will state that the Design-Builder is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
4. The Design-Builder will include the provisions of the above 1, 2 and 3 in every subcontractor or purchase order over \$10,000 in connection with this Agreement, so that the provisions will be binding upon each subcontractor or vendor.

16. **DRUG-FREE WORKPLACE.** During the performance of the Agreement, the Design-Builder agrees to (i) comply with the drug-free workplace provisions of Virginia Code 2.2-4312; (ii) provide a drug-free workplace for its employees; (iii) post in conspicuous places, available to employees, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Design-Builder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iv) state in all advertisements or solicitations for employees that the Design-Builder maintains a drug-free workplace; and (v) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 in connection with this Agreement, so that the provisions will be binding upon each subcontractor or vendor.

17. **IMMIGRATION REFORM AND CONTROL ACT OF 1986.** The Design-Builder represents and warrants that it does not and will not during the performance of this Agreement employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

18. **NONWAIVER.** The School Board's waiver or failure to enforce or require performance of any term or condition of this Agreement or the School Board's waiver of any particular breach of this Agreement by the Design-Builder extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Agreement or a waiver of any other breaches of the Agreement by the Design-Builder and does not bar the School Board from requiring the Design-Builder to comply with all the terms and conditions of the Agreement and does not bar the School Board from asserting any and all rights and/or remedies it has or might have against the Design-Builder under this Agreement or at law or in equity.

19. **LIMITATION ON LIABILITY.** **NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF REVENUE, BUSINESS INTERRUPTION, COST OF REPAIR OR REPLACEMENT SERVICES (INCLUDING THE COST OF LABOR AND MATERIALS), OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES RESULTING FROM ANY**

CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY) RELATED TO OR ARISING OUT OF THIS CONTRACT, NO MATTER THE FORM OF THE CLAIM AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20. NO THIRD-PARTY BENEFICIARIES. The Parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the School Board or the Design-Builder; (iii) no other individual or entity shall obtain any right to make any claim against the School Board or the Design-Builder under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

21. NO COLLUSION. The Design-Builder represents and warrants that this Agreement has been awarded without collusion or fraud and it has not offered or received any kickbacks or inducements from any other offeror, supplier, or subcontractor in connection with its proposal, and that it has not conferred on any School Board employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. Furthermore, the Design-Builder acknowledges that the provisions, requirements, and prohibitions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Code, pertaining to bidders, offerors, contracts, and subcontractors, are applicable to this Agreement, as are the provisions, requirements, and prohibitions contained in Sections 2.2-3100 through 2.2-3131 of the Virginia Code.

22. DEBARMENT. The Design-Builder represents and warrants that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this Agreement, nor is it an agent of any person or entity that is currently so debarred.

23. APPLICABLE LAWS AND COURTS. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the Commonwealth of Virginia. Any litigation with respect to the Agreement or the Services provided hereunder will be brought only in a court of appropriate jurisdiction in the City of Danville, Virginia.

24. COMPLIANCE WITH ALL LAWS. The Design-Builder shall comply with all federal, state and local statutes, ordinances, and regulations, now in effect or hereafter adopted, in the performance of the Services. The Design-Builder represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for the performance of the Agreement prior to the initiation of Project. If the Design-Builder is a corporation, it further expressly represents that it is a corporation in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the Agreement. The Design-Builder shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of the Project.

25. FAITH BASED ORGANIZATIONS. Pursuant to Va. Code § 2.2-4343.1, the School Board does not discriminate against faith-based organizations.

26. AUDIT. The Design-Builder shall retain all books, records, and other documents relative to this Project for five (5) years after final payment or until audited by the School Board, the City of Danville, or the Commonwealth of Virginia, whichever is sooner. The School Board or its authorized agents may, at the School Board's option and expense, audit the Design-Builder's records related to the Project at any time during the term of the Agreement or for a period of five (5) years thereafter. The Design-Builder shall cooperate with Owner's auditor and provide the documentation the auditor deems necessary in a timely and organized manner and the Design-Builder will be reasonably compensated for the costs associated with the audit. Auditors from the School Board, the City of Danville, and/or the Commonwealth of Virginia shall have full access to, and the right to examine, all such books, records, and other documents relative to this Agreement during said period. Upon request from the School Board, all such documents shall be turned over to the School Board.

27. ASSIGNMENT OF CONTRACT. Neither this Agreement nor the Design-Builder's obligations under this Agreement may be assigned, delegated or transferred without the School Board's prior written consent, which consent may be withheld in the School Board's discretion.

28. SCC REGISTRATION. Pursuant to Virginia Code § 2.2-4311.2, each entity executing this Agreement as part of the Design-Builder must be registered with the State Corporation Commission if so required by Title 13.1 or Title 50 of the Virginia Code or otherwise required by law.

29. AVAILABILITY OF FUNDS. It is understood and agreed between the Parties that the School Board shall be bound hereunder only to the extent of the funds available and duly appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling the School Board's obligations under the Agreement.

30. AUTHORIZED REPRESENTATIVES. The Design-Builder's Authorized Representative is Mrs. Heather Bowman (540-989-5215; Heather.bowman@branchbuilds.com). DPS's Authorized Representative is Dr. Wayne Lyle (434-799-6400 ext. 232; wlyle@mail.dps.k12.va.us). Each party may provide notice to the other party of a new or additional authorized representative(s) using the procedure outlined in the Notices Section.

31 CORRECTION OF DEFECTIVE WORK. The Design-Builder shall promptly replace or correct any work or materials which the School Board rejects as failing to conform to the requirements of the Agreement. If the Design-Builder does not do so within a reasonable time, the School Board shall have the right to replace or correct the defective work or materials and the Design-Builder shall be liable to the School Board for the cost thereof. If, in the opinion of the School Board, it is not expedient to correct or replace all or any part of rejected work or materials, then the School Board, at its option, may deduct from the payment due, or to become due, to the Design-Builder such amounts as, in the School Board's judgment, will represent the higher of: (i) the difference between the fair value of the rejected work and materials and the value thereof, if the work had complied with the Agreement; or (ii) the cost of correction.

32. NO CRIMES AGAINST CHILDREN.

A. The Design-Builder acknowledges that the provision of Services under the Agreement may require the Design-Builder, its employees or other persons that will provide services under this Agreement to have direct contact with Danville Public Schools students. Therefore, Design-Builder hereby certifies that neither Design-Builder, its employees nor any person that will provide Services on its behalf under this Agreement who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of: (i) any violent felony set forth in the definition of barrier crime in Va. Code § 19.2-392.02(A); (ii) any offense involving the sexual molestation or physical or sexual abuse or rape of a child; or (iii) any crime of moral turpitude.

B. The Design-Builder understands that, pursuant to Va. Code §22.1-296.1, making a materially false statement regarding offenses referenced in Section (A) above is a Class I misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. Danville Public Schools shall not be liable for materially false statements regarding the certifications required under the Agreement.

33. SEVERABILITY. If any provision of the Agreement, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall not be affected and all other terms and conditions of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

34. FURTHER ASSURANCES. It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Contract shall be and is inserted herein. Furthermore, if through mistakes and otherwise, any such provision is not inserted in correct form, then this Agreement shall upon application of either Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

35. INDEPENDENT CONTRACTORS. The Parties hereto are independent contractors and are not agents, partners, or joint venturers. Neither Party shall have the ability to bind the other to any contract with a third party and neither Party shall hold itself out to any third party as having the right to bind the other Party to any contract.

36. REMEDIES CUMULATIVE. The rights and remedies of the School Board provided for under this Agreement are in addition to any other rights and remedies provided by law.

37. SUCCESSORS. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective executors, administrators, heirs, successors-in-title, successors and assigns.

38. SOVEREIGN IMMUNITY. Nothing contained in the Agreement is intended to waive, or shall be construed as a waiver of, the School Board's sovereign immunity.

39. ENTIRE CONTRACT. This Agreement constitutes the entire and integrated agreement between the Parties. No representations, inducements, promises or agreements, oral or written, between the parties not embodied herein shall be of any force or effect. No amendment to the Agreement shall be binding on any of the Parties unless such amendment is in writing and such amendment is executed by the Parties.

40. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF the undersigned have executed this contract on the dates set forth beside their respective signatures.

SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA

By: _____
Title: Superintendent
Date: _____

BRANCH BUILDS, INC.

By: _____
Title: _____
Date: _____

Approved as to form: _____

School Board Attorney _____

INTERIM AGREEMENT

This Interim Agreement (this “Agreement”) is entered into as of September __, 2022 (the “Effective Date”) by and among the **SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA** (“the “Owner” or “School Board”), a political subdivision of the Commonwealth of Virginia, and **BRANCH BUILDS, INC.** (collectively “the Design-Builder”). The Owner and the Design-Builder are referred to individually as a “Party” and collectively as “the Parties.”

Recitals

1. On January 27, 2022, the School Board adopted its Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 (“Guidelines”), which establish procedures for the development of public facilities through public-private partnerships. These procedures in the Guidelines satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code 56-575.1 et seq. (“PPEA”).

2. On April 8, 2022, the School Board received an unsolicited proposal for the development of public facilities through public-private partnerships under the PPEA. The projects addressed in the unsolicited proposal included additions and renovations to George Washington High School and additions and renovations to Johnson Elementary School.

3. The School Board advertised the non-confidential portion of the unsolicited proposal in accordance with the Guidelines and the PPEA and solicited competing proposals. The Design-Builder submitted a competing proposal for additions and renovations to George Washington High School, additions and renovations to Johnson Elementary School, and a newly constructed Johnson Elementary School on June 13, 2022.

4. The School Board determined at its April 21, 2022 meeting that, among other things, it would be advantageous to proceed with the proposed projects using procedures for competitive negotiation, rather than using sealed, competitive bids, given the probable scope, complexity and urgency of the proposed projects; the merits of risk-sharing and the potential for added value; and the economic benefit from the proposed projects that might otherwise not be available.

5. The Evaluation Committee, appointed by the School Board at its April 21, 2022 meeting, recommended proceeding to the Detail Phase under the Guidelines and the PPEA with the Design-Builder for the portion of Design-Builder’s proposal that related to new construction for Johnson Elementary School. The School Board voted at its July 14, 2022 meeting to proceed to the Detail Phase with the Design-Builder for the new construction for Johnson Elementary School.

6. The School Board held a public hearing concerning the Design-Builder’s proposal on August 4, 2022, in accordance with the Guidelines and the PPEA.

7. The School Board has negotiated this Agreement with the Design-Builder for the preliminary design of a newly constructed Johnson Elementary School (the “Project”), which Agreement will be executed not sooner than thirty (30) days following the August 4, 2022 public hearing as required by Va. Code § 56-575.17.

8. The Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Guidelines, the Design-Builder's proposals, and discussions between representatives of the School Board and the Design-Builder.

9. The Parties acknowledge and agree that this Agreement will function as the Interim Agreement for purposes of this Project.

10 Having considered this Agreement and other information, the School Board has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4(C) and posted this Agreement for public inspection in accordance with the PPEA and Implementing Procedures.

11. In accordance with Va. Code § 56-575.16(5), the City Council of the City of Danville has approved the School Board's entering into this Agreement.

Now, therefore, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **PROJECT; SERVICES; DESIGN TEAM.** The Project includes preliminary design services for a newly constructed Johnson Elementary School to be located at the site of the existing Johnson Elementary School. The Design-Builder will furnish and provide, or cause to be furnished and provided, all architectural and engineering services for the Project, including, but not limited to, all architectural and engineering materials, labor and equipment necessary for programming, schematic design, and design development, to achieve the following tasks:

A. **Programming.** The Design-Builder will complete any programming that has not otherwise been completed during the Detail Phase. Whether completed in the Detail Phase or during Programming under this Agreement, the Design-Builder will prepare and present, for Owner's approval, a preliminary design for the Project. The Design-Builder shall establish a detailed baseline schedule for the design phases of the project, based on the criteria established by the Owner. The Design-Builder shall furnish schedule information to the CMC (as defined below) who will create and maintain an electronic schedule during the design phase. The Design-Builder shall provide regular progress updates to the Owner and the CMC and shall report on schedule progress during each project meeting, and when reasonably requested, including status of all design, permitting and regulatory activities.

B. **10% Schematic Design Drawings.** Based on Owner's approval of the preliminary design, the Design-Builder will prepare and submit to the Owner 10% Schematic Design Drawings. The Schematic Design will include the beginning of subsurface investigations (to be completed prior to the submission of the GMP (as defined below)), blocking/stacking exercises, preparation of schematic drawings and construction specifications in sufficient detail to clearly define all items which may affect the Project cost. During the Schematic Design, the design will be refined and input will be solicited from the School Board and its construction management contractor ("the CMC"). In preparing Schematic Design documents, the Design-Builder will, among other usual and

customary tasks, lead the Project team in developing building concepts and design parameters; conduct required research of codes applicable to the Project; obtain existing drawings, documentation and files of existing site and buildings; provide topographic and boundary surveys; develop preliminary plans, elevations, and sections for review; review the construction schedule; and provide an estimate for construction costs for entire Project. The Schematic Design documents should identify major building systems and construction materials. The Design-Builder will consider the use of alternative materials, building systems and equipment in developing a design for the Project that is consistent with the program, the Project Schedule and the Project Budget. At the end of the Schematic Design Phase, the Design-Builder will present to the School Board a final schematic design package for review and approval, as well as revised construction cost estimates indicating that the Project is within budget. The Design-Builder will meet with City of Danville personnel and School Board personnel before the Schematic Design Drawings submission to determinate any necessary approvals from the City for planning and land use. The Design-Builder, Owner, and City will use the Schematic Design phase to test and validate or adjust the program.

C. 35% Design Development Drawings. Based on Owner's approval of the Schematic Design documents, the Design-Builder will furnish and provide, or cause to be furnished and provided, all professional architectural and engineering services and related services necessary to develop 35% Design Development Drawings for the newly constructed Johnson Elementary School and to arrive at a Guaranteed Maximum Price ("GMP") for the completed newly constructed Johnson Elementary School. In preparing Design Development documents, the Design-Builder will, among other usual and customary tasks, coordinate with local building authorities to assure design compliance; consult with Owner and the CMC to review design concepts; prepare the Design Development documents, which consist of plans, elevations and sections showing the development from the Schematic Design documents; refine cost estimates for the Project; and review the construction schedule. The Design Development phase shall include a traffic study and any recommended construction on or off-site. The Design Development phase shall include further definition of the Schematic Design. The Project team, including the CMC, will meet collectively to further develop program requirements. The 35% Design Development Drawings must include details and design narratives regarding structural and mechanical, electrical and plumbing (MEP) components of the design and a GMP so that the School Board may evaluate the proposed design and cost and make a decision whether to proceed to a Comprehensive Agreement. The Design-Builder will perform such additional design work as may be needed to arrive at a GMP.

D. Construction Drawings. If funds are sufficient and the Parties agree in writing, this Interim Agreement may be amended to include the development of 65% Construction Documents.

E. The Services include all programming, architectural design, structural engineering, mechanical engineering, electrical engineering, plumbing engineering, civil engineering, surveying, geotechnical investigation, subsurface utility engineering, landscape architecture, hazardous material testing and abatement planning, FF&E design, architectural interior design, kitchen design, technology improvements (including

telecommunications, audiovisual and data), and security and fire protection design for the achievement of the foregoing milestones/tasks.

F. The Services include an environmental analysis and a site survey (Topographical survey suitable for design). These services will be performed in conjunction with the 10% Schematic Design Drawings.

G. Prior to completion of the 35% Design Development drawings, the Design-Builder will hold at least three meetings with the School Board's internal design/evaluation team. The Design-Builder also will hold at least one public meeting where members of the public will be allowed to view and make comments on the Project. In addition, the Design-Builder will make at least one public briefing to the School Board, and if requested at least one public briefing to City Council, prior to completing the 35% Design Development drawings. The Design-Builder will coordinate scheduling of these meetings with the School Board.

H. The Design-Builder shall assign the design team identified in its proposal to perform Services under this Agreement. The Design-Builder shall not make changes to the composition of the design team without the School Board's consent, which consent will not be unreasonably withheld, conditioned, or delayed. In addition to this design team, the Design-Builder will provide such additional staff of licensed, certified, qualified, and experienced personnel as needed to complete the Services Project within the Schedule and Fixed Fee. If any of the Design-Builder's personnel fail to perform to the School Board's satisfaction, the School Board may, upon fifteen (15) days' written notice, cause the Design-Builder to remove such person(s) from the Project and replace them with other personnel of at least equivalent knowledge, skill and experience who are acceptable to the School Board.

I. The Design-Builder shall perform all usual and customary tasks related to the Services that are reasonably required for the design of a complete, usable, and properly functioning Project, even if those tasks are not expressly enumerated in this Agreement.

J. The Design-Builder shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Design-Builder under this Agreement. The Design-Builder shall, without additional compensation, correct or revise any errors or deficiencies that deviate from the Standard of Care in its design, drawings, specifications, and other services.

K. Services also shall include the tasks enumerated in Exhibit A and Exhibit B, both of which are attached hereto and incorporated herein.

L. The Design-Builder's competing proposal for a newly constructed Johnson Elementary School, dated June 13, 2022 ("Proposal"), also is incorporated herein by reference. The Design-Builder shall perform Services in a manner consistent with the Proposal. Whenever possible, this Agreement (including Attachments A and B hereto) and the Proposal will be read as a whole with all parts being harmonized so as to avoid conflict. In the event of a conflict between this Agreement (including Attachments A and B hereto) and the Proposal, this Agreement (including Attachments A and B hereto) shall

control over the Proposal. Incorporation of the Proposal into this Agreement shall not negate the protections for disclosure afforded to trade secrets, financial information, and other confidential and proprietary information contained in Volume II of the Proposal, as permitted by Virginia Code §§ 2.2-3705.6(11), 2.2-4342(F) and 56-575.4(G).

M. The Design-Builder shall assign the Design Team (including subcontractors and subcontractors' personnel) identified in the Proposal to furnish Services on the Project. The Design-Builder shall not make changes to the composition of the Design Team without the Owner's consent, which consent will not be unreasonably withheld, conditioned, or delayed. In addition to this Design Team, the Design-Builder will provide such additional staff of licensed, certified, qualified, and experienced personnel as needed to complete the Project within the Fixed Fee. If any of the Design-Builder's personnel fail to perform to Owner's satisfaction, the Owner may, upon fifteen (15) days' written notice, cause the Design-Builder to remove such person(s) from the Project and replace them with other personnel of at least equivalent knowledge, skill and experience who are acceptable to Owner.

2. FIXED FEE. The School Board shall pay the Design-Builder a fixed fee of Eight Hundred Eighty Three Thousand Six Hundred Dollars (\$883,600.00.00) (the "Fixed Fee") for all of the Services under this Agreement. The components of the Fixed Fee are broken down as follows:

10% Schematic Design - \$245,000.00

35% Design Development - \$528,000.00

Topographic Survey - \$25,100.00

Subsurface Utility Engineering (SUE) - \$13,400.00

Environmental Analysis - \$5,100.00

Geotechnical Investigation - \$27,900.00

Traffic Impact Analysis (TIA) - \$39,100.00

The Design-Builder agrees that the Fixed Fee is full and complete compensation for the Services to be performed by the Design-Builder under this Agreement. The Fixed Fee includes all costs and expenses to be incurred by the Design-Builder in performing the Services. No costs and expenses will be reimbursed over and above the amount of the Fixed Fee. The Design-Builder covenants and agrees that the Fixed Fee stated herein is full, complete, just and adequate compensation for the Services.

There shall be no increase in the amount of the Fixed Fee without the School Board's express prior written authorization.

3. INVOICE; PAYMENT. The Design-Builder will issue invoices to the Owner only upon completion of each phase of Services enumerated in Section 2 above. Each invoice

shall include the Design-Builder's federal employer identification number and the School Board's purchase order number on the cover. Each invoice shall identify the Services that have been completed during the period since the last invoice. Each invoice shall state the amounts previously invoiced and, if different, the amounts approved for payment, the amounts paid previously, and the amount of the current invoice.

All payments will be due within thirty (30) days of receipt of the invoice. Any payment term requiring payment in less than thirty (30) days will be regarded as requiring payment within thirty (30) days after receipt of the invoice.

The School Board's review, approval or acceptance of, or payment for, any Services required under this Agreement shall not constitute acceptance of defective or nonconforming Services, nor shall it relieve the Design-Builder of any responsibility for any errors or omissions in connection with those Services, be construed as a waiver of any warranty, of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, or operate to release the Design-Builder from any obligation under the Agreement. The Design-Builder shall be and remain liable to the School Board in accordance with applicable law and the Agreement for all damages to the School Board caused by the Design-Builder's negligent performance of any of the Services furnished under this Agreement or breach of this Agreement.

4. TERM; SCHEDULE.

A. This Term of this Agreement shall commence on the date first written above (the "Effective Date") and, unless otherwise terminated as provided herein, shall continue until all the Services have been provided

B. The Design-Builder will perform Services according to the following Schedule:

- i. The Design-Builder will complete the 10% Schematic Design documents within thirty (30) days of the Effective Date.
- ii. The Design-Builder will complete the 35% Design Development documents within ninety (90) days of the Effective Date.
- iii. **Time is of the essence in completing the 10% Schematic Design and the 35% Design Development.**

5. OWNER'S RIGHT TO TERMINATE.

The School Board shall have the absolute and exclusive right to terminate or cancel the Agreement, stop the Services or the Project, or cease accepting the Services at any time, with or without cause or reason and without incurring any penalty, obligations, damages, costs or liability to the Design-Builder, except as set forth in this Section.

A. Upon receiving notice of Owner's termination of this Agreement, the Design-Builder must immediately cease and discontinue all Services (unless the notice directs otherwise) and deliver to Owner all data, drawings, specifications, reports, estimates, and such other data and records (whether completed or in progress) which may have been created or accumulated by the Design-Builder in performing the Agreement upon

Design-Builder's receipt of final payment through the termination date specified in the notice.

B. If the termination is due to the breach by the Design-Builder of a material term of this Agreement, including without limitation a failure to meet the standard of care herein, which breach or failure continues for no less than seven (7) days after the School Board provides written notice to the Design-Builder of such breach or failure and an opportunity to cure, Owner may take over the Services and prosecute the same to completion by contract or otherwise. In such case, the Design-Builder shall be liable to Owner for any damages allowed by law and upon demand of Owner shall promptly pay those damages to Owner.

C. Should the Agreement be terminated not due in any way to the fault of the Design-Builder, then the Design-Builder shall only be entitled to compensation for Services actually performed prior to termination and approved by Owner and non-cancellable expenses incurred prior to termination and approved by Owner. No profit, overhead, or any other costs of any type are allowed after the date of such termination.

D. The rights and remedies of Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

6. COMPREHENSIVE AGREEMENT. Should the parties both conclude that the Project is feasible, the parties may proceed to negotiate a Comprehensive Agreement under the PPEA to address the completion of design, construction and commissioning of the Project without further procurement. The Owner's participation in negotiation of a Comprehensive Agreement, however, shall not constitute an obligation of or commitment by the Owner to execute such Comprehensive Agreement and may be granted, denied or conditioned in Owner's sole discretion. A final Comprehensive Agreement would also need approval by City Council in addition to approval by the School Board.

7. STANDARD OF CARE. The standard of care for all professional design services performed by the Design-Builder under this Agreement will be the standards of professional skill and care that prevail in the professions of architecture and engineering in the Commonwealth of Virginia for similar projects at the time, and the Services will, at a minimum, be consistent with the Design-Builder's best work. Additionally, the Design-Builder represents and warrants that all persons performing any work on the Project under this Agreement shall be licensed and in good standing with any applicable regulatory agency for the full duration of their work on the Project under this Agreement.

8. INTELLECTUAL PROPERTY. The Design-Builder represents and warrants that the Services being provided under this Agreement will not infringe on any United States or foreign patents, copyrights or other intellectual property rights, and that the Design-Builder has all requisite licenses and agreements from third parties for the provision of such Services. The Design-Builder shall obtain and provide to the School Board any and all rights, title, interests, licenses, copyrights, trademarks, and other intellectual property rights or interests in the Services being provided for the Project. The Design-Builder warrants that the use of any designs, drawings, plans, specifications, instructions, materials, or information provided to the School

Board by the Design-Builder shall not infringe upon any United States or foreign patents, copyrights, or other intellectual property rights.

9. OWNERSHIP OF WORK PRODUCT. All documents, plans, specifications, diagrams, schematics, and other deliverables produced by the Design-Builder for the School Board under this Agreement and all reports, studies, plans, drawings, specifications, designs, renderings and other documents which the Design-Builder delivers to the School Board pursuant to this Agreement shall become and remain the School Board's exclusive property and shall be used exclusively for the School Board's benefit from the date of creation forward unless express written permission is given by the School Board. The Design-Builder shall not publish or disclose those reports, studies, plans or other documents to any entities or persons other than the School Board and its representatives without the prior written consent of the School Board. Notwithstanding anything to the contrary, the School Board expressly acknowledges and agrees that the drawings, specifications and other documents to be provided by the Design-Builder under the Agreement may contain certain design details, features and concepts from the Design-Builder's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of the Design-Builder. Nothing herein shall be construed as a limitation on the Design-Builder's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients. This provision shall not be construed as relieving the Design-Builder from the sole responsibility for all Services upon which payments have been made, or as waiving the right of the School Board to require the fulfillment of all the terms of the Agreement.

10. CLAIMS.

A. Claims by the Design-Builder, whether for money or other relief, shall be submitted in writing no later than sixty (60) consecutive calendar days after final payment. However, written notice of Design-Builder's intention to file such a claim must be given to the person to whom Notice must be given under this Agreement within ten (10) days of the occurrence or the beginning of the work upon which the claim is based. Such notice must state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of Owner or its agents that allegedly caused or may cause damage to the Design-Builder and the nature of the claimed damage. Verbal notice, Owner's actual knowledge, or a written notice given more than ten (10) days after the occurrence or beginning of the work upon which the claim is based, are not sufficient to satisfy the requirements of this Section. All claims must state that they are "claims" pursuant to this Section, be submitted along with all practically available supporting evidence and documentation, and request a final decision. Certificates for payment, applications for payment, vouchers, invoices, and similar requests for payment submitted for work done by the Design-Builder in accordance with the expected contract performance are routine submissions and are not claims under this Section. Proposed or requested change orders, demands for monetary compensation or other relief, and correspondence and e-mails to Owner or its representatives, which do not strictly comply with the requirements of this Section, are not claims under this Section. Such notice is a condition precedent to the assertion of any such claim by the Design-Builder. Failure to provide timely notice of intent to submit a claim precludes any relief to the Design-Builder.

B. A written decision upon any such claims will be made by the Superintendent on behalf of the Owner within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required or requested by Owner. The Design-Builder may not institute legal action prior to receipt of Owner's decision on the claim unless Owner fails to render such decision within the One Hundred Twenty (120) consecutive calendar days from submittal of its claim. Owner's decision shall be final and conclusive unless the Design-Builder within six (6) months of the date of Owner's final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in § 2.2-4364 of the Code of Virginia (1950), as amended. Failure of Owner to render a timely decision on a claim will not result in the Design-Builder being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of Owner's failure to render a timely decision is the Design-Builder's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Code of Virginia (1950), as amended, has been established for contractual claims under this Agreement.

C. If a claim is made prior to completion of the Services, the Design-Builder shall proceed diligently with performance of the Services and Owner shall continue to payments in accordance with the Agreement, except for any amount in dispute.

11. INSURANCE.

The Design-Builder will, at its sole expense, obtain and maintain during the life of the contract insurance policies of the type, in the amount, and subject to the terms required by the School Board, including without limitation: (i) commercial general liability insurance with minimum limits of liability of \$2,000,000 combined single limit for any one occurrence; (ii) broad form contractual liability insurance, which shall include the indemnification obligations set forth in this Agreement; (iii) workers' compensation and employer's liability insurance covering the Design-Builder's statutory obligations under the laws of the Commonwealth of Virginia; (iv) automobile liability insurance with at least a \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this contract; (v) professional liability and errors and omissions insurance with minimum limits of \$2,000,000 per claim and \$5,000,000 policy aggregate (professional liability insurance coverage shall be maintained for five years after completion of the project) and (vi) cybersecurity insurance for recovery or replacement of lost intellectual property, against ransomware, and the like. Any required insurance policies shall be effective prior to the beginning of any work under the Agreement. All insurance except professional liability shall be written on an occurrence basis. If the Design-Builder has professional liability insurance on a claims made basis, then it must provide proof of an agreement that coverage will be maintained for at least five years beyond the expiration date of the policy in force at the time of this Agreement.

In addition, (i) the Design-Builder shall furnish the School Board a certificate or certificates of insurance showing the type, amount, effective dates, and date of expiration of the policies; (ii) the required certificate or certificates of insurance, excluding those for workers' compensation and professional liability, shall name the School Board and its officers, trustees, directors, volunteers, employees, and agents as additional insureds; (iii) the required certificate or certificates of insurance shall require 30 days advance, written notice to the School Board before being cancelled; and (iv) any insurance company providing coverage under the contract

shall be authorized to do business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.

12. INDEMNIFICATION. Except the extent prohibited by law, including Virginia Code § 11.1-4.4, the Design-Builder shall indemnify, defend, and hold harmless the School Board and its officers, agents, trustees, directors, employees, and affiliates from and against any and all liability, losses, damages, claims, causes of action, suits of any nature (including suits by the School Board against the firm), costs, and expenses, including reasonable attorney's fees and consultant's fees, resulting from or arising out of the firm's or its agent's, and/or subcontractor's errors, acts, or omissions in the performance of services under the contract or any subcontract or any breaches of the contract or any subcontract. This indemnity provision shall cover and include, without limitation, fines and penalties for violations of federal, state or local laws or regulations; personal injury, wrongful death or property damage claims; breach of contract claims; indemnity claims; and other damages, losses and claims of any kind.

13. NOTICES.

A. All notices to the Design-Builder required or permitted under this Agreement shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the Design-Builder addressed to:

Mrs. Heather Bowman
Branch Builds
3635 Peters Creek Rd.,
Roanoke, VA 24019
540-989-5215
Heather.bowman@branchbuilds.com

B. All notices to the School Board required or permitted under this Agreement shall be given by mailing the notice by certified U.S. mail, postage prepaid, return receipt requested, to the School Board addressed to:

Dr. Wayne Lyle, Chief Operations Officer
Danville Public Schools
341 Main Street, Suite 100
Danville, Virginia 24541
cc. wlyle@mail.dps.k12.va.us

C. Where, under the terms of this Agreement, a notice is sent by certified U.S. mail, postage prepaid, return receipt requested, such notice shall be deemed to have been given five (5) days after the date of mailing such notice. Each Party to this Agreement shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in subsections (A) or (B) above.

D. Where, under the terms of this Agreement, a notice is required or permitted to be sent by certified U.S. mail, postage prepaid, return receipt requested, and such notice is

not sent in such manner, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

14. PAYMENTS TO SUBCONTRACTORS.

A. The Design-Builder shall take one of the two following actions within seven (7) consecutive, calendar days after receiving amounts paid to the Design-Builder by the School Board for work performed by any subcontractor under this Agreement:

1. Pay the subcontractor for the proportionate share of the total payment received from the School Board attributable to the work performed by the subcontractor under that subcontract; or
2. Notify the School Board and the subcontractor, in writing, of the Design-Builder's intention to withhold all or a part of the subcontractor's payment and explain the reason for nonpayment.

B. The Design-Builder shall pay interest at the rate of one (1) percent per month to the subcontractor on all amounts owed by the Design-Builder that remain unpaid after seven (7) consecutive, calendar days following receipt by the Design-Builder of payment from the School Board for work performed by the subcontractor under that subcontract, except for amounts withheld as allowed in subsection A.2. above.

C. The Design-Builder shall insert in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

D. The Design-Builder's obligation to pay an interest charge to a subcontractor pursuant to this section shall not be construed to be an obligation of the School Board. This Agreement may not be modified for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

E. So long as the failure of the Design-Builder to make prompt payments is not due to the failure of the School Board to pay the Design-Builder, the Design-Builder shall indemnify and hold the School Board harmless for any lawful claims resulting from failure of the Design-Builder to make prompt payments to all persons supplying the Design-Builder with equipment, labor, tools or materials in prosecution and completion of the work provided for in the Agreement. In the event of such claims, the School Board may, after providing written notice to the Design-Builder, withhold from any progress and/or final payment the unpaid sum of money deemed sufficient to pay all lawful claims and associated costs in connection with the Agreement.

15. ANTI-DISCRIMINATION. The Design-Builder will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginia Human Rights Act, the Virginians with Disabilities Act, the Americans With Disabilities Act, Section 2.2-4311 of the Virginia Public Procurement Act (VPPA), and all other applicable federal, state and local anti-discrimination laws, codes, rules, and regulations. Without limiting the foregoing, during the performance of this contract, the Design-Builder agrees as follows:

1. The Design-Builder will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Design-Builder. The Design-Builder agrees to post in conspicuous places, available to employees, notices setting forth the provisions of this nondiscrimination clause.
2. The Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, will state that the Design-Builder is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
4. The Design-Builder will include the provisions of the above 1, 2 and 3 in every subcontractor or purchase order over \$10,000 in connection with this Agreement, so that the provisions will be binding upon each subcontractor or vendor.

16. **DRUG-FREE WORKPLACE.** During the performance of the Agreement, the Design-Builder agrees to (i) comply with the drug-free workplace provisions of Virginia Code 2.2-4312; (ii) provide a drug-free workplace for its employees; (iii) post in conspicuous places, available to employees, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Design-Builder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iv) state in all advertisements or solicitations for employees that the Design-Builder maintains a drug-free workplace; and (v) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 in connection with this Agreement, so that the provisions will be binding upon each subcontractor or vendor.

17. **IMMIGRATION REFORM AND CONTROL ACT OF 1986.** The Design-Builder represents and warrants that it does not and will not during the performance of this Agreement employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

18. **NONWAIVER.** The School Board's waiver or failure to enforce or require performance of any term or condition of this Agreement or the School Board's waiver of any particular breach of this Agreement by the Design-Builder extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Agreement or a waiver of any other breaches of the Agreement by the Design-Builder and does not bar the School Board from requiring the Design-Builder to comply with all the terms and conditions of the Agreement and does not bar the School Board from asserting any and all rights and/or remedies it has or might have against the Design-Builder under this Agreement or at law or in equity.

19. **LIMITATION ON LIABILITY.** **NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF REVENUE, BUSINESS INTERRUPTION, COST OF REPAIR OR REPLACEMENT SERVICES (INCLUDING THE COST OF LABOR AND MATERIALS), OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES RESULTING FROM ANY**

CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY) RELATED TO OR ARISING OUT OF THIS CONTRACT, NO MATTER THE FORM OF THE CLAIM AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20. NO THIRD-PARTY BENEFICIARIES. The Parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the School Board or the Design-Builder; (iii) no other individual or entity shall obtain any right to make any claim against the School Board or the Design-Builder under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

21. NO COLLUSION. The Design-Builder represents and warrants that this Agreement has been awarded without collusion or fraud and it has not offered or received any kickbacks or inducements from any other offeror, supplier, or subcontractor in connection with its proposal, and that it has not conferred on any School Board employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. Furthermore, the Design-Builder acknowledges that the provisions, requirements, and prohibitions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Code, pertaining to bidders, offerors, contracts, and subcontractors, are applicable to this Agreement, as are the provisions, requirements, and prohibitions contained in Sections 2.2-3100 through 2.2-3131 of the Virginia Code.

22. DEBARMENT. The Design-Builder represents and warrants that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this Agreement, nor is it an agent of any person or entity that is currently so debarred.

23. APPLICABLE LAWS AND COURTS. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the Commonwealth of Virginia. Any litigation with respect to the Agreement or the Services provided hereunder will be brought only in a court of appropriate jurisdiction in the City of Danville, Virginia.

24. COMPLIANCE WITH ALL LAWS. The Design-Builder shall comply with all federal, state and local statutes, ordinances, and regulations, now in effect or hereafter adopted, in the performance of the Services. The Design-Builder represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for the performance of the Agreement prior to the initiation of Project. If the Design-Builder is a corporation, it further expressly represents that it is a corporation in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the Agreement. The Design-Builder shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of the Project.

25. FAITH BASED ORGANIZATIONS. Pursuant to Va. Code § 2.2-4343.1, the School Board does not discriminate against faith-based organizations.

26. AUDIT. The Design-Builder shall retain all books, records, and other documents relative to this Project for five (5) years after final payment or until audited by the School Board, the City of Danville, or the Commonwealth of Virginia, whichever is sooner. The School Board or its authorized agents may, at the School Board's option and expense, audit the Design-Builder's records related to the Project at any time during the term of the Agreement or for a period of five (5) years thereafter. The Design-Builder shall cooperate with Owner's auditor and provide the documentation the auditor deems necessary in a timely and organized manner and the Design-Builder will be reasonably compensated for the costs associated with the audit. Auditors from the School Board, the City of Danville, and/or the Commonwealth of Virginia shall have full access to, and the right to examine, all such books, records, and other documents relative to this Agreement during said period. Upon request from the School Board, all such documents shall be turned over to the School Board.

27. ASSIGNMENT OF CONTRACT. Neither this Agreement nor the Design-Builder's obligations under this Agreement may be assigned, delegated or transferred without the School Board's prior written consent, which consent may be withheld in the School Board's discretion.

28. SCC REGISTRATION. Pursuant to Virginia Code § 2.2-4311.2, each entity executing this Agreement as part of the Design-Builder must be registered with the State Corporation Commission if so required by Title 13.1 or Title 50 of the Virginia Code or otherwise required by law.

29. AVAILABILITY OF FUNDS. It is understood and agreed between the Parties that the School Board shall be bound hereunder only to the extent of the funds available and duly appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling the School Board's obligations under the Agreement.

30. AUTHORIZED REPRESENTATIVES. The Design-Builder's Authorized Representative is Mrs. Heather Bowman (540-989-5215; Heather.bowman@branchbuilds.com). DPS's Authorized Representative is Dr. Wayne Lyle (434-799-6400 ext. 232; wlyle@mail.dps.k12.va.us). Each party may provide notice to the other party of a new or additional authorized representative(s) using the procedure outlined in the Notices Section.

31 CORRECTION OF DEFECTIVE WORK. The Design-Builder shall promptly replace or correct any work or materials which the School Board rejects as failing to conform to the requirements of the Agreement. If the Design-Builder does not do so within a reasonable time, the School Board shall have the right to replace or correct the defective work or materials and the Design-Builder shall be liable to the School Board for the cost thereof. If, in the opinion of the School Board, it is not expedient to correct or replace all or any part of rejected work or materials, then the School Board, at its option, may deduct from the payment due, or to become due, to the Design-Builder such amounts as, in the School Board's judgment, will represent the higher of: (i) the difference between the fair value of the rejected work and materials and the value thereof, if the work had complied with the Agreement; or (ii) the cost of correction.

32. NO CRIMES AGAINST CHILDREN.

A. The Design-Builder acknowledges that the provision of Services under the Agreement may require the Design-Builder, its employees or other persons that will provide services under this Agreement to have direct contact with Danville Public Schools students. Therefore, Design-Builder hereby certifies that neither Design-Builder, its employees nor any person that will provide Services on its behalf under this Agreement who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of: (i) any violent felony set forth in the definition of barrier crime in Va. Code § 19.2-392.02(A); (ii) any offense involving the sexual molestation or physical or sexual abuse or rape of a child; or (iii) any crime of moral turpitude.

B. The Design-Builder understands that, pursuant to Va. Code §22.1-296.1, making a materially false statement regarding offenses referenced in Section (A) above is a Class I misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. Danville Public Schools shall not be liable for materially false statements regarding the certifications required under the Agreement.

33. SEVERABILITY. If any provision of the Agreement, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall not be affected and all other terms and conditions of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

34. FURTHER ASSURANCES. It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Contract shall be and is inserted herein. Furthermore, if through mistakes and otherwise, any such provision is not inserted in correct form, then this Agreement shall upon application of either Party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

35. INDEPENDENT CONTRACTORS. The Parties hereto are independent contractors and are not agents, partners, or joint venturers. Neither Party shall have the ability to bind the other to any contract with a third party and neither Party shall hold itself out to any third party as having the right to bind the other Party to any contract.

36. REMEDIES CUMULATIVE. The rights and remedies of the School Board provided for under this Agreement are in addition to any other rights and remedies provided by law.

37. SUCCESSORS. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective executors, administrators, heirs, successors-in-title, successors and assigns.

38. SOVEREIGN IMMUNITY. Nothing contained in the Agreement is intended to waive, or shall be construed as a waiver of, the School Board's sovereign immunity.

39. ENTIRE CONTRACT. This Agreement constitutes the entire and integrated agreement between the Parties. No representations, inducements, promises or agreements, oral or written, between the parties not embodied herein shall be of any force or effect. No amendment to the Agreement shall be binding on any of the Parties unless such amendment is in writing and such amendment is executed by the Parties.

40. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF the undersigned have executed this contract on the dates set forth beside their respective signatures.

SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA

By: _____
Title: Superintendent
Date: _____

BRANCH BUILDS, INC.

By: _____
Title: _____
Date: _____

Approved as to form: _____

School Board Attorney _____

GLH JOHNSON – NEW ELEMENTARY SCHOOL

Exhibit B –ADDITIONAL DESCRIPTIONS OF SERVICES INCLUDED IN INTERIM AGREEMENT

1.1 Schematic Design Phase. To be considered acceptable for final Schematic Design Phase submittal, the documents shall contain all of the following unless otherwise agreed in writing:

1.1.1 Architectural

- (i) Plans (at 1/8" scale) showing complete building layout, and identifying areas, room by room, showing square footage with comparisons to program standards, and core areas and their relationships.
- (ii) Preliminary building section and exterior elevations indicating location and size of fenestration and sufficient to determine overall building height.
- (iii) Preliminary furniture layouts of critical spaces (i.e. dining area, media center).
- (iv) Gross and net area calculations separated to show conformance with the Program of Requirements.
- (v) Preliminary Building Code Summary.

1.1.2 Civil & Landscaping

- (i) Site plan with building located and overall grading plan with a minimum of 5'- 0" contour lines. All major site development such as orientation, access road paving, walls and outside support buildings, structured parking facilities, programmed play areas, vehicle stacking, and paved parking lots shall be shown.

1.1.3 Structural

- (i) Narrative of structural systems and materials planned for all major components of the structure (load bearing walls, columns, floor systems, roof systems, shear walls, braced frames, etc.)
- (ii) Identification of foundation requirements (fill requirements, piles, caissons, spread, footings, retaining walls within the building footprint, etc.).

1.1.4 Mechanical, Controls, and Plumbing

- (i) Narrative of mechanical systems and materials planned for all major components
- (ii) Single-line drawings of all mechanical equipment spaces, duct chases and pipe chases.
- (iii) Location of all major equipment in allocated spaces.
- (iv) Location of all service entrances.

1.1.5 Electrical

- (i) Narrative of electrical systems and materials, lighting fixtures roughly scheduled showing types of fixtures to be used.
- (ii) Major electrical equipment roughly scheduled indicating size and capacity.
- (iii) Preliminary one-line electrical distribution diagrams with indications of final location of service entry, transformers and emergency generator, if required.
- (iv) Description of specialized electrical systems (fire alarm, intercom, voice/data).
- (v) Legend showing all symbols used on drawings.
- (vi) Projected energy use.

1.2 Documents not complying with Section 1.1 shall be returned to the Design Builder for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

2.1 Design Development Phase.

2.1.1 The Design Builder shall prepare from the approved Schematic Design Phase Submittal, for further approval by the Owner, the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.

2.1.2 Design Development Documents prepared by the Design Builder shall include drawings and a written report in more detail than the Schematic Design Documents and shall take into account the Owner's and the Construction Manager's comments on the previous submittal. The report shall include the status of the work in accordance with the Milestone Schedule, a summary of programmed versus actual square footage by room or area in a format defined by the Owner, such discussion of design factors, if any, as are pertinent in the opinion of the Design Builder; and outline descriptions of proposed engineered systems, construction methods, materials and work to be included in the construction contracts. Drawings shall include dimensioned site development plan, building plans, elevations, and typical sections indicating proposed construction. Drawings shall also include information on major finishes as well as diagrammatic drawings illustrating fundamentals of major engineered systems, i.e., structural, mechanical and electrical. The Design Builder shall submit an estimate and breakdown of the Guaranteed Maximum Price (GMP) no later than two (2) business days in advance of the scheduled DD review meeting. The Design Builder, shall prepare such estimates in the form prescribed by the Owner to ensure that the project cost is within the GMP.

2.1.3 The Design Builder shall coordinate with the Owner's playground equipment vendor to ensure that the area(s) reserved for playground equipment provide contiguous area(s) that are reasonably dimensioned to accommodate the Owner's playground equipment being designed and provided by others.

2.1.4 Site Utilities: No utilities of any kind shall be routed through areas of the site which are designated as playground areas, except in those conditions when no other routing is feasible. In cases where the Design Builder cannot identify feasible alternative routing, the Design Builder shall obtain prior written permission from the Owner for each utility proposed to pass through a playground area.

2.1.5 A statement from the Design Builder with the final Design Development Phase submittal shall be included that acknowledges that Design Builder has reviewed all of the applicable Design Guidelines and Educational Specifications and confirms that they have been incorporated in the documents unless specifically noted in writing. The Design Builder shall not incorporate asbestos-containing materials in the Project.

2.1.6 The Design Builder shall submit the final Design Development package, meeting minutes, etc. to show how review comments made in Schematic Design have been addressed. It should be clear from the notes where the specific item was incorporated into the Design Development submittal or an explanation if it was not incorporated.

2.1.7 The Design Builder shall provide the Owner's Representative and the Construction Manager periodically with copies of in-progress Design Development Documents during the Design Development Phase. The Design Builder shall review any recommendations from the Construction Manager and Owner's Representative, including any recommendations regarding the constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project contracts for various categories of Work, to confirm that they are architecturally sound and do not adversely impact the scope, functionality or requirements of the Project. The Design Builder's review of these recommendations shall not relieve or in any way diminish the Construction Manager's responsibilities pursuant to the Owner-Construction Manager Agreement. At the end of the Design Development Phase the Design Builder shall provide the Owner's Representative and the Construction Manager drawings and documents including a design phase report. The report shall incorporate the status of the work in accordance with the Milestone Schedule and a summary of programmed versus actual square footage in a format defined by the Owner by room or area. The Design Builder shall seek approval of the submitted deliverables from the Owner. The documents for this final Design Development Phase submittal shall contain all of the following unless otherwise agreed in writing:

2.1.7.1 Architectural

- (i) Project phasing plan, if applicable.
- (ii) Building Code Summary Sheet.
- (iii) Life safety plans showing all fire walls and egress calculations.
- (iv) Floor plans (at 1/8" scale) with final room locations including all openings.
- (v) Roof plan (at 1/8" scale) indicating structural slope, drainage areas and drain locations.

- (vi) Wall sections showing components for major types of exterior and interior walls, final dimensional relationships, materials and component relationships.
- (vii) Diagrammatic location and identification of typical room types fixed and loose equipment, furniture, and furnishings.
- (viii) The Owner will provide room inventory data sheets to the Design Builder for use in populating the furniture and equipment plans. The Design Builder shall include typical furniture and equipment plans for all room types with the DD submittal.
- (ix) Finish schedule identifying all finishes.
- (x) Preliminary door and window and hardware schedule showing final quantity plus type and quality levels.
- (xi) Preliminary development of details, including ¾" scale millwork details and large-scale blow-ups.
- (xii) Legend showing all symbols used on drawings.
- (xiii) Outline of materials to be specified in the CD phase.
- (xiv) Reflected ceiling development including ceiling grid and all devices that penetrate the ceiling (i.e., light fixtures, speakers, WAP, ceiling register or diffusers, etc.).

2.1.7.2 Civil/Site

- (i) Virtually complete site plans including grading and drainage.
- (ii) Sufficient details of all site utilities and improvements as required to initiate the site plan submittals for approval by the AHJ.
- (iii) Identify areas (fully dimensioned on plans) reserved for installation of playground equipment by Owner
- (iv) Copy of the Site Survey.

2.1.7.3 Structural

- (i) Plan drawings with all structural members located and sized.
- (ii) Final building elevations.
- (iii) Outline of materials to be specified in the CD phase.
- (iv) Foundation drawings.

2.1.7.4 Plumbing

- (i) Piping, fixtures and equipment substantially located and sized.

2.1.7.5 Mechanical

- (i) Heating and cooling load calculations for each space and major duct or pipe runs sized to interface structural.
- (ii) Major mechanical equipment scheduled indicating size and capacity.
- (iii) Ductwork and piping substantially located and sized trunk lines and loops
- (iv) Above ceiling and/or mechanical room layouts to verify all, structural, mechanical, plumbing, electrical and fire protection systems fit in available spaces.
- (v) Devices in ceiling located, including all areas to receive access panels in GWB ceilings.
- (vi) Legend showing all symbols used on drawings.
- (vii) Outline of materials to be specified in the CD phase.
- (viii) Completed life cycle cost analysis.

2.1.7.6 Electrical

- (i) All power consuming equipment and load characteristics.
- (ii) Total electric load.
- (iii) Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned and drawn to scale into the space allocated.
- (iv) Preliminary site lighting design coordinated with the power company.
- (v) Outline of materials to be specified in the CD phase.
- (vi) Lighting, power, telecommunications and office automation devices and receptacles shown in plan.
- (vii) Preliminary light fixture schedule.
- (viii) One line diagram of specialized electrical systems (fire alarm, intercom, voice/data, security, access control) showing location of control equipment/panels and devices.
- (ix) Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas, etc. Coordinate with Owner FF&E.

2.1.7.7 Fire Protection

- (i) Provide flow test information
- (ii) Provide narrative of proposed fire protection system, including determining whether or not fire pumps will be required for the project.
- (iii) Floor plans indicating occupancy and hazard classifications for all areas requiring fire protection, and location of riser room.

2.1.8 Specifications: Provide table of contents listing all specifications anticipated for the work.

2.1.9 Upon Owner acceptance and approval of the Design Development Phase, the structural bay sizes, floor elevations and exterior wall locations (building "footprint") may not be changed except by a Design Phase Change Order. Interior wall locations shall not be changed unless approved in writing by the Owner.

2.1.10 Documents not complying with Subparagraph 2.1.7 (including all subparts) shall be returned to the Design Builder for correction at no additional charge to the Owner and with no change to the overall Project design schedule.

Council Letter

City of Danville, Virginia



CL-2844

New Business F.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Consideration of a Moral Obligation with Virginia Community Capital

From: Corrie Bobe, Director of Economic Development

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

On October 12, 2021, the Industrial Development Authority of Danville, Virginia (IDA) approved financing terms from Virginia Community Capital for the construction of a shell building in Danville, Virginia. This 30,000 square foot building will be constructed on Lot 10B in the Cyber Park, which totals approximately 10.17 acres. The total cost to construct this building is \$2.875 million. Staff has worked with Virginia Community Capital and the Virginia Small Business Financing Authority to finalize the financing for this project. Both VCC and the VSBFA will participate in this loan and has requested a moral obligation from the City. On November 16, 2021, City Council approved a moral obligation for this loan. Through the loan closing process, the legal teams representing both financial institutions requested changes to this document, which has been reviewed and approved by the City Attorney.

BACKGROUND

The Industrial Development Authority of Danville, Virginia and Pittsylvania County's Industrial Development Authority have entered into an agreement to jointly construct a 30,000 square foot shell building within the Cyber Park, which is owned by the Danville-Pittsylvania Regional Industrial Facility Authority (RIFA). This site totals approximately 10.17 acres, which allows the building to be doubled in size at a future date. RIFA has approved a 30-year ground lease with both entities for this project at a rate of \$100.00 per year and with an option to purchase the site after September 1, 2022 for a price of \$1,000.00. The total cost to construct this building is \$2.875 million and the City of Danville has received a \$1 million grant from the Tobacco Commission to go towards this project. This grant will be provided on a reimbursement basis. Danville has a very limited number of suitable buildings for a manufacturing operation, and this shell building would provide some needed inventory to market to prospective industry. Virginia Community Capital (VCC) and the Virginia Small Business Financing Authority will be partnering on the financing of this project, with VCC acting as the administrator. This partnership provides both IDAs with an initial blended interest rate of 3.10%.

The bank is requesting an updated moral obligation from both the City and County as part of its commitment to lend.

RECOMMENDATION

Staff recommends that Council approves a moral obligation as prepared by the City Attorney and the attorney representing Virginia Community Capital.

Attachments

Resolution

Agreement

PRESENTED: _____

ADOPTED: _____

RESOLUTION NO. 2022 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANVILLE, VIRGINIA, APPROVING A MORAL OBLIGATION SUPPORT AGREEMENT WITH THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA

WHEREAS, the Industrial Development Authority of Danville, Virginia (the "City Authority") is partnering with the Industrial Development Authority of Pittsylvania County, Virginia (the "County Authority") to construct a 30,000 square foot shell building on property commonly referred to as Lot 10B in the Cyber Park located at 120 Slayton Avenue, Danville, VA (Tax Parcel ID 78359) (the "Project"); and

WHEREAS, the City Authority and the County Authority now propose to undertake the financing of the Project, including necessary expenses incidental thereto, by a loan from Virginia Community Capital ("Virginia Community Capital") in the maximum amount of \$2,875,000 (the "Loan") pursuant to the terms of certain loan documents (the "Loan Documents"); and

WHEREAS, amounts due under the Loan Documents (the "Debt Service"), for which the City Authority and the County Authority will each be responsible for one-half (1/2) of the same, are to be paid by the City Authority, to the extent funds are not otherwise available to the City Authority, from funds that are subject to appropriation in each fiscal year by the City of Danville, Virginia (the "City"); and

WHEREAS, in connection with the Loan, Virginia Community Capital desires that the commitment of the County of Pittsylvania, Virginia, and the City to provide such funds, respectively, subject to annual appropriation by each, be set forth in a Moral Obligation Support Agreement between the County and the County Authority and in a Moral

Obligation Support Agreement between the City and the City Authority (the "City Support Agreement"); and

WHEREAS, the City Support Agreement has been presented to the City Council of the City (the "Council") in substantially final form attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DANVILLE, VIRGINIA:

1. Form and Authorization of City Support Agreement. The City Support Agreement is hereby approved, with such variations, insertions, changes or deletions (including without limitation changes to the date thereof) as may be approved by the Mayor or Vice Mayor of the City or the City Manager. To the extent necessary or required by applicable law, the County Authority is authorized to participate and have an interest in the Project which is located in the City of Danville, Virginia. Further, the execution and delivery of the City Support Agreement are hereby approved and authorized.

2. Execution and Delivery of City Support Agreement. The Mayor and the Vice Mayor of the City and the City Manager, any of whom may act, are each authorized and directed to execute the City Support Agreement on behalf of the City. The Clerk and Deputy Clerk of the City, either of whom may act, are each authorized and directed to execute and affix the seal of the City to the City Support Agreement and deliver the City Support Agreement to the other parties thereto.

3. Further Actions. The Mayor and the Vice Mayor of the City, and other officers and agents of the City, including the City Manager, the Finance Director, the City Clerk, the Deputy City Clerk and the City Attorney, are authorized and directed to take such further actions as they deem necessary regarding the execution and delivery of the City Support Agreement, including, without limitation, the execution and delivery of any instruments, closing documents and certificates with respect to or as may be required for the closing of the Loan. All such actions previously taken by the Mayor, Vice Mayor or such other officers and agents are hereby approved, ratified and confirmed.

4. Limitation of Liability of Officials of the City. No covenant, condition, agreement or obligation contained herein shall be deemed to be a covenant, condition, agreement or obligation of an officer, employee or agent of the City in his or her individual capacity, and no officer of the City executing the City Support Agreement shall be liable personally on the City Support Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

5. Effective Date. This Resolution shall take effect immediately.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to
Form and Legal Sufficiency:

City Attorney

CERTIFICATE

The undersigned Clerk of the City of Danville, Virginia, does hereby certify that the foregoing constitutes a true and correct extract from the minutes of a meeting of the City Council held on _____, 2022, and of the whole thereof so far as applicable to the matters referred to in such extract. I hereby further certify that such meeting was a regularly scheduled meeting and that, during the consideration of the foregoing Resolution, a quorum was present. The vote of the members of the City Council upon the foregoing Resolution was as follows:

<u>Member</u>	<u>Present/Absent</u>	<u>Vote</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

WITNESS MY HAND and the seal of the City of Danville, Virginia, this ____ day of _____, 2022.

Clerk, City of Danville, Virginia

MORAL OBLIGATION SUPPORT AGREEMENT OF CITY OF DANVILLE

THIS MORAL OBLIGATION SUPPORT AGREEMENT (this "**Moral Obligation Agreement**") made as of the ____ day of _____ 2022, by and between the **CITY OF DANVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "**City**"), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "**Authority**"), to-wit:

Background

A. The Authority was created under the Industrial Development and Revenue Bond Act (§15. 2- 4900 et seq.) of the Code of Virginia of 1950, as amended (the "**Code**") to promote development, industry and trade.

B. In an effort to promote development, trade, and the local economy, the Authority is partnering with the Industrial Development Authority of Pittsylvania County, Virginia (the "**County Authority**") to construct a 30,000 square foot shell building on property commonly referred to as Lot 10B in the Cyber Park located at 120 Slayton Avenue, Danville, VA (Tax Parcel ID 78359) (the "**Project**").

C. The Authority has obtained a commitment from Virginia Community Capital ("**Virginia Community Capital**") to finance up to Two Million Eight Hundred Seventy- Five Thousand and 00/100 Dollars 2,875,000. 00) (the "**Loan**") of the projected costs of the Project, and such Loan will be secured by a pledge of the revenues and receipts received by the Authority from payments made by the City pursuant to this Moral Obligation Agreement and by the revenues and receipts received by the County Authority pursuant to a Moral Obligation Agreement (the "**County Moral Obligation Agreement**") between the County Authority and Pittsylvania County, Virginia (the "**County**").

D. Virginia Community Capital requires that the City and the Authority enter into this Moral Obligation Agreement as a condition of making the Loan, in addition to requiring the County and the County Authority to enter into the County Moral Obligation Agreement.

E. As used herein, the term "**Payments Due**" shall mean one-half (1/2) of all monthly payments of principal and interest due, as well as one-half (1/2) of any other amounts due to Virginia Community Capital, under the terms of the agreements, notes, bonds, instruments and other documents setting forth the provisions of and related to the Loan (collectively, the "**Loan Documents**").

F. Section 15.2-953 of the Code provides that any locality may appropriate money to an industrial development authority for the purpose of promoting economic development.

Agreement

NOW, THEREFORE, for and in consideration of the covenants and the mutual benefit to be derived therefrom and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Authority, in consultation with the City, will determine, prior to closing of the Loan and subsequently, as part of its budget process, by April 30th prior to each subsequent fiscal year that this Moral Obligation Agreement is in effect, those portions of the Payments Due in such fiscal year which the Authority will not be able to pay from revenues and receipts associated with the Project, its revenues and receipts generally, or other funds of the Authority available to make Payments Due, for purposes of determining the amounts to be requested from, and paid (subject to the limitation of Section 6) by, the City for the City's immediately succeeding fiscal year such that Payments Due can be made by the Authority during such fiscal year to Virginia Community Capital (the "**Appropriated Sums**"). Further upon such determination, the Authority shall provide notice of such Appropriated Sums requested by the Authority in connection with the Project to the City (the "**Notice**"). The City Manager shall include the Appropriated Sums requested by the Authority in the budget submitted to the City Council of the City (the "**City Council**") for the following fiscal year as an amount to be appropriated to or on behalf of the Authority. The City Manager shall deliver to the Chairman of the Authority within ten (10) days after the adoption of the City's budget for each fiscal year, but not later than July 15th of each year, a certificate (the "**City Certificate**") stating whether the City Council has appropriated to or on behalf of the Authority the Appropriated Sums requested. The City shall deliver a copy of the City Certificate to Virginia Community Capital concurrent with the delivery to the Chairman of the Authority.

2. Subject to the limitation of Section 6, the City shall make payment to the Authority or the Authority's assignee of all Appropriated Sums. In the event of an acceleration of the Loan in accordance with the Loan Documents, the City agrees to pay, subject to the limitation of Section 6, an amount equal to all Payments Due that are payable or to become payable under this Moral Obligation Agreement. Appropriated Sums and Payments Due, as the case may be under this Section 2, shall be payable in a timely manner, without notice or demand, in accordance with the Loan Documents

3. The Authority and the City acknowledge and agree that this Moral Obligation Agreement and all payments and rights hereunder (except the rights of the Authority to receive notices) will be assigned as part of an assignment agreement to be executed by the Authority in favor of Virginia Community Capital in connection with the Loan. The City consents to such assignment and agrees to pay to Virginia Community Capital all amounts payable by the City that are so assigned at the principal corporate office of Virginia Community Capital, or such other address as Virginia Community Capital may direct.

4. Except as otherwise provided in this Moral Obligation Agreement, including the limitation in Section 6, the obligations of the City to make all payments and to observe all other covenants, conditions and agreements hereunder shall be absolute and unconditional, irrespective

of any right of setoff, recoupment or counterclaim the City may otherwise have, and the City shall not suspend or discontinue any such payments or fail to observe and perform any of its covenants, conditions and agreements hereunder.

5. While recognizing that it is not empowered to make any binding commitment to pay Appropriated Sums or make Payments Due beyond the current fiscal year, the City Council in authorizing the execution of this Moral Obligation Agreement has stated its intent to make annual appropriations sufficient to pay Appropriated Sums or make Payments Due, as the case may be, and as such it is hereby recognized by the parties hereto that this Moral Obligation Agreement, to the extent permitted by law, creates strictly a moral obligation of the City to pay such amounts.

6. Notwithstanding anything in this Moral Obligation Agreement to the contrary, the City's obligations to pay the cost of performing its obligations under this Moral Obligation Agreement, including its obligations to pay Appropriated Sums and make all Payments Due, as the case may be, shall be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose; provided, however, that the City Manager or other officer charged with the responsibility for preparing the City's annual budget shall include in the budget for each fiscal year of the City as a single appropriation the amount of all Appropriated Sums and Payments Due, as the case may be, to be paid by the City during such fiscal year.

7. Throughout the term of this Moral Obligation Agreement, the City Manager or other officer charged with the responsibility for preparing the City's annual budget shall deliver to the Authority and Virginia Community Capital within ten (10) days after the adoption of the City's annual budget for each fiscal year, but not later than the beginning of each such fiscal year, a certificate stating whether an amount equal to the Appropriated Sums and Payments Due, as the case may be, which will come due during such fiscal year has been appropriated by the City Council in such budget. If, by the beginning of such fiscal year, the City Council has not appropriated funds for the payment of Appropriated Sums or Payments Due, as the case may be, coming due for the then current fiscal year, the City Manager or other officer charged with the responsibility for preparing the City's Annual Budget shall give written notice to the City Council of the consequences of such failure to appropriate, including, among others, the right of Virginia Community Capital to accelerate Payments Due in accordance with the Loan Documents, and request the City Council to make a supplemental appropriation for such purposes.

8. If at any time the Appropriated Sums as determined pursuant to Section 1 are insufficient to make payments of the Authority's portion of principal and interest due under the Loan Documents, the Authority (or Virginia Community Capital as assignee of the Authority) shall notify the City Manager (or other officer charged with the responsibility for preparing the City's Annual Budget) of the amount of such insufficiency, and the City Manager shall submit to the City Council at its next regularly scheduled meeting or as promptly as practicable, but in any event within forty five (45) days, a request for a supplemental appropriation in the amount necessary to cover such insufficiency.

9. Virginia Community Capital, by executing the Receipt and Acknowledgement below, agrees to apply any funds so appropriated and paid to it by the City pursuant to this Moral Obligation Agreement toward the Authority's obligations under the Loan Documents in accordance with the terms of the Loan Documents.

10. The City Council hereby undertakes a non-binding obligation to appropriate such amounts as may be requested from time to time pursuant to Sections 5, 7 and 8 above, to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The City Council, while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent to make such appropriations, as may be necessary, consistent with this Agreement.

11. Nothing herein contained is or shall be deemed to be a lending of the credit of the City to Virginia Community Capital, the Authority, the County, the County Authority, the Project or to any other person or entity (unless specifically set forth otherwise), and nothing herein contained is or shall be deemed to be a pledge of the faith and credit or the taxing power of the City, nor shall anything herein contained legally bind or obligate the City Council to appropriate funds for the purposes described herein.

12. Any notices or requests required to be given hereunder shall be deemed given if hand- delivered or sent by registered or certified mail, postage prepaid, addressed as follows:

If to the City: City of Danville, Virginia
 Municipal Building, Patton Street
 P. O. Box 3300
 Danville, VA 24543
 Attention: City Manager

With a copy to: The City Attorney's Office
 Municipal Building, Patton Street
 P. O. Box 3300
 Danville, VA 24543
 (434) 799- 5122

If to the Authority: Industrial Development Authority of Danville, Virginia
 c/o City Attorney
 421 Municipal Building (24541)
 P.O. Box 3300 (24543)
 Danville, Virginia

With a Copy to: City Attorney
 The City Attorney's Office
 P. O. Box 3300
 Danville, Virginia 24543

If to Virginia
Community Capital:

Virginia Community Capital
110 Peppers Ferry Road NW
Christiansburg, VA 24073
Attention: Cindy Snider, AVP,
Small Business Loan Officer

13. If any clause, provision, or paragraph of this Agreement shall be held illegal or invalid by a court, the illegality or invalidity of such clause, provision, or paragraph shall not affect any of the remaining clauses, provisions, or paragraphs hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision, or paragraph had not been contained herein. In case any question should arise as to whether any provision contained herein shall be in violation of law, then such provision shall be construed to be the agreement of the parties hereto to the full extent permitted by law.

14. This Agreement and the performance thereof shall be governed by and enforced under the laws of the Commonwealth of Virginia, and if legal action by either party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in the City of Danville, Virginia, as the location of the Project.

15. This Moral Obligation Agreement supersedes all prior understandings and agreements of the parties with respect to the subject matter hereof and contains the entire agreement and understanding of the parties in connection with the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and the Authority have caused this Moral Obligation Agreement to be executed in their names and on their behalf by their duly authorized representatives, all as of the date first above written.

CITY COUNCIL, CITY OF DANVILLE

By: _____

Name: Ken Larking

Title: City Manager

(SEAL)

Attest:

City Clerk

**INDUSTRIAL DEVELOPMENT AUTHORITY OF
DANVILLE, VIRGINIA**

By: _____

Name: _____

Title: _____

(SEAL)

Attest:

Secretary

RECEIPT AND ACKNOWLEDGEMENT

Receipt of the foregoing original counterpart of the Moral Obligation Support Agreement dated as of _____, 2022, between the City of Danville, Virginia and the Industrial Development Authority of Danville, Virginia, is hereby acknowledged.

VIRGINIA COMMUNITY CAPITAL

By: _____
Name:
Title:

Council Letter

City of Danville, Virginia



CL-2838

New Business G.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Consideration of Amending the Partnership for Regional Prosperity Committee

From: Ken F. Larking, City Manager

COUNCIL ACTION

Business Meeting: 09/20/2022

SUMMARY

The Partnership for Regional Prosperity would like to add two additional members to their Steering Committee.

BACKGROUND

On October 6, 2020, Danville City Council approved a Resolution supporting the formation of the Danville-Pittsylvania Economic Development Alliance; this has since been re-branded to the Partnership for Regional Prosperity. The original steering committee consisted of seven members including the City Manager, County Administrator, the CEO of the Danville Regional Foundation, the Chamber President, the President of IALR, two industry leaders, and two regional/state economic development leaders.

The PRP has met several times over the past two years and has requested that two additional members be added to their Steering Committee: the Superintendents of Danville Public Schools and Pittsylvania County Schools.

RECOMMENDATION

Staff recommends Council adopt the attached Resolution Amending the members of the Partnership for Regional Prosperity's Steering Committee.

Attachments

Resolution

PRESENTED:_____

ADOPTED:_____

RESOLUTION NO. 2022 -____._____

A RESOLUTION SUPPORTING THE AMENDMENT TO THE PARTNERSHIP FOR REGIONAL PROSPERITY, FORMALLY THE DANVILLE-PITTSYLVANIA ECONOMIC DEVELOPMENT ALLIANCE STEERING COMMITTEE.

WHEREAS, the City of Danville, Pittsylvania County, and the Danville Regional Foundation jointly sponsored a thorough review of the Region's Economic Development Program(s); and

WHEREAS, the three entities jointly appointed a Steering Committee to guide the development of an Economic Development Strategy for the Region; and

WHEREAS, the Steering Committee presented the final draft of the Region's new Economic Development Strategy to a joint meeting of the City Council and Board of Supervisors on June 9, 2020; and

WHEREAS, the Strategy recommended the appointment of an Alliance, comprised of area stakeholders, to be responsible and accountable for the progress of strategy implementation; and

WHEREAS, the Board of Supervisors and Danville City Council both adopted resolutions supporting an Alliance Leadership Council of seven (7) members, including the City Manager, County Administrator, the Danville Regional Foundation CEO, the Institute for Advanced Learning and Research President, the Chamber President, and two (2) industry leaders.

NOW THEREFORE, BE IT RESOLVED, the Council of the City of Danville, Virginia hereby approves of the Amendment to the Partnership for Regional Prosperity Council which currently consists of seven members, as previously approved by the Pittsylvania County Board of Supervisors and Danville City Council to add the Superintendent of Danville Public Schools and the Superintendent of Pittsylvania County Schools.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

CITY ATTORNEY

Council Letter

City of Danville, Virginia



CL-2835

New Business H.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: City Wide Preservation Plan CLG Grant

From: Kenneth C. Gillie, Jr., Community Development Director

COUNCIL ACTION

First Reading: 09/20/2022

Final Adoption: 10/04/2022

SUMMARY

The City of Danville has received a Certified Local Government grant in the amount of \$26,950 from the Virginia Department of Historic Resources. The grant will be used to complete a City-Wide Preservation Plan. This is a request to amend the Fiscal Year 2023 Budget to accept these funds

BACKGROUND

The City of Danville was awarded a Certified Local Government (CLG) grant from the Virginia Department of Historic Resources (VDHR) in the amount of \$26,950 for the completion of a City-Wide Preservation Planning Document. It is necessary to amend the Fiscal Year 2023 Budget to accept this grant award. The CLG grant is reimbursable, and a local match will be provided. It is anticipated that the local match will not exceed \$11,550.

The City of Danville does not have a preservation plan. The development of this plan is occurring at a time of updates for the City's Comprehensive Plan and Zoning Code. The grant is set to be complete by May 2023.

The consultant completing the plan will hold four (4) community input meetings and prepare a final document and summary presentation to City Council. The City-Wide Preservation Plan will have five (5) components: identification of local historic resources; an evaluation of current trends and influences on historic resources; community input on preservation goals and priorities; tools and strategies to achieve preservation goals and an action plan. These components are consistent with the federal standards for preservation planning. The document will provide the community and staff a proactive plan to carry out goals and priorities in a logical, efficient, and effective manner.

RECOMMENDATION

It is recommended that City Council Amend the Fiscal Year 2023 Budget Appropriation Ordinance to accept a grant award in the amount of \$26,950.

Attachments

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2022 - _____ - _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR A GRANT FROM THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES IN THE AMOUNT OF \$26,950 AND LOCAL MATCH IN THE AMOUNT OF \$11,550 FOR A TOTAL GRANT IN THE AMOUNT OF \$38,500 AND APPROPRIATING THE SAME.

WHEREAS the City of Danville has received a grant from the Commonwealth of Virginia, Department of Historic Resources to fund the development of a City-Wide Preservation Plan; and

WHEREAS the local share is to be transferred from the Capital Projects Fund, Comprehensive Blight Removal,

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance be, and it is hereby, amended by increasing revenues from the Commonwealth of Virginia, Department of Historic Resources (Federal pass-through funds), in the amount of \$26,950 and the local share for \$11,550 for an aggregate amount of \$38,500 for the purpose of development of a City-Wide Preservation Plan such funds to be appropriated in the Special Grant Fund as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
City-Wide Preservation Plan Categorical Aid - Federal	61801000-48050	\$ 26,950
Local Share Transfer In from Capital Projects	61801000-6125	\$ 11,550
	TOTAL	<u>\$ 38,500</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
City-Wide Preservation Plan	61801999-50	<u>\$ 38,500</u>

BE IT FURTHER ORDAINED by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance be, and it is hereby, amended authorizing a transfer from the Capital Projects Fund to the Special Grants Fund, such transfer be as follows:

**TRANSFER
FROM**

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Capital Projects Fund		
Comprehensive Blight Removal	60806999-50	(\$ 11,550)
Transfer Out to Special Grants	60806000-6014	\$ 11,550

AND BE IT FINALLY ORDAINED that all other accounts and provisions of the Fiscal Year 2023 Budget Appropriation Ordinance, as amended, not hereby amended, shall continue in full force and effect unless and until hereafter further amended or repealed.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney

Council Letter

City of Danville, Virginia



CL-2836

New Business I.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Freedman's Cemetery CLG Grant

From: Kenneth C. Gillie, Jr., Community Development Director

COUNCIL ACTION

First Reading: 09/20/2022

Final Adoption: 10/04/2022

SUMMARY

The City of Danville has received a Certified Local Government grant in the amount of \$12,709 from the Virginia Department of Historic Resources. The grant will be used to interment location project using Ground Penetrating Radar. This is a request to amend the Fiscal Year 2023 Budget to accept these funds.

BACKGROUND

The City of Danville was awarded a Certified Local Government (CLG) grant from the Virginia Department of Historic Resources (VDHR) in the amount of \$12,709 for the completion of an interment location project at Freedmen's Cemetery. The project uses Ground Penetrating Radar (GPR) technology to locate anomalies below the surface and identify potential unmarked grave locations. It is necessary to amend the Fiscal Year 2023 Budget to accept these funds.

The CLG grant is reimbursable, and a local match will be provided. It is anticipated that the local match will not exceed \$5,500. This grant will fund the second phase of the interment location project at Freedmen's Cemetery. The first phase yielded 418 interments, and staff anticipates a larger number in phase two.

RECOMMENDATION

It is recommended that City Council Amend the Fiscal Year 2023 Budget Appropriation Ordinance to accept a grant award in the amount of \$12,709.

Attachments

Ordinance

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2022 - _____ - _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR A GRANT FROM THE DEPARTMENT OF HISTORIC RESOURCES IN THE AMOUNT OF \$12,709 AND A LOCAL MATCH IN THE AMOUNT OF \$5,500 FOR A TOTAL AMOUNT OF \$18,209 AND APPROPRIATING THE SAME.

WHEREAS the City of Danville has received a grant from the Commonwealth of Virginia, Department of Historic Resources to fund an interment location project at Freedmen's Cemetery; and

WHEREAS the local share is to be transferred from the Capital Projects Fund, Comprehensive Blight Removal,

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance be, and it is hereby, amended by increasing revenues from the Commonwealth of Virginia, Department of Historic Resources (Federal pass-through funds), in the amount of \$12,709 and the local share in the amount of \$5,500 for a total amount of \$18,209 for the purpose of an interment location project at Freedmen's Cemetery such funds to be appropriated in the Special Grant Fund as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Freedman's Cemetery, Phase II Categorical Aid - Federal	61800000-48050	\$ 12,709
Local Share Transfer In from Capital Projects	61800000-6125	\$ 5,500
	TOTAL	<u>\$ 18,209</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Freedman's Cemetery, Phase II	61800999-50	<u>\$ 18,209</u>

BE IT FURTHER ORDAINED by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance be, and it is hereby, amended authorizing a transfer from the Capital Projects Fund to the Special Grants Fund, such transfer be as follows:

TRANSFER FROM

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Capital Projects Fund		
Comprehensive Blight Removal	60806999-50	(\$ 5,500)
Transfer Out to Special Grants	60806000-6014	\$ 5,500

AND BE IT FINALLY ORDAINED that all other accounts and provisions of the Fiscal Year 2023 Budget Appropriation Ordinance, as amended, not hereby amended, shall continue in full force and effect unless and until hereafter further amended or repealed.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney

Council Letter

City of Danville, Virginia



CL-2830

New Business J.

City Council Regular Meeting

Meeting Date: 09/20/2022

Subject: Victim/Witness Assistance Program Ordinance

From: Henrietta Weaver, Budget Director

COUNCIL ACTION

First Reading: 09/20/2022

Final Adoption: 10/04/2022

SUMMARY

The City received notice from the Commonwealth of Virginia, Department of Criminal Justice Services, of the approval of Federal and State funding in the amount of \$177,083 for the continuation of the City's Victim/Witness Assistance Program which is operated through the Commonwealth Attorney's Office. The Victim/Witness Assistance Program provides assistance to victims of criminal offenses (e.g., rape, felonious assault, child sexual and physical abuse, homicide, domestic violence) occurring in Danville.

The program provides direct and referral services to meet specific needs (e.g., mental health, social services, legal, medical) and files claims for crime victim's compensation. The program also provides a court escort, an explanation of criminal court procedures, intervenes with employers, collection agencies and landlords when victim's injuries result in loss of income, and monitors court related restitution payments.

BACKGROUND

The goal of the Victim/Witness Assistance Program is to alleviate the confusion, pain, and suffering experienced by innocent victims of violent crime occurring in Danville. This is an annual grant and does not require any local matching funds.

RECOMMENDATION

It is recommended that the Council approve the attached ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to provide for the appropriation of the funds.

Attachments

Ordinance

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2022 - _____._____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR A GRANT FROM THE COMMONWEALTH OF VIRGINIA FOR A VICTIM WITNESS PROGRAM IN THE AMOUNT OF \$177,083 AND APPROPRIATING SAME.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance be, and it is hereby, amended by increasing revenues to provide for a grant from the Commonwealth of Virginia, Department of Criminal Justice Services, in an amount of \$177,083 for the purpose of operating a victim witness program within the City of Danville, and appropriating same within the Special Grants Fund, such revenue and appropriation to be as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Victim Witness Grant		
Federal Aid	60301000-48055	\$123,958
Categorical Aid – DCJS	60301000-47060	53,125
	Total	<u>\$177,083</u>

EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Victim Witness Grant		
Salaries & Wages	60301000-51100	\$142,842
Other Taxable Comp	60301000-51155	5,500
FICA	60301000-51450	9,563
Retirement VRS	60301000-51500	14,800
Print Shop – Office Supplies	60301000-52655	1,980
Postage	60301000-54050	695
Telephone/Internet	60301000-54100	250
Travel/Training	60301000-54900	601
Materials & Supplies	60301000-55930	852
	Total	<u>\$177,083</u>

AND BE IT FURTHER ORDAINED that all other accounts and provisions of the Fiscal Year 2023 Budget Appropriation Ordinance, as amended, not hereby amended, shall continue in force and effect unless and until hereafter further amended or repealed.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney