# DANVILLE CITY COUNCIL REGULAR MEETING AGENDA

# MUNICIPAL BUILDING

# August 20, 2019

# 7:00 P.M.

| | | |
|---|---|---|
| **PRESIDING:** | Alonzo L. Jones, Mayor | |
| **CITY COUNCIL MEMBERS:** | James B. Buckner<br>L.G. "Larry" Campbell, Jr.<br>Dr. Gary P. Miller<br>Sherman M. Saunders | Fred O. Shanks, III<br>Adam J. Tomer<br>J. Lee Vogler, Jr., Vice Mayor<br>Madison J. Whittle |
| **STAFF:** | Ken F. Larking, City Manager<br>Earl B. Reynolds, Jr., Deputy City Manager | W. Clarke Whitfield, Jr., City Attorney<br>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 - Fred O. Shanks, III**

**PLEDGE OF ALLEGIANCE TO THE FLAG**

**COMMUNICATIONS FROM VISITORS**

*Citizens who desire to speak on matters not listed on the agenda will be heard at this time. Citizens who desire to speak on agenda items will be heard when the agenda item is considered.*

**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. Consideration of Approval of Minutes from Regular Council Meeting held on July 16, 2019.
Council Letter Number CL - 2173.

B. Consideration of Amending the Fiscal Year 2020 Budget Appropriation Ordinance for a Virginia Commission for the Arts Grant.
Council Letter Number CL - 2154.

An Ordinance Amending the Fiscal Year 2020 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 Grant of $9,500.
**FINAL ADOPTION**

C. Consideration of Amending the Fiscal Year 2020 Budget Appropriation Ordinance for a National Recreation and Parks Grant.
Council Letter Number CL - 2157.

An Ordinance Amending the Fiscal Year 2020 Budget Appropriation Ordinance to Provide for a National Recreation and Parks Association Grant Award in the Amount of $110,000.
**FINAL ADOPTION**

**NEW BUSINESS**

A. Consideration of Changes to Chapter 32 of the Danville City Code for the Employee Retirement System.
Council Letter Number CL - 2171.

An Ordinance Amending Chapter 32, Entitled "Retirement System" of the Code of the City of Danville, Virginia, 1986, as Amended in Order to Update and Reflect the Required Contributions of New Employees to the "Employees' Retirement System of the City of Danville, Virginia" Hired on or after September 1, 2019.

B. Consideration of Authorizing the Issuance of Bonds of the City of Danville, Virginia in the Amount of $16,000,000.
Council Letter Number CL - 2168.

1. Public Hearing

2. 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 and Declaring the City's Official Intent to Reimburse Expenditures with Proceeds of a Borrowing.
**FIRST READING**

C. Consideration of Approval of a Lease Agreement with Fly High Inc.
Council Letter Number CL - 2135.

1. Public Hearing

2. A Resolution Authorizing and Approving a Lease Agreement for Airport Facilities Between the City of Danville and Fly High Danville, Inc. to Provide Fixed Based Operator Services at the Danville Regional Airport.

D. Consideration of Providing a Moral Obligation to Virginia Bank & Trust for 145 Cane Creek Boulevard.
Council Letter Number CL - 2167.

A Resolution Authorizing and Approving Execution of a Moral Obligation Agreement by and Between the City of Danville, Virginia and Virginia Bank and Trust Company.

E. Consideration of Authorizing the City of Danville to enter into a Turn-Back Agreement with Transco.
Council Letter Number CL - 2165.

A Resolution Approving and Authorizing the City of Danville, Virginia to Enter into a Turn-Back Capacity Agreement with the Transcontinental Pipeline Company, LLC.

F. Consideration of Amending the Fiscal Year 2020 Budget Appropriation Ordinance for Federal and State Aviation Funding.
Council Letter Number CL - 2166.

An Ordinance Amending the Fiscal Year 2020 Budget Appropriation Ordinance to Provide for Additional Federal and State Aviation Funding for Multiple Construction Projects at the Danville Regional Airport in the Amount of $4,104,325 and for the Local Share in the Amount of $282,664.65 to be Provided from Reprogrammed Funds Transferred from Various Projects and Appropriating the 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-2173** **Consent Agenda Item #: A.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** Consideration of Approval of Minutes

**From:** Susan M. DeMasi, City Clerk

**COUNCIL ACTION**

Business Meeting: 08/20/2019

**SUMMARY**

Consideration of Approval of Minutes from Regular Council Meeting held on July 16, 2019.

**Attachments**

Meeting Minutes

The Second Regular July meeting of the Danville City Council was held on July 16, 2019, 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., Mayor Alonzo L. Jones, Dr. Gary P. Miller, Sherman M. Saunders, Fred O. Shanks, III, Adam J. Tomer, Vice Mayor 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**

The Invocation was given by L.G. “Larry” Campbell, Jr., followed by the Pledge of Allegiance to the Flag.

**COMMUNICATIONS FROM VISITORS**

Mayor Jones recognized Jasmine Lipscomb who noted she has not been before Council for several years and wanted to see how things were going. Ms. Lipscomb noted there was a cosmetology club at DCC and a cosmetology cohort that opened in January; the day program will finish in December.

**CONSENT AGENDA**

Council Member Shanks requested Item B on the Consent Agenda be pulled for discussion. Mr. Shanks noted this was a wonderful project serving Route 29 North and Route 58 East with Regional Bus Service. Mr. Shanks noted this was a Demonstration project, do they consider Demonstration funds to be temporary. Director of Transportation Marc Adelman noted they do, and were conditional upon receiving future local governments support, in this case from the counties; this project had funding for three years. Mr. Shanks stated when the funding stops after the third year, who will pick up the difference that will cover the employee cost. Mr. Adelman explained the employees that will work exclusively related to the grant fund would be informed when they are interviewed, it would be contingent upon funding from the counties to support the project in the future. If the counties do not want to support the operation after the three year period, then those positions would not be available. Mr. Shanks noted it was a great project and was glad Danville was able help the counties with it, but wanted to make sure Danville citizens are not caught funding something that may dry up in years to come. Right now, it would be up to the other localities to pick up funding if it were to stop from other places and Mr. Adelman noted that was correct.

Council Member Campbell questioned the shortage of drivers and Mr. Adelman stated, across the United States there was a driver shortage, it was a challenge having enough drivers to support the level of service the City would like to offer. Danville had to reduce their service for the Reserve a Ride operation in March, and in order to restore that level of service and also offer service to the counties, the City needs to hire eleven full time drivers. In response to Mr. Shanks, Mr. Adelman noted those full time positions do come with full City benefits. People can contact the Human Resources office at 799-5241 and make application on line. If they don’t have a computer to make application, they can coordinate with Human Resources or Transit to help them out.

Council Member Saunders **moved** for approval of the Consent Agenda:

Minutes of the Regular Council Meeting held on June 18, 2019. Draft copies of the Minutes had been distributed prior to the meeting.

Budget Appropriation – Amending the Fiscal Year 2020 Budget Appropriation Ordinance to Provide for State Demonstration Grant Funds Related to Regional Bus Service

An Ordinance entitled Ordinance No. 2019-07.01, Presented by its First Reading on July 2, 2019, Amending the Fiscal Year 2020 Budget Appropriation Ordinance to Provide for State Demonstration Grant Assistance Funds Related to the Provision of Regional Bus Service by the Danville Transit System to Halifax and Pittsylvania Counties in the Amount of $183,275, Cash Fare Revenues in the Amount of $24,192 and for the Local Share in the Amount of $45,819 for a Total Appropriation of $253,286 and Appropriating the Same.

Budget Appropriation – Amending the Fiscal Year 2020 Budget Appropriation Ordinance to Provide for State Department of Aviation Maintenance Grant Funds

An Ordinance entitled, Ordinance No. 2019-07.02, presented by its First Reading on July 2, 2019, Amending the Fiscal Year 2020 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 $100,000 and for the Local Share in the Amount of $52,750 for a Total Appropriation of $152,750 and Appropriating the Same.

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

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

**NEW BUSINESS**

**CONSIDERATION OF CANCELING THE REGULAR MEETING OF DANVILLE CITY COUNCIL SCHEDULED FOR AUGUST 6, 2019**

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

**RESOLUTION NO. 2019-07.03**

CANCELING THE REGULAR MEETING OF DANVILLE CITY COUNCIL SCHEDULED FOR TUESDAY, AUGUST 6, 2019 AND SCHEDULING A SPECIAL MEETING OF CITY COUNCIL ON THURSDAY, AUGUST 8, 2019.

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

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

**CONSIDERATION OF AMENDING THE CITY MANAGER'S CONTRACT**

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

**RESOLUTION NO. 2019-07.04**

AMENDING SECTION 4 ENTITLED "AUTOMOBILE ALLOWANCE" AND AMENDING SECTION 8 ENTITLED "VACATION AND SICK LEAVE" OF THE CITY MANAGER'S EMPLOYMENT AGREEMENT.

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

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

**CONSIDERATION OF AMENDING THE CITY ATTORNEY'S CONTRACT**

Vice Mayor Vogler **moved** for adoption of a Resolution entitled:

**RESOLUTION NO. 2019-07.05**

AMENDING SECTION 7 ENTITLED "VACATION AND SICK LEAVE BENEFITS" OF THE CITY ATTORNEY'S EMPLOYMENT AGREEMENT.

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

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

**COMMUNICATIONS**

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

**ROLL CALL**

Council Member Tomer gave a brief update on his health situation; he will be having surgery on August 6, 2019, will remain hospitalized for several days and will miss the August 8th meeting.

Vice Mayor Vogler noted Virginia was recently named the best state for doing business in America, which presents Danville and Council with an opportunity to do everything they can to make Danville the most business friendly city in the most business friendly state in America. Danville needs to do more to reach out to the small business owners, to hear from them, and get their ideas and concerns. Not only do things to make it easier for a small business to start in Danville, but not forget those that have been here for a long time, to see if there are opportunities to help them grow and thrive. Mr. Vogler stated he would like to have a conversation with the Director of Economic Development, his staff and Council about having a position in Economic Development that was solely focused on working with small businesses, a small business liaison. They would work with small businesses in the area, and provide resources and information to those who are looking to start a business.

Council Member Whittle noted the heat index will be over one hundred degrees and people needed to get under some cover. Danville Utilities has a peak power alert; electric customers should curtail usage from Tuesday through Friday, from 3:00 p.m. to 6:00 p.m.

Council Member Buckner noted citizens have seen the news about IKEA shutting down in December and would like to keep those employees in their thoughts and prayers. The City and the City Council are working hard to find someone to take over that building and hopefully there will be very little down time for the employees of IKEA. There was a lot of good news in the City, Rick Barker has announced several new ventures opening up downtown, the Lynn Street Market was opening and the Axe Throwing venue and the escape room was coming in the next month or two. Melissa Rose, from Union Church on Main Street, on July 26th, from 6:00 to 9:00 p.m., was hosting a community block party with games, food and activities, and has invited organizations in the community to attend.

Council Member Campbell asked the City Manager about utility rates for churches, will the rates increase for smaller churches, and will there be weatherization programs to assist them. City Manager Ken Larking explained the Utility Commission discussed this and asked staff to reach out to all the churches in the community to make sure they are as efficient as possible. Every church had the opportunity to request someone from utilities to walk through their building, and offer advice on how to be more efficient; this was whether the rate was projected to go up or down. Some churches will experience decreases and some will experience increases depending on how efficient their use of power was. Staff was targeting the ones that were projected to have increases, to go to them first and help them mitigate that as much as possible. Mr. Shanks noted there was going to be a rate increase this year which was recommended by the consultant, but the Utility Commission delayed it so churches could be put on notice and staff could reach out to them to help mitigate some of the issues. There are about fifteen churches that could see a substantial increase, those churches need to do some work and are the first ones that are supposed to be contacted by staff. Mayor Jones requested a list of those fifteen churches that will receive those substantial increases and a time line of when they were contacted by the City.

Council Member Miller noted they will be thinking of Council Member Tomer on National Night Out. Dr. Miller noted there was an article in the paper of a woman who died after being bitten by a kissing bug on the Riverwalk Trail. This has caused some panic and people are afraid to go on the trail. Dr. Miller noted it was unlikely it was the Reduviidae Bug which was common in South America, but not here; its bite doesn't kill by causing immediate death, it takes months to years after the bite. The woman did have a reaction to some kind of insect; whatever bit her caused an allergic reaction and cardiac arrest. People should not fear walking on the Trail. Dr. Miller noted Litehouse had their opening, employing 160 workers, PRA will soon employ several hundred workers, Rick Barker was going to open two new restaurants downtown and Ed Walker will open two new boutique hotels, including one on Main Street; there are a lot of good things happening in Danville. Dr. Miller noted Angie Dickerson, from Hoops Don't Shoot was doing a great job working with the youth in Danville and the banquet Saturday was excellent; Mayor Jones did a great job with his speech.

Mayor Jones thanked Jasmine Lipscomb for attending the meeting tonight. The Hoops Don't Shoot banquet Saturday was a great event. Mayor Jones noted everyone's thoughts and prayers will be with Mr. Tomer, and thanked everyone who has been praying for him and his family. Mayor Jones encouraged citizens to check on their neighbors during the high heat temperatures.

The meeting adjourned at 7:35 p.m.

APPROVED:

__________________________
MAYOR

ATTEST:

________________________________
CITY CLERK

# Council Letter
## City of Danville, Virginia

**CL-2154** **Consent Agenda** **Item #: B.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** Creative Communities Partnership Grant

**From:** William Sgrinia, Director of Parks, Recreation & Tourism

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**COUNCIL ACTION**

First Reading: 08/08/2019
Final Adoption: 08/20/2019

**SUMMARY**

In the past, the City of Danville has participated in the Creative Communities Partnership Grant, formerly known as the Local Government Challenge Grants program, 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 2020.

**BACKGROUND**

The local match of $5,000 has been provided in the FY 2020 Budget, General Fund Support Grants account. With these funds, assistance is provided to local arts organizations. Some of the local groups that have been assisted under this program over the years include: Danville Choral Arts Society, Danville Concert Association, Danville Museum of Fine Arts and History, Danville Festival in the Park, Inc., and the Danville Symphony Orchestra. The advertising for availability of funding and the submittal for funding requests will begin immediately. A public notice will be advertised in the Danville Register and Bee on Sunday, September 1, 2019 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 to the City no later than October 1, 2019. City staff reviews the applications and makes award recommendations to a local arts grant task force, who vote on the final awards. Award recipients are notified by letter of their grant amount and the funds must be spent prior to June 30, 2020.

**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.

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**Attachments**

Ordinance

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PRESENTED:_______________________

ADOPTED: _________________________

ORDINANCE NO. 2019____.____

AN ORDINANCE AMENDING THE FISCAL YEAR 2020 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 GRANT OF $9,500.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the Fiscal Year 2020 Budget Appropriation Ordinance be, and the same is hereby, amended by increasing revenues for a grant in the amount of $4,500 from the Commonwealth of Virginia, Virginia Commission for the Arts, and the local share of the grant in the amount of $5,000, all for its support of local arts, such funds to be appropriated in the Special Grants fund and to be as follows:

**ANTICIPATED REVENUES**

| **Description** | **Account No.** | **Amount** |
|---|---|---|
| Virginia Commission for the Arts | | |
| Categorical Aid—State | 60139000-47520 | $ 4,500 |
| Transfer from General Fund | 60139000-6101 | 5,000 |
| TOTAL | | $ 9,500 |

**ANTICIPATED EXPENDITURES**

| **Description** | **Account No.** | **Amount** |
|---|---|---|
| Virginia Commission for the Arts | 60139999-50 | $ 9,500 |

AND BE IT FURTHER ORDAINED that all other accounts and provisions of the Fiscal Year 2020 Budget Appropriations 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-2157** **Consent Agenda Item #: C.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** NRPA Grant - Mentoring Youth Initiative

**From:** William Sgrinia, Director of Parks, Recreation & Tourism

### COUNCIL ACTION

First Reading: 08/08/2019
Final Adoption: 08/20/2019

### SUMMARY

The City of Danville has been selected by the National Recreation and Parks Association to receive a three year mentor and opioid prevention grant. The department was selected as one of five departments in the U.S., to develop and implement a youth Mentor program focused on ages 9-12 over the next three years. The department will work closely with NRPA and its grant resources to develop and implement the programs as well as with local partners.

### BACKGROUND

The total funding for this project is $110,000 over the course of three years. With these funds, assistance will be provided to department staff, travel and training, program resources, materials and supplies etc. The grant covers the following:

- One full-time grant specialist to oversee and implement the program;
- Implement after school focused mentoring program to children ages 9-12;
- Develop national model for mentoring and opioid awareness and reduction in youth; and
- Training, materials and supplies and other needs as seen fit for program.

### RECOMMENDATION

It is recommended that City Council adopt the accompanying ordinance providing funds for the Mentoring Opportunities for Youth Initiative.

**Attachments**

Ordinance

PRESENTED:________________________

ADOPTED: __________________________

ORDINANCE NO. 2019____.____

AN ORDINANCE AMENDING THE FISCAL YEAR 2020 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR A NATIONAL RECREATION AND PARKS ASSOCIATION GRANT AWARD IN THE AMOUNT OF $110,000.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that the Fiscal Year 2020 Budget Appropriation Ordinance be, and the same is hereby, amended by increasing revenues for a grant in the amount of $110,000 from National Recreation and Parks Association for its support of the Mentoring Youth Initiative program, funds to be appropriated in the Special Grants fund and to be as follows:

**ANTICIPATED REVENUES**

| Description | Account No. | Amount |
|---|---|---|
| NRPA-Mentoring Youth Initiative | 6515000 | $110,000 |

**ANTICIPATED EXPENDITURES**

| Description | Account No. | Amount |
|---|---|---|
| NRPA-Mentoring Youth Initiative | 6515000 | $110,000 |

AND BE IT FURTHER ORDAINED that all other accounts and provisions of the Fiscal Year 2020 Budget Appropriations 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-2171** **New Business Item #: A.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** Changes to Employees' Retirement System

**From:** Sara Weller, Director of Human Resources

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### COUNCIL ACTION

Business Meeting: 08/20/2019

### SUMMARY

The National Resource Network made a recommendation to require new employees to contribute a portion of their salary to the Employees' Retirement System (ERS) each pay period. Currently, all contributions to ERS are made by the City. An employee contribution reduces the City's retirement expenses over time and assists in ensuring a continued benefit for all members of the System. If adopted, changes to ERS go into effect September 1, 2019.

### BACKGROUND

The Employees' Retirement System (ERS) of the City of Danville, Virginia is a defined benefit retirement plan that began in 1946 for the purpose of providing retirement, disability, and death-in-service benefits to regular full-time employees of the City of Danville. The System is governed by the provisions of Chapter 32 of the City Code and ordinances made by City Council. Current funding for the System comes from employer contributions paid by the City, and investment income. Each year, with the annual budget, City Council is provided recommended contribution rates from the Board of Trustees to adopt for the next fiscal year. Recommendations are made with a goal of maintaining the ERS on a sound financial basis. The adopted contribution rates for Fiscal Year 2020 are 5.315% for General Employees and 16.089% for Public Safety Employees. ERS funds are separate from other City funds and are invested and administered solely in the interest of the members, retirees, and beneficiaries of ERS. Employees become vested in ERS after five years of credible service with the City.

The National Resource Network provided various recommendations to reduce expenditures and increase the City's long-term financial stability. Requiring an employee contribution to help fund ERS is one of the recommendations made. After reviewing the recommendation and discussing it with the City's actuary, it is the City's recommendation to require employee contributions from newly hired or rehired full-time employees effective September 1, 2019. These contributions will be set at the lesser of fifty percent (50%) of the City Council's annually adopted contribution rate or the Virginia Retirement System's (VRS) Hybrid Plan's current contribution rate to be deducted from the employee each pay period. The current VRS employee contribution rate is 5%. The City's contribution rate is volatile, changing each fiscal year. If adopted, for FY20 the required employee contribution rate will be 2.6575% for General Employees and 5% for Public Safety Employees.

Recommended changes to Chapter 32 of City Code are attached for review. These changes incorporate the contribution rates for newly hired or rehired employees and the process for returning the contributions if the employee ceases being an employee prior to becoming vested in ERS. There are no recommended changes to ERS for current employees.

**RECOMMENDATION**

It is recommended City Council adopt the recommended changes to Chapter 32 of City Code.

**Attachments**

Ordinance

Retirement Code

PRESENTED:________________________

ADOPTED: _________________________

ORDINANCE NO. 2019-____.____

AN ORDINANCE AMENDING CHAPTER 32, ENTITLED "RETIREMENT SYSTEM" OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED IN ORDER TO UPDATE AND REFLECT THE REQUIRED CONTRIBUTIONS OF NEW EMPLOYEES TO THE "EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF DANVILLE, VIRGINIA" HIRED ON OR AFTER SEPTEMBER 1, 2019.

WHEREAS, the current Chapter 32, entitled "Retirement System" of the Code of the City of Danville, Virginia, needs to be amended to reflect the required contributions of new employees hired on or after September 1, 2019 to the Employees' Retirement System of the City of Danville, Virginia.

NOW THEREFORE, BE IT ORDAINED by the Council of City of Danville, Virginia, that the certain sections of Chapter 32, entitled "Retirement System" of the Code of the City of Danville, Virginia, 1986, as amended be amended, more specifically, Article I entitled "In General" section 32- 2 entitled "Definitions", Article II entitled "Administration and Finances" section 32-28 entitled "Annuity savings account; members' contributions", Article III entitled "Benefits" section 32-54 entitled "Service retirement allowance", section 32-56 entitled "Disability retirement allowance", section 32-58 entitled "Optional Allowances", section 32-60 entitled "Restoration of beneficiaries to membership", and section 32-63 entitled "Vested Retirement allowance; and

BE IT FURTHER ORDAINED those certain sections enumerated above of Chapter 32, entitled "Retirement System" of the Code of the City of Danville, Virginia, 1986, as amended hereby be amended as attached hereto and made a part hereof, as if fully set forth herein; and

BE IT FINALLY ORDAINED that all other provisions and Chapters of said Code be, and the same are hereby, continued in full force and effect unless and until the same are hereafter amended or repealed.

APPROVED:

MAYOR

ATTEST:

CLERK

Approved as to
Form and Legal Sufficiency:

City Attorney

**Chapter 32 - RETIREMENT SYSTEM [1]**
**ARTICLE I. - IN GENERAL**

Sec. 32-2. - Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings, unless a different meaning is plainly required by the context:

*Accumulated contributions* shall mean the sum of all the amounts deducted from the compensation of a member and credited to his individual account in Annuity Savings Account A, together with regular interest thereon plus the sum of all City contributions credited to his individual account in Annuity Savings Account B, together with regular interest thereon, as provided in section 32-28 of this chapter. Notwithstanding the foregoing, any employee who is first employed by the City after September 30, 1991, shall not be eligible to receive any contributions to an Annuity Savings Account B. Any employee who was first employed before October 1, 1991, shall receive or continue to receive contributions to his Annuity Savings Account B until his coverage under this retirement system terminates; as provided in section 32-4(a), an Annuity Savings Account B will not be established for any such employee until the first day of the month following completion of one (1) year of continuous service. Any employee hired after September 30, 1991, and who was previously employed by the City and terminated employment, shall not be eligible to receive any additional contributions to an Annuity Savings Account B.

*Actuarial equivalent* shall mean equality in value of the aggregate amounts expected to be received under different forms of payment. Such equality in value shall be based on assumptions as to the occurrence of future events. The future events to be taken into account are mortality for members, mortality for beneficiaries, and an interest discount for the time value of money. For this system, the actuarial assumptions are as follows:

(1) Mortality assumption for payments to members: RP 2000 Mortality Tables (one (1) year setback for males, one (1) year set forward for females) projected to 2025 with Scale BB, adjusted for eighty (80) percent male and twenty (20) percent female content.

(2) Mortality assumption for payments to beneficiaries and survivors: RP 2000 Mortality Tables (one (1) year setback for males, one (1) year set forward for females) projected to 2025 with Scale BB, adjusted for twenty (20) percent male and eighty (80) percent female content.

(3) Interest assumption: An annual effective rate of seven (7) percent.

*Annuity* shall mean annual payments for life derived from the accumulated contributions of a member.

*Annuity reserve* shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, computed at regular interest on the basis of the tables last adopted by the Board.

*Average final compensation* shall mean the average annual creditable compensation of a member during the three (3) highest consecutive years of creditable service which will produce the highest average, or if he has less than three (3) years of creditable service, then his average annual creditable compensation during his total years of creditable service.

*Average final three-year compensation* shall mean the average annual creditable compensation of a member during the three (3) consecutive years of creditable service which will produce the highest average, or if he has less than three (3) years of creditable service, then his average annual creditable compensation during his total years of creditable service.

*Beneficiary* shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by the system.

*Board* shall mean the Board of Trustees of the system provided for in this chapter to administer the system.

*Creditable compensation* shall mean the sum of a member's earnable compensation plus the amount, if any, contributed to such member's Annuity Savings Account B based on such earnable compensation. Earnable compensation and creditable compensation are equal prior to March 1, 1979, not contributions having been made to Annuity Savings Account B prior to that date. For any employee who is first employed by the City on or after October 1, 1991, creditable compensation shall be equal to earnable compensation. In the case of any member whose participation in the retirement system commences after June 30, 1996, creditable compensation for purposes of the retirement system shall not exceed the dollar limitation of Internal Revenue Code Section 401(a)(17), which is incorporated herein by reference, adjusted from time to time. If the retirement system determines creditable compensation for a period of time that contains fewer than twelve (12) calendar months, then the annual creditable compensation limit is an amount equal to the annual creditable compensation limit for the calendar year in which the creditable compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by twelve (12). If there are any contradictions between language herein and Internal Revenue Code Section 401(a)(17), the provisions of such Code section shall prevail. Effective as of the first day of first plan year beginning after December 31, 2001, the annual creditable compensation of each member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed two hundred thousand dollars ($200,000.00). Annual compensation means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the system (the determination period). The two hundred thousand dollar ($200,000.00) limit on annual compensation shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. In determining benefit accruals in plan years beginning after June 30, 2002, the annual compensation limit for determination periods beginning before July 1, 2002, shall be two hundred thousand dollars ($200,000.00).

*Creditable service* shall mean the sum of:

(1) Membership service prior to retirement service; and

(2) Converted and accumulated sick leave as described in section 32-6(e).

*Earnable compensation* shall mean the full rate of compensation per annum that would be payable to a member if he worked the full normal working time for his position. In cases where compensation includes maintenance, the Board may, in its discretion, fix the value of that part of the compensation not paid in money. If a member's normal working time is changed during his period of employment, average final compensation and average final three-year compensation shall be adjusted to reflect annual compensation payable to the member as if he worked the full normal working time scheduled for his position during each period of service for which he was a member.

*Employee* shall mean any regular and permanent officer or full-time employee of the City as defined in the City's Personnel System, whose compensation is fully paid by the City, whether employed or appointed for stated terms or otherwise, and shall include policemen and firemen and appointed officials, but shall not include employees of the School Board of the City, employees who hold office by popular election and are not required to devote a major portion of their time to the duties of their office. In all cases of doubt, the Board shall decide who is an employee within the meaning of this chapter.

***Employee Contribution shall mean the required monetary contribution to be paid by the employee into the Employees' Retirement System each payroll period. The amount of the contribution is set July 1 each fiscal year and only applies to employees hired on or after September 1, 2019.***

*Medical Board* shall mean the Board of Physicians provided for in this chapter.

*Member* shall mean any person included in the membership of the system as provided in section 32-4 of this chapter.

*Membership service* shall mean:

(1) Service as an employee since last becoming a member for which credit is allowable as provided in subsection 32-6(a) of this chapter, plus

(2) Service provided by subsections 32-6(c) and (f) of this chapter.

*Pension* shall mean annual payments for life derived from money provided by the City, but not from money contributed by the City to Annuity Savings Account B.

*Pension reserve* shall mean the present value of all payments to be made on account of a pension, or benefit in lieu of a pension, computed at regular interest on the basis of the tables last adopted by the Board.

*Permanent officer or employee* shall mean "regular employee" as defined in chapter II, entitled "definitions", of the personnel system of the City of Danville, as adopted and ordained in Ordinance No. 83-11.16, adopted November 28, 1983, and as from time to time thereafter amended and reordained.

*Physician* shall mean a person qualified to practice medicine such as a doctor of medicine, MD, general practitioner, nurse practitioner, and the like.

*Regular interest* shall mean interest at such per centum rate, compounded annually, as shall be established from time to time by the Board as provided in this chapter.

*Retirement allowance* shall mean the sum of the annuity and the pension. All retirement allowances shall be payable in monthly installments to the former member, except the allowance payable for the month in which he dies, which installments shall be paid to his beneficiary.

*Retirement allowance service* shall mean a member's membership service, except reduced to one-half (½) such service for any year during which he worked in a "shared position" (as defined in the City's personnel policies) for the entire year.

*Service* shall mean service as an employee paid for by the City, to include time the employee is out of work due to a job-related injury or illness compensable under worker's compensation. Under no circumstances shall service extend beyond the employee's termination date.

*System* shall mean the employees' retirement system of the City of Danville, Virginia, as defined in section 32-1 of this chapter.

(Ord. No. 2018-08.09 , 8-21-18)

## ARTICLE II. - ADMINISTRATION AND FINANCES

Sec. 32-28. - Annuity savings account; members' contributions.

(a) The annuity savings account shall be the account in which shall be accumulated the contributions deducted from the compensation of members to provide for their annuities. For membership service prior to July 1, 1977, and upon the basis of such tables as the Board shall adopt and regular interest, there shall be determined, for each general employee, the proportion of earnable compensation which, when deducted from each payment of his prospective earnable compensation prior to the attainment of age sixty-five (65), and accumulated at regular interest until his attainment of such age, shall be computed to provide at that time an annuity equal to one-one hundred fortieth of his average final compensation multiplied by the number of years of his membership service; and for each policeman or fireman the proportion of earnable compensation which, when deducted from each payment of his prospective earnable compensation prior to the attainment of age sixty (60), and accumulated at regular interest until his attainment of such age, shall be computed to provide at that time an annuity equal to one-one hundred twentieth of his average final compensation multiplied by the number of years of his membership service. Such proportion of earnable compensation shall be computed to remain constant. The proportion so computed for a member one (1) year younger than his normal service retirement age shall be applied to a member who has attained a greater age before he becomes a member of the system. Anything to the contrary in this chapter notwithstanding, each policeman or fireman whose credit for membership begins prior to January 1, 1957, may elect, on or before such date, to contribute at the increased rate which would be applicable at his age attained as of that date to a new policeman or fireman. Anything to the contrary in this chapter notwithstanding, any general employee may elect to reduce his contributions with respect to the first four thousand two hundred dollars ($4,200.00) of each year's salary by one-half (½) by filing written notice of such election with the Board at least thirty (30) days prior to the date such reduction is to become effective, and such a reduction shall be in effect for all general employees after December 31, 1968.

(b) Effective July 1, 1977, the portion of earnable compensation which each member contributes to the annuity savings account shall be redetermined. The Board shall determine a flat portion of earnable compensation to be contributed by general employees, and the Board shall also determine a flat portion of earnable compensation to be contributed by policemen and firemen. The portion so determined may be different for policemen and firemen than for general employees. The same contribution rate shall apply to all employees of a given class. The Board shall determine the portion to be contributed by each class of employee such that each class of employee shall bear a reasonable portion of, and have an interest in, the total cost of the retirement system.

(c) Effective January 1, 1979, no active employee of the City whose age equals or exceeds his normal retirement age, as defined in section 32-54, shall be required to contribute to the system. However, the employee's accumulated contributions shall continue to be credited with regular interest until he retires or dies or otherwise ceases to be an employee, whereupon his annuity savings account will be applied for his benefit or for his beneficiary as provided herein as if he were an active member at the time of his retirement, death or cessation of employment.

(d) On and after January 1, 1969, a member shall not deposit in the annuity savings account, by a single payment or otherwise, any amount in excess of the contributions deducted from his compensation as hereinbefore provided. Any such additional amounts previously deposited shall be treated as excess contributions returnable to the member as an annuity of equivalent actuarial value.

(e) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this chapter, shall be paid from the annuity savings account, and the balance, if any, of the accumulated contributions of such a member shall be transferred to the pension accumulation account. Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings account to the pension accumulation account.

(f) Effective March 1, 1979, the annuity savings account referred to in the preceding subsections of this section will be redesignated as "Annuity Savings Account A." This account will continue to be credited with regular interest and will be available to provide benefits for members or their beneficiaries as generally provided in this chapter, but no further employee contributions shall be deducted from the compensation of any member or credited to this account. A new account shall be established for each existing member on March 1, 1979, and this new account shall be designated as "Annuity Savings Account B." The amount of contribution to be paid into Annuity Savings Account B for each individual will be generally determined in the same manner as described in subsections (b) through (f) of this section, based on a contribution rate of five (5) percent of earnable compensation for general employees and a contribution rate of six and one-half (6½) percent of earnable compensation for policemen and firemen, but such contribution shall not be deducted from the compensation of any member, but shall instead be provided directly by the City. Any employee of the City who first becomes a member of the system on or after March 1, 1979, shall not have an Annuity Savings Account A established for him, but shall have an Annuity Savings Account B. Notwithstanding the foregoing, any employee who is first employed by the City after September 30, 1991, shall not be eligible to receive any contributions to an Annuity Savings Account B. Any employee who was first employed before October 1, 1991, shall receive or continue to receive contributions to his Annuity Savings Account B until his coverage under this retirement system terminates; as provided in section 32-4(a), an Annuity Savings Account B will not be established for such an employee until the first day of the month following the completion of one (1) year of continuous service. Any employee hired after September 30, 1991, and who was previously employed by the City and terminated employment, shall not be eligible to receive any additional contributions to an Annuity Savings Account B.

(g) As used throughout this chapter, on and after March 1, 1979, the term "annuity savings account" shall refer to the sum of Annuity Savings Account A and Annuity Savings Account B, and the term "member's accumulated contributions" shall be synonymous with the term "annuity savings account." The phrase "return of the member contributions," as used in this chapter, shall mean the payment to the member of the combined balance of Annuity Savings Account A and Annuity Savings Account B. Annuity Savings Account A and Annuity Savings Account B shall be one hundred (100) percent vested and nonforfeitable to an active member at all times. Upon retirement, the annuity savings account shall be distributed based upon the options selected under section 32-58 of this chapter.

***(h) Effective September 1, 2019, newly hired or rehired full-time employees of the City of Danville contribute the lesser of fifty percent (50%) of City Council's annually adopted contribution rate or the Virginia Retirement System's Hybrid Plan's current contribution rate to be deducted each pay period. These contributions shall be pre- tax contributions and will continue until the employee ceases to be a full-time employee of the City of Danville. City Council's annually adopted contribution rate is reviewed and adopted effective July 1 of each fiscal year. These contributions are called Employee Contributions and are not subject to the same rules and guidelines as the Annuity Savings Account A or B set up previously in the System. Interest is not earned on employee contributions. Upon retirement, these Employee Contributions shall be distributed based upon the option selected under section 32- 58 of this chapter.***

***If an employee ceases being a full-time employee prior to retirement and is not vested in the System, the Employee Contributions will be managed as follows:***

***(1) Refund of accumulated contributions before retirement. Any employee who has less than five (5) years of creditable service who ceases to be an employee other than by death shall be paid the balance in the member's contribution account in a mandatory cash-out as soon as administratively practical following his or her ceasing to be employed.***

***(2) Rollover of lump sum distributions. If a refund is paid (pursuant to h(1) in this section), that exceeds $1,000.00, and the member has not attained the later of his normal retirement age or sixty-two (62), the refund shall be made in a direct rollover to an individual retirement plan on behalf of the member, unless the member requests in writing that the distribution be made directly to him or her or directs in writing that the distribution be made to a specified eligible retirement plan or plans. Distributions paid directly to an employee are subject to IRS withholdings.***

## ARTICLE III. – BENEFITS

Sec. 32-54. - Service retirement allowance.

(a) The normal service retirement age shall be sixty-five (65) for general employees and sixty (60) for policemen and firemen; however, members hired after adoption of this section must have five (5) or more years of creditable service to be eligible for a service retirement allowance. Any member in service who has attained his normal service retirement age may retire on a service retirement allowance on the first day of any calendar month following the attainment of such age.

(b) The service retirement allowance shall consist of:

(1) An annuity which shall be the actuarial equivalent of the employee's accumulated contributions at the time of his retirement; and

***(2) An employee contribution, required of employees hired on or after September 1, 2019.***

*(3)~~(2)~~* A pension which, when added to the annuity provided by the employee's accumulated contributions, ***or the required employee contributions***, shall provide a total amount computed as follows:

a. In the case of a general employee, one fifty-fifth (1/55) of his average final compensation multiplied by the number of years of retirement allowance service prior to January 1, 1956, and one and forty-two one hundredths (1.42) percent of the part of his average final compensation not in excess of nine thousand five hundred dollars ($9,500.00) plus one and eighty-two one hundredths (1.82) percent of the part of such compensation in excess of nine thousand five hundred dollars ($9,500.00) multiplied by the number of years of retirement allowance service after December 31, 1955;

b. In the case of a policeman or fireman retiring from active status or who left the City as a vested member of the system on or before August 31, 2018, one-fiftieth (1/50) of his average final compensation multiplied by the number of years of retirement allowance service; and

c. In the case of a policeman or fireman retiring from active status or who left the City as a vested member of the system on or after September 1, 2018, two and two tenths (2.2) percent of his average final compensation multiplied by the number of years of retirement allowance service.

(4)~~(3)~~ In no event shall an employee's service retirement allowance, after adjustment as provided in section 32-64, be less than the employee's minimum service retirement allowance. The minimum service retirement allowance shall consist of:

a. An annuity which shall be the actuarial equivalent of the employee's accumulated contributions at the time of his retirement; and

***b. An employee contribution, required of employees hired on or after September 1, 2019.***

c~~b~~. A pension which, when added to the annuity or ***the required employee contributions*** provided by the employee's accumulated contributions, shall provide a total amount computed as follows: one and thirty-five hundredths (1.35) percent of his average final three- year compensation multiplied by his years of retirement allowance service.

d~~c~~. The required beginning date for commencement of retirement benefits shall be the later of the April 1 of the calendar year following the calendar year in which the employee attains age seventy and one-half (70½) or the April 1 of the calendar year following the calendar year in which the employee retires.

(5)~~(4)~~ In no event shall an employee's service retirement allowance be more than one hundred (100) percent of the employee's average final compensation used to calculate the member's benefit.

(Ord. No. 2018-08.09 , 8-21-18)

Sec. 32-56. - Disability retirement allowance.

(a) *Application and determination of eligibility.*

(1) Any member in service or the head of the member's department may apply to the Board for a disability retirement allowance on behalf of the member.

(2) In order to apply, a member must have five (5) or more years of creditable service and not attained his normal service retirement age as defined in section 32-54 or be eligible for unreduced early service retirement as defined in section 32-55.

(3) Any member who applies shall furnish to the Board, or its designee, a written report from his personal physician which includes the physician's recommendations regarding disability retirement based upon examination of the member. In order to be considered, the physician must certify in writing that the member is mentally or physically totally incapacitated for the performance of duty and such incapacity is likely to be permanent.

(4) Upon submission of the application for disability retirement and physician's report, the Board, or its designee, shall arrange for examination of the member by at least two (2) members of the Medical Board. Members of the Medical Board on an individual basis shall examine the member to the extent deemed necessary, review the report of the applicant's physician, if available, consult with the applicant's physician if deemed necessary and review any other available evidentiary material submitted by the Board, or its designee, for review. The members of the Medical Board shall state in their written reports to the Board whether or not the member is mentally or physically totally incapacitated for the performance of duty, whether such incapacity is likely to be permanent and whether such member should be retired.

(5) The Board, or its designee, may require that the member be examined by specialist physicians and may obtain such other information pertaining to the member which would be helpful to the Board in evaluating the disability retirement application.

(6) The Board shall approve or disapprove a disability retirement application not less than thirty (30) nor more than ninety (90) days next following the execution and filing of the application after giving consideration to reports from at least two (2) members of the Medical Board recommending disability retirement for the member and such other evidentiary material available to the Board. The Board may extend the evaluation period for an additional ninety (90) days if special reports are deemed necessary. The Board may designate authority to a member(s) of City staff to approve or disapprove an application for disability retirement as provided herein.

(b) *Method of computation.* The disability retirement allowance shall be equal to the service retirement allowance, if the member has attained his normal service retirement age; otherwise, it shall consist of:

(1) Any annuity which shall be the actuarial equivalent of the accumulated contributions of the member at the time of his retirement; and

***(2) An employee contribution, required of employees hired on or after September 1, 2019.***

(3) A pension which, when added to the annuity **or employee contributions** provided by the member's accumulated contributions, shall provide a retirement allowance equal to a service retirement allowance computed as described in section 32-54 at date of disability retirement. For such calculation, retirement allowance service shall equal the smaller of twice the retirement allowance service to date of disability retirement or the projected retirement allowance service at age sixty (60), but in no event less than retirement allowance service to the date of disability retirement. The minimum retirement allowance so determined shall be twenty-five (25) percent of the member's average final three-year compensation; provided, however, that such minimum allowance shall not exceed one hundred (100) percent of the service retirement allowance that would be payable to him if he had continued in the service of the City to his normal service retirement age and if he had continued to earn compensation at a rate equal to his average final three-year compensation from the date of disability until his normal service retirement age; and further provided, that the minimum retirement allowance shall be applicable to a general employee only until he becomes eligible for an unreduced social security benefit under Title II of the Social Security Act, and a disability retirement allowance.

(4) In no event shall an employee's disability retirement allowance be more than one hundred (100) percent of the employee's average final compensation used to calculate the member's benefit.

(Ord. No. 2018-08.09 , 8-21-18)

Sec. 32-58. - Optional allowances.

(a) Until the first payment on account of his retirement allowance becomes normally due, any member may elect to convert the retirement allowance otherwise payable to him into a modified retirement allowance in accordance with one (1) of the optional forms named below. However, if no option is elected, the member will be assumed to have automatically retired under Option 1.

(1) *Option 1.* An unreduced retirement allowance payable during the life of the retired member. If he dies before he has received in payments of his annuity ***or required employee contributions*** the amount of his accumulated contributions at the time of his retirement, the balance of such amount shall be paid to such person, if any, as he shall have nominated by written designation (duly acknowledged and filed with the Board), if such person survives him, otherwise to the estate of such retired member.

(2) *Option 2.* A reduced retirement allowance of equivalent actuarial value to Option 1 payable during the life of the retired member, with the provision that upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall have nominated by written designation (duly acknowledged and filed with the Board).

(3) *Option 3.* A reduced retirement allowance of equivalent actuarial value to Option 1 payable during the life of the retired member, with the provision that upon his death one-half (½) of his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall have nominated by written designation (duly

acknowledged and filed with the Board).

(4) *Option 4.* A reduced retirement allowance of equivalent actuarial value to Option 1 payable during the life of the retired member, with the provision that upon his death some other benefit shall be payable to such person as he shall have nominated by written designation (duly acknowledged and filed with the Board); provided that the total value of the allowance during his life and the succeeding benefit shall be computed to be of equivalent actuarial value to the retirement allowance which he would receive without optional modification and provided that the benefit shall be approved by the Board.

(5) *Option 5.* A retirement allowance of equivalent actuarial value to Option 1 payable during the life of the retired member, with greater monthly installments paid prior to age sixty-five (65) and a reduced monthly installment payable thereafter, such that the combined monthly benefit from the system and from primary Social Security benefits shall be calculated to be substantially level.

(6) *Lump sum payments.* Notwithstanding any other provisions of the system, if the actuarial equivalent of a service retirement allowance, early service retirement allowance, disability retirement allowance, or death benefit is ten thousand dollars ($10,000.00) or less at the time benefits are to commence, such actuarial equivalent shall be offered to such member or such member's beneficiary as determined under subsection 32-59(c), as the case may be, as soon as practicable following such member's date of retirement or death. For purposes of this subsection, the term "actuarial equivalent" shall be calculated in accordance with the actuarial equivalent assumptions as outline in section 32-2.

(b) Notwithstanding anything contained herein, in no event shall payments under any optional method extend beyond the later of the lifetime of the member, the lifetime of the member and the member's beneficiary, the life expectancy of the member or the joint life expectancies of the member and his beneficiary. Unless payments are to continue to a surviving spouse under a nondecreasing survivor annuity ***or required employee contribution*** the method of distribution selected must assure that at least fifty (50) percent of the present value of the accrued benefit is paid within the life expectancy of the member.

(c) If any of the following should occur: (i) the member's original beneficiary has died, (ii) the member obtains a final decree of divorce from the member's original beneficiary and such order has been entered by the appropriate court of law, or (iii) the member has obtained the written consent of the member's original beneficiary, together with evidence, satisfactory to the Board, of the good health of the member's original contingent beneficiary; then a retired member who has elected a retirement allowance under Option 2, 3, or 4 of paragraph (a) of this Code section may for one (1) time only, in the manner prescribed by the Board, revoke such election and elect one (1) of the two (2) following options:

(1) Elect to receive from time of notification the retirement allowance to which he would have been entitled had no option been elected initially.

(2) Elect an allowance actuarially equivalent thereto under Option 2, 3, or 4 of paragraph (a) of this Code section naming a different beneficiary.

If the provisions of this subsection are invoked by a retired member on the basis of the member having been divorced from his spouse, if his spouse is his beneficiary, and the marriage had been of a duration of twenty (20) years or more, the provisions of this subsection shall not be applicable until the death or remarriage of the former spouse unless such spouse consents in writing to the revocation of the option prior to death or marriage.

If such an election is made as result of the death or divorce of the member's beneficiary, the benefit payable to the retired member may be adjusted retroactively for a period of not more than sixty (60) days from the date the Board first receives notification of the desire of the retired member to make such a change, but in no event prior to the adoption of this subsection.

(Ord. No. 2018-08.09 , 8-21-18)

Sec. 32-60. - Restoration of beneficiaries to membership.

(a) Should a disability beneficiary under normal service retirement age be restored to or be in service at a compensation equal to or greater than his average final compensation at retirement, or should any other beneficiary be restored to service, his retirement allowance shall cease, he shall again become a member of the system, and he shall contribute thereafter at the same rate he paid prior to his retirement. An amount equal to the actuarial reserve held for the annuity provided by his own contributions **or an amount equal to his required employee contributions** shall be credited to him as accumulated contributions.

(b) If a former member who is entitled to a vested retirement allowance, commencing after he attains his normal service retirement age, returns to service as an employee of the City before such allowance has become payable, he shall again become a member of the system upon his return. He shall contribute thereafter at the rate determined as of the time he returned, and his retirement allowance payable on subsequent retirement shall be computed in accordance with the provisions of this chapter in effect at such time on the basis of service standing to his credit at the time of his termination and service credited to him after his return.

(c) If a former member who is entitled to and who is receiving a vested retirement allowance from the retirement system returns to service with the City, then either such member can be employed as a part-time or temporary employee as defined within the City's Personnel System or such former member must again become a member of the system and no longer receive a retirement allowance upon his return to full-time employment with the City.

(d) Nothing in this section shall require member contributions or City contributions or the accrual of additional benefits which would not be required for a currently active member of the same age, length of creditable service, and employee classification who has never had an interruption in his service.

(e) Members are eligible to make a one-time purchase of all or part of certain service credits. Members who gain service credits increase the amount of future retirement benefits. Members must purchase service while they are actively employed in a covered position or within ninety (90) days of termination. Military leave must be purchased while the member is actively employed in a covered position.

Members on leave without pay are not eligible to purchase any service credit.

Disability applicants who have been denied disability benefits are allowed the later of ninety (90) days from termination or ninety (90) days from the date of final denial to purchase service if service retirement is taken.

(1) With at least five (5) years of service in the retirement system, a member may make a one-time purchase of certain past service credits, provided that this service will not be used in calculation of retirement benefits under any other pension plan.

Under the conditions stated above, a member may purchase any retirement allowance service under this retirement system that was forfeited as a result of a member's receiving a distribution of his or her contributions following termination of service. Such member may purchase service at a fifteen (15) percent rate for general employees and twenty (20) percent for police and firemen, provided they have a minimum of five (5) years of credited service at the time of purchase. Purchase of this service will not change the member's retirement reduction factor; that is, this service cannot be used to satisfy the thirty-year service requirement for full benefits before normal retirement age; nor can it be doubled in determining service to be used in computing the amount of disability retirement benefits.

(2) The cost to purchase service credit will be fifteen (15) percent for general employees and twenty percent for police and firemen multiplied by the higher of a, b and c below, multiplied by each year of credited service to be purchased.

a. Current salary;

b. Salary as of the last date in service (if the member is within ninety (90) days of termination);

c. The average annual creditable compensation during the thirty-six (36) highest months of creditable service.

(3) Any service credit purchased must be paid either in one (1) lump sum or by payroll deduction as provided in section 32-60(e)(4). Lump sum payments may be made by submitting a check to the retirement system for the entire amount of service credit that the member wishes to purchase.

(4) A member may purchase past service credits by payroll deduction upon written request to the Secretary. The cost to purchase service credit, as provided by section 32-60(e)(2), shall be withheld by payroll deduction (fifteen (15) percent of salary for general employees and twenty percent of salary for police and firemen). The member will receive service credit equal to a period of time he purchases service credit by payroll deduction. A member can discontinue the purchase of service credit at any time with written notice to the Secretary. Once such payroll deduction has been discontinued, the member will be ineligible to again purchase service credit.

A member who repurchases credited service under this subsection shall not have his or her Annuity Savings Account A or B reestablished.

(f) If there is a portability agreement between the Board of Trustees of the system and the VRS or another political subdivision of the Commonwealth having a defined benefit plan which is not supplemental to the VRS, as authorized by section 32-10 of this Code, then any member in active service on the date the portability agreement is entered into may purchase any credited service in such other retirement system, that is not credited to the member in this system, upon the transfer of assets as provided in the portability agreement. For each year of nontransferred time, the member shall pay fifteen (15) percent of salary for general employees and twenty (20) percent of salary for police and firemen.

(Ord. No. 2018-08.09 , 8-21-18)

Sec. 32-63. - Vested retirement allowance.

(a) Anything in this chapter to the contrary notwithstanding, a member whose service is terminated, for reasons other than death or retirement, after he has completed five (5) or more years of creditable service, may elect to receive a vested retirement allowance in lieu of the return of his contributions. The vested retirement allowance shall be a deferred allowance commencing at his normal retirement age, or, for general employees at age fifty-five (55) provided the member has thirty (30) or more creditable years of service, for policeman and fireman that retired from active service or left the City as a vested member of the system on or before August 31, 2018, at age fifty-five (55) provided the member has thirty (30) or more creditable years of service, and, for policeman and fireman that retire from active status or left the City as a vested member of the system on or after September 1, 2018, at age fifty (50) provided the member has twenty- five (25) or more creditable years of service. Reduced benefits may be requested by vested policeman and fireman members who have less than twenty-five (25) years' service and retire from active status or leave the City as a vested member of the system on or after September 1, 2018, vested policeman and fireman members who have less than thirty (30) years' service and retire from active status or leave the City as a vested member of the system on or before August 31, 2018, and vested general employee members who have less than thirty (30) years' service in accordance with the provisions in section 32-55, reduced for the number of years the member's age is less than sixty (60) as provided in section 32-55(a)(1) or sixty-five (65) as provided in section 32-55(b)(1), whichever is appropriate. Sections 32-55(a)(2) and 32-55(b)(2) shall not apply to members whose service is terminated for reasons other than death or retirement. The vested retirement allowance (before reduction) shall consist of:

(1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at his normal service retirement age; and

***(2) An employee contribution, required of employees hired on or after September 1, 2019*****; and**

(3) A pension which, when added to the annuity provided by the member's accumulated contributions, ***or applicable required employee contributions*** shall provide a retirement allowance equal to an amount computed, pursuant to section 32-54 as a service retirement allowance on the basis of his average final compensation and creditable service at the date his employment terminated.

(b) Should a member who has elected a vested retirement allowance request the return of his contributions or die prior to the date when the first payment of his retirement allowance is normally due to become payable, the amount of his contributions shall be returned in accordance with the provisions of section 32-59 and no further benefit shall be due or become payable on account of his previous membership.

# Council Letter
## City of Danville, Virginia

**CL-2168** **New Business Item #: B.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** Ordinance Authorizing the Use of Fiscal Year 2020 Debt Capacity

**From:** Michael Adkins, Director of Finance

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### COUNCIL ACTION

First Reading: 08/20/2019
Final Adoption: 09/03/2019

### SUMMARY

The City's Charter grants the ability to issue bonds, within a specified annual limit, without a referendum. Each year's bond capacity may carry forward to the next fiscal year, if the authorization is granted by Council prior to June 30. Approving the attached Ordinance does not allow the City to issue debt, it only reserves the capacity to issue debt based on Fiscal Year 2020's legal limits for issuing debt without a referendum. This capacity is only available from now until the end of the subsequent fiscal year (June 30, 2021). Council would need to approve a Resolution for the issuance or refunding of debt before the City can actually issue debt. A separate Resolution is also being presented for approval in order to issue new bonds to finance the FY 2020 Capital Improvement Plan in accordance with Council's adopted budget for FY 2020.

### BACKGROUND

The City's Charter grants the ability to issue up to $6,000,000 principal amount of bonds to finance any capital expenditures other than expenditures relating to the City's water, sewer, gas, and/or electric systems. Further, the Charter grants authority to issue up to $10,000,000 principal amount of bonds to finance capital expenditures related to the City's water, sewer, gas, and electrical systems, or other specific undertakings from which a revenue may be derived. The Charter also allows an additional $25,000,000 in principal amount of bonds to be issued to finance capital expenditure relating to the City's water treatment, wastewater treatment, stormwater treatment, solid waste disposal, or recycling facilities, and any extraordinary maintenance improvements or expansion of transmission and distribution infrastructure for the electric or gas systems. Each of the amounts may be authorized annually without referendum and may carry forward one fiscal year, if authorized prior to June 30.

The FY2020 budget for capital projects includes potential bond financing of $4,984,102 of general governmental projects and $8,000,000 of Electric Fund projects. The passing of this Ordinance will allow access to the borrowing capacity needed to finance these approved projects, but does not actually authorize the issuance of the bonds. A separate Resolution to authorize bonds will need to be approved in order to issue the debt.

**RECOMMENDATION**

It is recommended City Council approve the attached Ordinance authorizing utilization of the City's borrowing capacity to issue General Obligation bonds of the City of Danville, Virginia, in the maximum principal amount of $6,000,000, pursuant to Section 9-7A of the City Charter, as well as a maximum amount of $10,000,000, pursuant to Section 9-7D of the City Charter.

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**Attachments**

Ordinance

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PRESENTED: ______________________

ADOPTED: ______________________

ORDINANCE NO. 2019-____.____

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 AND DECLARING THE CITY'S OFFICIAL INTENT TO REIMBURSE EXPENDITURES WITH PROCEEDS OF A BORROWING.

WHEREAS, Section 9-7A of the City Charter allows the City of Danville, Virginia (the "City"), to issue each fiscal year up to $6,000,000 principal amount of bonds to finance any capital expenditures other than for capital expenditures relating to the City's water, sewer, gas and/or electric systems, without submitting the question of their issuance to the voters; and

WHEREAS, the Council of the City (the "Council") has not authorized or issued any bonds pursuant to Section 9-7A for the fiscal year that began July 1, 2019, and the Council now desires to authorize the issuance of up to $6,000,000 principal amount of bonds in accordance with such Charter provision; and

WHEREAS, Section 9-7D of the City Charter allows the City to issue each fiscal year up to $10,000,000 principal amount of bonds to finance capital expenditures relating to the City's water, sewer, gas and electric systems or other specific undertaking or undertakings from which the City may derive a revenue, without submitting the question of their issuance to the voters; and

WHEREAS, the Council has not authorized or issued any bonds pursuant to Section 9-7D for the fiscal year that began July 1, 2019, and the Council now desires to authorize the issuance of a up to $10,000,000 principal amount of bonds in accordance with such Charter provision; and

WHEREAS, the City plans to undertake the Projects described below, and expects to advance its own funds to pay expenditures related to the Projects (the

“Expenditures”) and to receive reimbursement for such Expenditures from proceeds of tax-exempt bonds, as described above.

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

1. It is determined to be necessary and expedient for the City to plan, design, acquire, construct, extend, renovate and/or improve the Projects described below, all of which are determined to promote the development and public welfare of the City, to borrow money for such purposes and to issue the City’s bonds therefor.

2. Pursuant to Section 9-7A of the City Charter, there are authorized to be issued general obligation bonds in the maximum principal amount of $6,000,000 to provide funds for any capital expenditures (other than for capital expenditures relating to the City’s water, sewer, gas and/or electric systems), including but not limited to financing various capital expenditures for general governmental purposes including, without limitation, (a) acquisition of fire equipment and the expansion, installation and equipping of a rescue station building, (b) acquisition and installation of an emergency generator for a public building, (c) public building improvements, (d) welcome center renovations, (e) street and parking lot improvements, (f) stormwater system upgrades and (g) school building improvements (collectively, the “9-7A Project”). Such bonds may be issued as one or more separate issues or may be combined with bonds authorized for other purposes and issued as a single issue.

3. Pursuant to Section 9-7D of the City Charter, there are authorized to be issued general obligation and/or revenue bonds in the maximum principal amount of $10,000,000 to provide funds, together with other available funds, for capital expenditures relating to the City’s water, sewer, gas and electric systems or other specific undertaking or undertakings from which the City may derive a revenue, including, without limitation, streetlight replacements, generation projects and substation and line rebuilds for the electric system (collectively, the “9-7D Project” and, together with the 9-7A Project, the “Projects”). Such bonds may be issued as one or more separate issues or may be combined with bonds authorized for other purposes and issued as a single issue.

4. The bonds shall conform to Section 9-5 of the City Charter and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations and form, be executed in such manner, and be sold at such time or times and in such manner as the Council shall hereafter provide by appropriate resolution or resolutions. All bonds issued to finance capital expenditures shall be made payable within the average probable period of usefulness of the improvements or undertakings to be financed. The Council shall make such determinations pursuant to such resolution or resolutions.

5. As determined by Council pursuant to subsequent resolution, the bonds shall be issued as general obligations of the City to which the City’s full faith and credit of the City shall be irrevocably pledged, or, in the alternative for purposes of financing the 9-7D Project, the bonds may be issued as revenue obligations to which the revenues of the City’s electric, gas, water and wastewater systems shall be irrevocably pledged.

6. The City declares its intent to use proceeds of the bonds to reimburse the City for Expenditures with respect to the Projects made on or after the date that is no more than 60 days prior to the date hereof. As such, the City intends that the adoption of this Ordinance confirms the "official intent" within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.

7. The City Clerk, in collaboration with the City Attorney, is authorized and directed to see to the immediate filing of a certified copy of this Ordinance in the Circuit Court of the City of Danville.

8. This Ordinance shall take effect immediately.

APPROVED:

______________________________
MAYOR

ATTEST:

______________________________
CLERK

Approved as to
Form and Legal Sufficiency:

______________________________
City Attorney

# Council Letter
## City of Danville, Virginia

**CL-2135** **New Business Item #: C.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** Fixed Based Operator Lease

**From:** Marc Adelman, Director of Transportation Services

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**COUNCIL ACTION**

Business Meeting: 08/20/2019

**SUMMARY**

Based on proposals received from companies to provide aviation services at the Danville Regional Airport, the Airport Commission recommended that a new lease should be provided to Fly High Inc. Per the attached lease agreement, the initial lease term is for ten years with an option for renewal of three additional terms of five years each, and for Fly High Inc. to pay $.08 per gallon for the fuel flow fee. The fee for leased premises space will be $1500 per month and this fee shall be adjusted every five years beginning on the date the agreement is effective for the initial and option renewal periods and will be equal to the percentage change in the Consumer Price index from the effective date of the original Agreement to the end of the five-year period.

**BACKGROUND**

On March 1, 2019, proposals were received from interested parties to provide Fixed Based Operator services at the Danville Regional Airport. Per Section 6-38 of the City of Danville, Virginia Code of Ordinances, the Danville Regional Airport Commission's duties include providing recommendations to City Council related to ground lease fees. With the assistance of an outside aviation consulting firm, written proposals were evaluated and interviews were completed by the Airport Commission. Through this review process, a lease was recommended by the Commission to be provided to Fly High Inc. to Danville City Council on May 9, 2019.

A new lease agreement was prepared based on input received from the Airport Commission and provided to Fly High Inc. for their review. The lease agreement calls for an initial lease term of 10 years with an option for renewal involving three additional terms of five years each. Commission members also proposed that the monthly lease fee for rental facilities should be increased over time as part of the lease terms.

As a result, the lease shall be adjusted every five years beginning on the date the agreement is effective for the initial and option renewal periods and will be equal to the percentage change in the Consumer Price index from the effective date of the original agreement to the end of the five-year period. The initial lease fee for rental facilities shall be $1500 per month and the fuel flow fee shall be $.08 per gallon. Staff recommends that the lease commence on Friday, November 1, 2019.

**RECOMMENDATION**

It is recommended that Danville City Council approve a lease agreement with Fly High Inc. to provide aviation services and for leased premises space at the Danville Regional Airport and that the lease commence on November 1, 2019.

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**Attachments**

Resolution

Lease agreement

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PRESENTED: ____________________

ADOPTED: ______________________

RESOLUTION NO. 2019-____.____

A RESOLUTION AUTHORIZING AND APPROVING A LEASE AGREEMENT FOR AIRPORT FACILITIES BETWEEN THE CITY OF DANVILLE AND FLY HIGH DANVILLE, INC. TO PROVIDE FIXED BASED OPERATOR SERVICES AT THE DANVILLE REGIONAL AIRPORT.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Danville, Virginia, that the Lease Agreement, substantially in the form attached hereto and made a part hereof, between the City of Danville, Virginia and Fly High Danville, Inc. involving hangar space, administrative office space, pilot’s lounge, and other airport facilities including use of the tie-down spaces and the airport’s fuel farm be, and the same is hereby, approved; and

BE IT FURTHER RESOLVED that the City Manager, Kenneth F. Larking, be, and he is hereby, authorized to execute said agreement on behalf of the City.

APPROVED:

______________________________
MAYOR

ATTEST:

______________________________
CLERK

Approved as to
Form and Legal Sufficiency:

______________________________
City Attorney

**FIXED BASED OPERATOR AGREEMENT**
**DANVILLE REGIONAL AIRPORT, DANVILLE, VIRGINIA**

**THIS AGREEMENT**, made and entered into this 1st day of NovEmBEA1 2019, by and between the **City of Danville**, **Virginia ("City)** and **Fly High Danville, Inc.**, a domestic corporation ("FBO") registered in the Commonwealth of Virginia.

**WITNESSETH:**

**WHEREAS**, the City owns and operates the Danville Regional Airport ("Airport") located within the corporate limits of the City of Danville, Virginia and has jurisdiction over the operation and maintenance of land within the Airport; and

**WHEREAS**, in order to ensure adequate aeronautical services and facilities for the users of the Airport, to encourage the development of the Airport and its activities, and to foster the economic health and orderly development of commercial aeronautical operators at the Airport, the City has determined to contract with the FBO to provide aeronautical services at the Airport; and

**WHEREAS**, the FBO has presented itself to be qualified to provide such services as an independent fixed base operator in response to the City's Request for Proposals as amended the FBO's proposal dated February 25, 2019, and representations made by the FBO at its interview with the Airport Commission on April 5, 2019 that are incorporated herein by reference; and

**WHEREAS**, both parties hereto agree that this Fixed Based Operator Agreement ("Agreement") constitutes the entire agreement between the parties;

**WHEREAS,** all references to days presented in this Agreement shall mean calendar days;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement to be kept and performed by both parties, the parties hereby agree as follows:

**Premises**

The City hereby leases to the FBO and the FBO hereby leases from the City, the premises described, identified, and shown on Exhibits A and B, hereto (the "Premises"), together with the right of ingress and egress for both vehicles and aircraft.

The FBO shall have the right to erect, maintain and construct facilities that it owns within the Premises or on land areas to be leased from the City, provided that such construction is approved by the Airport Commission and conforms to the building code requirements of the City and obtains the applicable Federal, State and local permits including requisite environmental impact reports. The City is responsible for filing Federal Aviation Administration (FAA) Form 7460-1 and obtaining a Notice of No Hazard from the FAA prior to construction. Lease terms for such new facility construction are to be negotiated with the City prior to construction. Title to such construction shall be held by the FBO and shall not be transferable during the term of the Agreement. The FBO shall maintain these facilities in good repair and function during the term of the Agreement. At such time as the Agreement expires, the constructed facilities will revert

to ownership by the City at its sole option. Should that option be not exercised, the FBO shall be responsible for removal of the facilities and returning the site to its original condition.
The FBO shall be entitled to make modifications to the existing facilities, communications and other components within its Premises provided that prior written approval is obtained from the City. The FBO shall provide the City with details associated with its planned modifications.

**Term**

The initial term of this Agreement shall be for a period of ten years, commencing on November 1, 2019 and continuing through October 31, 2029, unless earlier terminated under the provisions of this Agreement.

The FBO shall have an option to renew this Agreement for an additional three (3) periods of five (5) years each upon the terms and conditions set forth herein:

The FBO shall provide written notice to City no less than one year before the termination date of this Agreement of its intention to seek renewal(s) of this Agreement.

**Payments by the FBO to the City**

The FBO agrees to pay to the City during the initial term of this Agreement the following payments:

a. A rental of $18,000.00 paid per year in 12 equal monthly payments of $1,500.00 to the City for use of the Premises.

b. A fuel flowage fee of eight cents ($0.08) per gallon of aviation fuel (avgas and Jet-A) delivered to the FBO. The FBO shall provide fuel delivery receipts as provided by the fuel supplier. The fuel flowage fee is also applicable to fuel used in aircraft owned or operated by the FBO.

c. For terminal building leased space for which electricity, water, air conditioning, or other utilities are supplied by the City, the FBO shall pay the FBO's pro rata share to be calculated as follows:

   Pro Rata Share = (A / B) x monthly utility bill, where:

   A = Square feet of Premises (1507 square feet)

   B = Total square feet of building under roof (13,628 square feet)

d. Utility charges for the maintenance facility will be based on meter readings paid exclusively by the FBO.

The payments specified above for rent and the flowage fee shall be paid to the City on or before the 10th calendar day following the end of each month during each term of this Agreement. Payment for utilities shall be due and payable within ten (10) calendar days from receipt of billing by FBO from City, which in the case of first class mail shall be deemed to have been received three (3) calendar days after the day it is postmarked.

In the event the FBO fails to make timely payment of any fee or payment due and payable in accordance with the terms of this Agreement within fifteen (15) calendar days after such payment shall become due and payable, interest at the rate of 1.5 % per month or a fraction thereof on the unpaid balance shall accrue against the delinquent payment from the date due until the date payment is received by the City.

Notwithstanding the foregoing, the City shall be permitted to terminate this Agreement for default in the payment of any fee or payment due and payable to the City in accordance with the terms of this Agreement, or from enforcing any other provisions contained herein or implied by law.

The FBO shall not, for any reason, withhold or reduce the FBO's required payments provided in this Agreement, it being expressly understood and agreed by the parties that the payments described herein are a covenant by the FBO that is independent from the other covenants of the parties hereunder.

**Rental and Fees Adjustment**

The minimum rents and fees above shall be adjusted at the beginning of each renewal term. The rent adjustments are due to changes in the purchasing power of the United States Dollar. It is necessary to establish a base in order to provide for this adjustment. This base will be the Consumer Price Index (CPI) for All Urban Consumers (CPI-U) for the South Region as reported by the U.S Bureau of Labor Statistics. The rent adjustment will be equal to the percentage change in the index from the effective date of the original Agreement to the end of the initial term and then adjusted for each renewal term as to the change from the beginning of the previous term to the beginning of the renewal term. The rental and fees adjustment is applicable only to the rental of facilities.

As an example, if the index increased by ten percent during the first ten-year period of this Agreement, then beginning with the one hundred twenty first month of the Agreement, the rents and fees would be increased by ten percent and remain at that value until the end of the 180th month (the end of the first five-year period.) At that time the rents and fees would again be adjusted according to the change in the index should the second and third renewal options be exercised by the FBO. This adjustment procedure shall continue until this Agreement is expires or is terminated.

**Services and Business Responsibilities**

In accordance with its written proposal and representations at its interview, the FBO agrees to provide, and the City hereby grants the FBO the right to engage following aeronautical activities and services:

a. Ground handling services
b. Fuel sales -- Jet-A and 100LL
c. Concierge reservations system for pre-arrivals
d. Concierge services on arrival -- assistance with hotel reservations, rental cars, catering
e. Flight planning
f. Pilot lounge
g. Courtesy car
h. GPU
i. Complimentary coffee and ice

j. Complimentary high speed internet access
k. Flight training
l. Work with maintenance to remove any disabled aircraft from the runways
m. Aircraft maintenance and repair
n. Aircraft for rent and flight training
o. Aircraft for sale
p. Two mobile refueling vehicles

The FBO may subcontract the provision of any of the above services to a third party, provided that the agreement made between the parties incorporates the provisions of this Agreement in full and that the City and the Airport Commission approve the third party with respect to its qualifications, ability to adequately provide the services, business practices, financial status, and other factors considered important by the Airport Commission. The City reserves the right to review, comment and approve the agreement between the two parties.

Notwithstanding the above, the FBO shall not contract out to a third party the performance of any of the aeronautical activities or services required under the Agreement or engage in any business or activity at the Airport other than those specifically authorized under this Agreement, unless otherwise approved, in writing, by the City and the Airport Commission.

In addition, the FBO may sublease any portion of the Premises so long as such sublease complies with the terms of this agreement and is for aviation purposes. As an example and not in limitation of this provision, the FBO may sublease the maintenance hangar to a City-approved subcontractor providing maintenance services.

The FBO shall implement a Sales and Marketing Plan as presented in its proposal and amended as appropriate as conditions warrant. The FBO shall inform the Airport Commission and City staff as to the status of the plan, findings obtained and results achieved on a quarterly or more periodic basis in written reports and, when requested, personal presentations.

The FBO shall implement a FBO Services--Customer Service Plan, Operations-Safety, and Operations- Security as presented in its proposal.

The FBO shall prepare an Operations Manual for its activities at the Airport and allow for its review by the Airport Commission and City staff.

**Appurtenant Privileges**.

The FBO shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which now are or may hereafter be constructed on or appurtenant to the Airport, including the use of landing areas, runways, taxiways, navigational aids and aircraft parking areas as designated by the City and Airport Commission. The FBO's permitted use of any of these areas shall be at the discretion of the City and the Airport Commission and subject to change to facilitate the general development and operations, or both, of the Airport and to comply with FAA or other regulatory agency directives.

The City and the Airport Commission reserve the right to take any action they consider necessary to protect the airspace and approaches of the Airport against obstruction, together with the right to prevent the FBO from erecting, or permitting to be erected or located, any light fixture, building, object or structure on the Premise or adjacent to the Airport which, in the opinion of the City and the Airport Commission, would limit the usefulness of the Airport or constitute a hazard to aircraft.

**Airport Minimum Operating Standards**.

The Airport Minimum Operating Standards, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference, shall be met by the FBO in order to conduct any aeronautical activity or endeavor at the Airport. The FBO agrees that all aeronautical activities authorized under this Agreement and engaged in by the FBO shall be performed in accordance with the said minimum operating standards, including such amendments thereto as may be adopted by the City and the Airport Commission from time to time.

Additionally, in providing any of the services or activities specified herein, the FBO shall operate for the use and benefit of the public, and shall meet or exceed the following standards:

a. The FBO shall furnish service on a fair and reasonable and on a non-discriminatory basis to all users of the Airport. The FBO shall furnish good, prompt and efficient service adequate to meet all reasonable demands for the services at the Airport.

b. The FBO shall charge fair, reasonable and nondiscriminatory prices for each unit of sale or service; provided, however, the FBO may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers. The FBO shall provide the Airport Commission with a monthly comparative analysis of full service avgas fuel prices charged on an average weekly basis at general aviation airports within a 50-nautical mile radius of the Airport, including the Davidson County Airport, North Carolina.

c. The FBO shall select and appoint a full-time manager for its operations at the Airport. The manager shall be qualified in experience and vested with full power and authority to act in the name of the FBO with respect to the method, manner and conduct of the operation of the fixed base operation services to be provided. The manager shall be available at the Airport during regular business hours. In the manager's absence, a duly authorized and experienced subordinate shall be in charge and available at the Airport. The Airport Commission shall approve the manager proposed by the FBO.

The manager for FBO operations shall be Jack Robertson, who shall also be the manager for other Fly High Inc. locations as well. Prior to commence of operations of the FBO an assistant manager for FBO operations of the Airport specifically shall be recruited and hired who will be under the oversight of Jack Robertson. Any designation by FBO of a different individual to act as manager for FBO operations shall be subject to the City of Danville's prior approval. The FBO shall, at a minimum, implement the following employee staff at the Airport -- one FBO manager, an assistant FBO manager on a full-time basis, and part time employees with overlapping shifts. Full-time is defined as between the hours of 7:00 a.m. and 7:00 p.m. daily. FBO reserves the right to adjust such times as it determined needed to provide for the needs of the airport, provided that the operating times are at least twelve (12) hours per day.

The FBO shall control the conduct, demeanor and appearance of its employees, agents, vendors and contractors, who shall be trained by the FBO and shall possess such technical qualifications and hold such certificates or qualifications, or both, as may be required in carrying out assigned duties. It shall be the FBO's responsibility to maintain close supervision over its employees and contractors to assure a high standard of service to the FBO's customers.

The FBO shall not allow employees to bring pets to the Airport, or allow employees' pets' access to areas associated with the leased premises. The term pets shall not include service animals or animals for reasonable accommodation under the Americans with Disabilities Act. The FBO shall comply with all Federal, State and local laws, as well as standards set forth in the Airport master plan and Airport minimum operating standards that apply to the conduct of the FBO's business, and as may be amended from time to time, including rules and regulations promulgated by the City and the Airport Commission. The FBO shall keep in effect and post in a prominent place all necessary and/or required licenses, certificates and permits.

It is expressly understood and agreed that, in providing the services required under this Agreement, the FBO shall have the exclusive right to choose, at its sole discretion, its vendors and suppliers.

The FBO shall have the right, at its expense, to place in or on the Premises one or more signs, compliant with the City of Danville Zoning and Sign Codes, identifying the FBO. The size, shape and design shall be pre-approved by the Airport Commission, which shall not be unreasonably withheld. At the termination of this Agreement, the FBO shall remove, at its expense, all lettering, signs and placards erected on the Premises. It is not the intent of this Agreement to grant the FBO the exclusive right to provide any or all of the services described herein at any time during the term of this Agreement. Nothing herein shall preclude the City from granting to others certain rights and privileges at the Airport, which are similar in part or in whole to those granted to the FBO. However, the Airport Commission does covenant and agree that it shall enforce, without discrimination or partiality, all Airport minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the Airport, and will not allow the conduct of any commercial aeronautical endeavor or activity at the Airport by any person or firm except under an Agreement approved by the City and the Airport Commission.

The FBO shall submit to the City of Danville the prescribed State AVGAS and Jet A fuel forms showing deliveries by the fuel supplier to the FBO and fuel sales by the FBO. Such forms shall be submitted by the twentieth (20th) day of the month to the City of Danville following the month of account. The City of Danville may require the FBO to submit for examination any other forms evidencing fuel transactions between the FBO and any third party.

**Maintenance and Repair**

The FBO agrees to maintain in a first class condition and in a good state of repair, normal wear and tear excepted, at all times, the Premises. The Airport Manager shall be the sole judge of the quality and sufficiency of the FBO's maintenance and repairs of the Premises. Provided, however, that the FBO shall only be responsible for routine maintenance of the maintenance hangar and that other repairs and maintenance shall be responsibility of the City to be completed promptly upon notification by the FBO. FBO shall not be responsible for maintenance or repairs of the fuel farm.

**Personal Property**

Any personal property of the FBO or others placed at the Premises shall be at the sole risk of the FBO or the owners thereof, and the City shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage. The FBO hereby releases the City, for itself and any of its insurers, and waives all rights of subrogation or recovery for such damage, destruction or loss.

**Assignment**

The FBO shall not assign this Agreement, in whole or in part, without prior written consent from the City and the Airport Commission, which consent shall not be unreasonably withheld. No request for, or consent to, such assignment shall be considered unless the FBO shall have paid all outstanding fees and charges which have accrued in favor of the City and shall have otherwise met all other legal obligations to be performed, kept and observed by it under the terms and conditions of this Agreement, or as it may be subsequently amended. The FBO shall provide the City, at the time notice is given of any proposed assignment, with whatever information the City shall request concerning the identity, background, financial responsibility and other qualifications of the entity involved in any such proposed transfer. The FBO acknowledges that City cannot and will not act upon any request for approval of any such proposed transfer unless and until complete and accurate information is supplied regarding the proposed transferee.

**Insurance**

Prior to the commencement of FBO operations, the FBO will carry and maintain at its sole cost and expenses all policies of insurance described below relevant to services provided. Such insurance shall include coverage against liability for death, bodily injury or property damage arising out of the acts or omissions of or on behalf of the FBO or involving any owned, non-owned, leased or hired vehicle in connection with any of the obligations or activities of the FBO's equipment and shall be in the following categories and amounts:

a. Comprehensive General Liability -- $2,000,000 each occurrence
b. Completed Operations/Products Liability -- $1,000,000 each occurrence
c. Hangar keeper's Liability -- $500,000 each aircraft and $500,000 each loss
d. Premises Medical Payments -- $1,000 each person and $5,000 each accident

All policies shall be issued by insurance companies and shall show on their face that the FBO is a named insured and must include the City of Danville, Airport Commission, its officers, agents, employees and volunteers as "Additional Insured" under its policies and must be endorsed to the applicable policy, and that the FBO carries a Waiver of Subrogation. The insurance coverage and limits are set at the sole discretion of the City and are subject to change or revision as the need arises. All policies shall be underwritten by insurance companies licensed in the Commonwealth of Virginia. All policies shall be written in a commercially reasonable form and shall be maintained with insurance companies holding a General Policyholder's Rate of "A-"or better, and a financial rating of "VIII" or better, as set forth in the most current issue of Best's Key Rating Guide.

The FBO shall also provide evidence of workers' compensation insurance coverage in accordance with Virginia laws and regulations.

If the FBO's insurance is underwritten on a claims made basis, the retroactive date shall be prior to or coincide with the date of this Agreement, and this information shall be provided in the Certificate of Insurance.

If the FBO shall maintain such coverage for the duration of this Agreement and, if coverage is underwritten on a claims made basis, for two years following termination of this Agreement.

The FBO shall furnish the City, annually on the policy renewal date, with similar Certificates of Insurance as evidence of coverage.

On claims made policies, the parties agree that either the FBO or the City may invoke the tail option, if available, for two years following termination of this Agreement, on behalf of both parties, and that the extended reporting period premium shall be paid by the FBO. This provision shall not apply in the event that FBO's coverage is underwritten on an occurrence basis.

The City reserves the right to increase the minimum liability insurance set forth herein when, in the City's opinion, the risks attendant to the FBO's operations hereunder have increased, provided that any such increase shall be equivalent among all similar operators at the Airport.

The FBO shall, at all times during the term of this Agreement, keep or cause all improvements on the Premises to have fire and extended coverage insurance for all risks of direct physical loss with insurers authorized to do business in the Commonwealth of Virginia. The FBO agrees to cause an inspection of the improvements to be made by the company or companies providing this insurance at least every five years and to increase the insurance coverage, if necessary, so that the full insurable value of the improvements is at all times fully covered. The FBO shall furnish the Airport Commission with copies of the above inspection reports when received by the FBO, and with Certificates of Insurance as policies are acquired by the FBO.

The cancellation or other termination of any insurance policy issued in compliance with this section shall automatically terminate this Agreement, unless another policy has been filed and approved pursuant to this section and shall be in full force and effect at the time of such cancellation or termination.

**Indemnification**

The FBO agrees to protect, defend, reimburse, indemnify and hold the City, Airport Commission, agents, employees and elected officers, and each of them, free and harmless at all times from and against any and all claims, liabilities, expenses, losses, costs, fines and damages (including reasonable attorneys' fees) and causes of action of every kind and character against and from the City by reason of any:

a. Damage to property or the environment arising out of or incident to or in connection with the FBO's performance under this Agreement or the FBO's use or occupancy of the improvements located on the Premises, including any contamination of Airport property such as the soil or storm water by fuels and other petroleum products, chemicals or other substances deemed by the Federal Environmental Protection Agency to be environmental contaminants at the time this Agreement is executed or may be redefined by the appropriate regulatory agencies in the future. Provided, however this provision shall not apply to existing damage or conditions of the property or the environment at the time of the FBO entering this agreement.

b. Bodily injury (including death) incurred or sustained by any party hereto, arising out of or incident to or in connection with the FBO's performance under this Agreement, the FBO's use or occupancy of the improvements located on the Premises.

c. Acts, omissions or operations hereunder or the performance, nonperformance or purported performance of the FBO or any breach of the terms of this Agreement.

d. All claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the Term of this Agreement as a result of any Hazardous Materials used or stored in the Premises by FBO, its agents, employees or invitees in violation of Environmental Laws.

The FBO recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges that it is an express condition of this Agreement. The City recognizes and acknowledges that it has provided no documentation of environmental releases or other environmental testing and that FBO is providing no indemnification related to issues existing on the Premises prior to the FBO's occupation of the Premises pursuant to this agreement. This section shall survive the termination of this Agreement and shall remain in full force and effect with respect to any and all claims, liabilities, expenses, losses, costs, fines and damages (including reasonable attorneys' fees) and causes of action of every kind and character set forth herein. Compliance with the insurance requirements shall not relieve the FBO of its liability or obligation to indemnify the City and Airport Commission as set forth herein.

**Default by FBO**

The occurrence of any of the following events shall constitute a default by the FBO under this Agreement:

a. The FBO's failure to make any payment due hereunder for a period of fifteen (15) calendar days after written notice by the City.

b. The FBO's failure to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Agreement or in the Airport Minimum Operating Standards for a period of fifteen (15) calendar days after written notice by the City.

c. The filing by or against the FBO of any proceedings seeking the benefit of any bankruptcy, reorganization or insolvency law, or the FBO making an assignment for the benefit of creditors, or a receiver or a trustee being appointed for the FBO or a substantial portion of FBO's assets.

d. The FBO vacating or abandoning the Airport.

e. The FBO's interest under this Agreement being sold, without the prior written consent of the City, as provided in Indemnification above.

f. The FBO's interest under this Agreement being sold under execution or other legal process.
g. The FBO's interest under this Agreement being modified by any unauthorized assignment or by operation of law.

h. The FBO's failure to cooperate with any environmental laws, programs or audits promulgated by any applicable regulatory agency as the same may be revised from time to time.

i. Change of control of the FBO without the City's prior written consent, which provision shall not include the change of fifty percent (50%) or less of the stock ownership of the corporate entity or transfers between existing owners during the term of this Agreement.

j. Cancellation or termination of any insurance policy required by this Agreement unless a replacement policy is acquired at or prior to the effective date of the terminated policy.

In the event that any of the foregoing acts of default occurs, the City may, at its election, declare this Agreement terminated and null and void, whereupon all rights of the FBO to continue its operations shall end. This declaration shall not be deemed to preclude the exercise of any other action otherwise provided by statute or general law at any time.

**Performance Guarantee**

At the commencement of the lease, the FBO shall provide a cash security deposit to the City of Danville for $5000 to be applied in the event of default of contract obligations. The cash security deposit will be held in escrow by the City of Danville until such time the FBO is in default of the terms of this agreement or either party terminates the lease with acceptable notice as identified in the lease agreement. Subject to appropriate notice to terminate the lease and the FBO is not in default of its contract obligations, the cash security deposit will be returned to the FBO.

**Default by City**

The City agrees to perform the following activities, which if shown by the FBO to not have been accomplished is considered a default by the City under this Agreement:

a. Within 24 hours of notice from the FBO, the City shall make its best efforts to undertake necessary maintenance and repairs to Runway 2-20 and the fuel farm. Such maintenance and repairs will be subject to the availability of qualified contractors, who will be retained subject to their cost and ability to perform in a timely manner.

b. The City's failure to observe, keep or perform any of the other terms, covenants, agreements of this Agreement for a period of fifteen (15) calendar days after written notice by the FBO.

In the event that any of the foregoing acts of default occurs, the FBO may, at its election either declare this agreement to be terminated and null and void or the FBO may instead continue this

Agreement but shall not be responsible for payment of rent or expenses other than minimum utility expenses during such time as the default remains uncured.

**Services to be Provided by the City**

The City has responsibility for the following services at the Airport:

a. Management, leasing and maintenance of all hangar and facility space
b. All grass cutting responsibilities related to the airfield and landside
c. Snow removal requirements on airside and landside
d. All repair requirements related to the fuel farm
e. Maintenance of the runway, taxiway, ramp, sign lights, wind sock, landing instruments and ASOS.

**Rights Reserved to the City**

The rights and privileges granted to the FBO under this Agreement are subject to the following reservations and conditions:

a. The City expressly reserves the right to prevent any use of the property that would interfere with or adversely affect the operation and maintenance of the Airport, or otherwise constitute an airport hazard.

b. The City reserves the right to further develop or improve the Airport and all publicly owned air navigation facilities of the Airport as it sees fit, regardless of the views or desires of the FBO, and without interference or hindrance.

c. The City shall have the right to add tie-down locations for aircraft.

d. Ramp space shall be used on a non-exclusive basis by the FBO, and the FBO agrees to manage and operate ramp space as the City's agent.

e. The City shall have the right, without cost to the FBO, to install and maintain in, on or across the Premises, sewer, water, gas, electric, steam and telephone lines and streets or other installations necessary to the operations of the Airport, or to service other users of the Airport; provided, however, that the City shall carry out all such work and locate any above-ground structures in a manner so as not to unreasonably interfere with the FBO's activities.

f. The City has the right to perform or cause to be performed any work (including, but not limited to, constructing improvements, surveying, performing environmental testing, removing any hazard or obstruction, and implementing any plan, program, or action), that City (in its sole and absolute discretion) determines to be in City's best interests, including, but not limited to, within the Premises. The City may elect to pursue any such work without recovering the Premises from the FBO, in which case the City shall exercise reasonable care to minimize disruptions to the Premises. The City also has the right to recover all or any portion of the Premises from the FBO in connection with any such work (with or without relocating the FBO) as the City may determine in its sole and absolute discretion, and the following shall apply:

1. If the City determines to recover all or any portion of the Premises, the City shall provide FBO with 90 calendar days prior written notice specifying what areas will be recovered. If any portion remaining after such recovery is tenantable in light of the purposes of this Agreement (as determined by the City in its sole and absolute discretion), the City shall reduce the FBO's rent and utilities hereunder by the percentage of the Premises that the City recovers, and the City shall pay the cost of any alterations that are required by the City in connection therewith, so long as such improvements are not in breach of this Agreement.

2. If the City recovers all of the Premises, or if any remaining portion of the Premises is not tenantable pursuant to the City's determination, the City may terminate this Agreement by including a notice of termination, and this Agreement shall terminate at the end of such 90-day period. In connection with any such termination where FBO is not in default, the City shall pay to the FBO the fair market value of any capital improvements made by the FBO and the FBO's leasehold interest as determined by a professional real estate appraisal obtained and paid for the City. The appraiser's determination of fair market value shall take into consideration the remaining term of this Agreement, the FBO's net income from such operations at the Airport and the parties' rights to remove FBO-made improvements upon expiration of this Agreement.

3. If the City elects to relocate the FBO, the City shall pay the reasonable costs that the FBO actually incurs to relocate to a new location (chosen by City) and FBO capital improvements, so long as such improvements are not in breach of this Agreement, and any movable property associated with FBO's permitted uses under this Agreement. The FBO's rent at such new location shall be determined based on the actual square footage contained in the FBO's Premises at such new location. The notice of relocation from the City to the FBO must provide specifics of the new location and a floorplan of what will be built and a timeline for when construction would be completed. The FBO shall not be required to make any payments of rent or utilities under this Agreement during any period of time that it is not in possession of these Premises or the replacement Premises.

g. Loss of aircraft tie-down space is not subject to payment by the City to the FBO.

The foregoing shall not be construed to waive the City's right to pursue any remedy for a breach of this Agreement arising from or relating to the FBO's use, occupancy, or operations at any portion of the Premises or at the Airport.

**Force Majeure.**

No act or event, whether foreseen or unforeseen, shall operate to excuse the FBO from the prompt payment of rent or any other amounts required to be paid under this Agreement. If the FBO is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and that such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

**Right of Entry**

The City shall have the right at any time to request from the FBO the right to be provided entry to the Premises for the purposes and to the extent necessary to protect the City's rights and interest and to confirm the FBO's compliance with the terms of this Agreement. City, at its sole risk, may enter the Premises without requesting from the FBO the right to be provided entry to the Premises in the case of an emergency, provided City has first made a reasonable attempt to notify FBO's employees.

**Right of Flight**

The City reserves unto itself, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing at, taking off from or operating on the Airport.

**FBO's Rights**

The FBO shall have the following rights:

a. In common with others so authorized, to use common areas of the Airport, including runways, taxiways, aprons, roadways, flood lights, landing lights, signals and other conveniences for the take-off, flying and landing of aircraft.

b. In common with others, the non-exclusive use of the Airport parking areas, appurtenances and improvements thereon, but this shall not restrict the right of the City to charge visitors a fee for the use of such areas.

c. To install, operate, maintain, repair and store, subject to approval of the City, in the interests of safety and convenience of all concerned, all equipment necessary for the conduct of FBO's business.

d. To have access to and from the Premises, limited to streets, driveways or sidewalks designed for such purposes by the City, and which right shall extend to FBO's employees, passengers, guests, invitees and patrons. This includes the right to secure rental concessions for rental car companies and to use or authorize the use of Uber, Lyft, taxi services or limousines on the Premises as deemed advisable for the transportation of airport customers.

e. To sell aviation fuel, oil and other lubricants in and on the Premises, to maintain and operate full aircraft servicing facilities, sell aircraft, engines, accessories and parts (and to provide storage space for aircraft), a repair shop for the repairing and servicing of aircraft engines, instruments, propellers and accessories in connection with the FBO's business. The right to conduct these activities shall apply to aircraft owned by other persons as well as aircraft belonging to the FBO.

f. To give flying instructions, to provide pilots for operating aircraft owned by others, and to carry passengers and freight for hire, subject to all appropriate laws of the Federal and State governments, City of Danville ordinances, and the requirements of the FAA and the Virginia Department of Transportation or any other duly authorized governmental agency.

g. To utilize existing Wi-Fi at the Premises, including secure Wi-FI, provided that such Wi-Fi access is made available at no charge to the public.

**Non-Exclusive Rights**

The FBO shall have the right and privilege of engaging in and conducting the businesses previously described on the Premises under the terms and conditions set forth in this Agreement; provided, however, that this Agreement shall not be construed in any manner to grant the FBO or those claiming under the FBO the exclusive right to the use of the Airport premises and facilities of the Airport other than those premises under FBO's exclusive control.

**Aircraft Service by Other Owners or Operators**

It is clearly understood by the FBO that no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance and repair, that it may choose to perform.

**Hours of Operation**

Operator agrees to maintain operations during scheduled hours, a minimum of 12 hours per day (7:00 a.m. through 7:00 p.m.), 7 days per week. The FBO may close operations during a total of not more than three business days per year for the observance of national holidays. This schedule shall be filed with and approved by the Airport Commission on an annual basis. Hours and days of operation shall not be reduced below the stated minimum without written consent of the Airport Commission, except during any period when the Airport is closed by any lawful authority restricting the use in such a manner as to interfere with use by the FBO in its business operations.

**Financial Disclosure**

The FBO shall furnish such evidence to the City of Danville to show that the FBO is financially capable of providing the services set forth in this Agreement. The form of evidence shall be a statement of operating revenue and expenses, debt obligations, and annual debt service requirements to be provided annually by the FBO beginning November 1, 2020, and thereafter shall be due annually no later than November 1 of each subsequent year this Agreement is in effect.

## Property Rights Reserved

This Agreement shall be subject to and subordinate to the provision of any existing or future Agreement between the City and the United States of America, the Commonwealth of Virginia, or any of their agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal and/or State funds for the development of the Airport, and to any terms and conditions imposed upon the City by any other governmental entity.

## Compliance With Laws, Regulations, Ordinances and Rules

The FBO shall at all times comply with applicable Federal, State and local laws, ordinances and regulations, Airport rules and regulations, all applicable health rules and regulations and other mandates, whether existing or as promulgated from time to time by the Federal, State or any local government, or airport management, including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters relating to the operation of the Airport. This shall include, but not be limited to, the FBO precluding its employees, agents, customers or invitees from entering upon any restricted area at the Airport as noted in §107 and §108 of the Federal Aviation Regulations.

## Environmental Regulations

The FBO hereby expressly warrants, guarantees and represents to the City that:

a. The FBO shall, acting in good faith and to the best of its ability, familiarize itself with all Federal, State, regional and local governmental laws, ordinances, regulations, orders and rules, without limitation, which govern or which in any way apply to the direct or indirect results and impacts to the environment and natural resources due to, or in any way resulting from, the conduct of the FBO of its operations. The FBO agrees to keep informed of and comply with future changes in environmental laws, regulations and ordinances.

b. With respect to its operations and activities, the FBO shall assume and accept full responsibility and liability for compliance with all applicable Federal, State and local laws, regulations and ordinances protecting the environment and natural resources and all rules and regulations promulgated or adopted in accordance with these rules from time to time.

c. Prior to commencement of any operations under this Agreement, the FBO shall secure any and all permits and properly make all necessary notifications as may be required by and to all governmental agencies having jurisdiction over any portion of the subject matter hereof.

d. The FBO as well as its employees, agents, contractors and all persons working for or on its behalf shall be fully and properly trained in the handling and storage of all hazardous and toxic waste materials and other pollutants and contaminants involved in its operations, and institute recurrent training on a periodic basis per accepted industry practices.

e. The FBO shall supply the City with satisfactory evidence of all such required permits and notifications.

f. The FBO shall cooperate with any investigation, audit or inquiry by City or any governmental agency regarding possible violation of any environmental law or regulation. If the City conducts an investigation, audit or inquiry, and the results of such action show that the FBO is in compliance with applicable Federal, State and local laws, regulations, ordinances, rulings, orders and standards, the cost of such investigation, audit, or inquiry shall be reimbursed to the FBO.

g. If the FBO is deemed to be a generator of hazardous waste, as defined by Federal or State law, the FBO shall obtain an EPA identification number and the appropriate generator permit and shall comply with all Federal, State and local requirements imposed upon a generator of hazardous waste, including, but not limited to, insuring that the appropriate transportation and disposal of such materials are conducted in full compliance with the law. Provided, however, in the event the FBO is determined to be a conditionally exempt small quantity generator or similar designation, then it shall be subject to only those regulations and requirements applicable to its status.

h. The FBO shall provide an accurate inventory list (including quantities) of any hazardous, toxic or other contaminated or polluted material in its possession, whether stored, disposed of or recycled, available at all times for inspection by the City inspectors or Fire Department officials having jurisdiction for implementation of proper storage, handling or disposal procedures.

i. Any notice of violation or similar enforcement action or notice of noncompliance received by the FBO shall be provided to the City within 24 hours of receipt by the FBO or its agent.

**Storage Tanks**

The FBO shall comply with all Federal, State, regional and local governmental laws, ordinances, regulations, orders and rules concerning the installation, operation, maintenance and inspection of both aboveground and underground storage tanks, including financial responsibility requirements that the FBO owns on the Premises. The FBO shall comply with all Federal, State, regional and local governmental laws, ordinances, regulations, order and rules concerning the operation of leased tanks on the Premises owned by the City. The City agrees to provide the FBO with a conversion table and stick, and to allow the FBO to install a sump recovery system at the FBO's expense. The cost of the sump recovery system is expected to be $5,000 and by its nature will become a fixture on the Premises. As a result if this contract is terminated by either party during the first contract year the FBO will be paid $5,000 for such system upon contract termination, $4,000 if the contract is terminated during the second contract year, $3,000 if the contract is terminated during the third contract year, $2,000 if the contract is terminated during the fourth contract year and $1,000 if the contract is terminated during the fifth contract year. After such time period, no further payment is required in the event of contract termination. In the event this contract is terminated by the City, it may withhold from such payment in offset anything due and payable to the City by the FBO at the time of contract termination. The City agrees to use its best efforts to obtain from Titan Aviation Fuels or General Aviation, Inc. the following records and to provide those to the FBO prior to the commencement of operations at the airport: the QEC reports from the last three (3) years, an audit by Titan Aviation Fuels, waste fuel disposal records, and records of truck and farm fuel filter disposal. FBO will be allowed to have a contractor or fuel company of its choosing to perform an inspection of the fuel farm and all associated plumbing prior to the commencement of operations and shall notify the City of any issues noted with the fuel farm that need to be repaired.

**Community Engagement and Coordination**

The FBO will make good faith efforts to conduct and publicize activities intended to demonstrate the value of the Airport to the local community. These efforts will be supported by the City and may include the following as examples, as well as others that the FBO and City may jointly identify. Additionally, the FBO may join with the Danville Squadron Civil Air Patrol and the Danville EAA Chapter in sponsoring these events.

a. Static aircraft displays
b. Air shows
c. Field trips by elementary, junior high and high school students
d. Others that may jointly be identified with the City

The FBO shall make a good faith effort, when requested by Averett University, to allow students enrolled in the Averett University Aviation Program to "shadow" the FBO line service staff and other staff during intermittent periods at the Airport. The intent of this cooperative effort is to allow these students to gain an appreciation for the services that an FBO provides, staffing requirements, and methods of service implementation. The FBO shall attend the meetings of the Airport Commission to provide information and updates on air traffic activity and Airport events.

**Change of Corporate Control**

The FBO represents that the ownership and power to vote the FBO's entire outstanding stock belongs to and is vested in the officer or officers executing this Agreement or members of their immediate families. If any change in 49 percent or more of the ownership of and/or power to vote the majority of the outstanding capital stock of the FBO shall occur, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of the City, then the City shall have the option to terminate this Agreement upon 30 calendar days' prior written notice to the FBO. In addition, the FBO shall have an affirmative obligation to notify the City immediately of any such change of 49 percent or more of the ownership of the FBO. Provided, however, that such provision shall not apply to a transfer among the existing ownership.

**Americans With Disabilities Act**

The FBO shall comply with the Americans With Disabilities Act, 42 U.S.C. § 1210, as well as the regulations implementing the Act, and applicable State laws and regulations

**Relationship of Parties**

The FBO is, and shall be deemed to be, an independent contractor responsible to all parties for its respective acts and omissions, and the City shall in no way be responsible thereof
**Severability**

The invalidity of any portion, article, paragraph or provision of this Agreement shall not have any effect upon the validity of any other part or portion thereof.

**Governing Law**

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.

In the event of any discrepancies between the proposal submitted by the FBO and this Agreement, this Agreement will prevail.

**Amendments**

All actions seeking amendment of this Agreement shall be in writing approved by both parties. The City shall be charged with jurisdiction to review any requests to amend this Agreement.

**Notices**

All notices to either of the parties shall be deemed validly given upon deposit in the United States Mail, certified, with proper postage and certified fee prepaid, addressed as follows:

a. To the City:

   Attention: Airport Manager
   City of Danville
   424 Airport Drive
   Danville, Virginia 24540

b. To the FBO:

   Karel Van Der Linden and Mari-Elena Baldwin
   Fly High Danville, Inc.
   Davidson County Airport
   1673 Aviation Way
   Lexington, North Carolina 27292
   With a copy to: karel@flyhighinc.com

Additionally a copy of all billing statements shall be sent by email to karel@flyhighinc.com.

**Binding Effect**

The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, as well as their respective heirs, successors and assigns.

**CITY OF DANVILLE, VIRGINIA**

By:______________________________________

Print Name: Kenneth F. Larking

Title: City Manager

Attest:____________________________________

Print Name:________________________________

Title:_____________________________________

**FLY HIGH DANVILLE, INC.**

By:______________________________________

Karel Van Der Linden

Owner/Director

Attest:____________________________________

Print Name: Mari-Elena Baldwin

Title: Owner/Director

# Council Letter
## City of Danville, Virginia

**CL-2167** **New Business Item #: D.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** Moral Obligation

**From:** Michael Adkins, Director of Finance

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### COUNCIL ACTION

Business Meeting: 08/20/2019

### SUMMARY

Litehouse Foods has assumed the lease at 145 Cane Creek Boulevard from Sky Valley Foods and will be expanding operations at this location. This facility is owned by the Industrial Development Authority and is mortgaged through a loan with Virginia Bank & Trust. The monthly lease payments from Litehouse Foods to the Industrial Development Authority provide the funding for repayment of this loan. The loan is set to mature on September 10, 2019, with a final principal payment of approximately $3,000,000. In order to provide Litehouse Foods time to structure its financing plan for the plant expansion, Virginia Bank & Trust has agreed to extend this loan for six months and is requesting the City to also extend the existing moral obligation for six months as well. The moral obligation provides documentation of the City's support for this transaction. This is NOT a commitment by the City to pledge its full faith and credit for the loan.

### BACKGROUND

Sky Valley Foods moved its operation from Yanceyville, NC to Danville and located its business at 145 Cane Creek Boulevard. At that time, the IDA purchased the property with proceeds from a loan from Virginia Bank & Trust Company in the amount of $2,750,000. Later, Sky Valley requested the IDA amend the loan by increasing the borrowing $500,000 to provide for additional equipment. This loan matures on September 10, 2019, with a final principal payment of approximately $3,000,000. Monthly lease revenue paid by Sky Valley to the IDA provided funding for the monthly loan payments. Several months ago, Litehouse Foods announced that it would be acquiring the operations of Sky Valley Foods, as well as expanding operations at 145 Cane Creek Boulevard. Litehouse has also assumed the terms of the lease between the IDA and Sky Valley. In order to provide Litehouse Foods sufficient time to structure the financing for this expansion, Virginia Bank has agreed to extend the loan for six months. During this time, the IDA and Litehouse Foods will be able to plan a new financing structure for the coming expansion. Virginia Bank & Trust has requested the City to approve a six-month extension of the existing moral obligation to coincide with the new maturity date. It should be noted that the City is NOT committing its full faith and credit to this transaction.

### RECOMMENDATION

Staff recommends that City Council approve a resolution provided by the City Attorney, providing a moral obligation from the City to Virginia Bank & Trust Company covering the extended loan period for the loan to the IDA for 145 Cane Creek Boulevard, Danville, VA 24541.

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## Attachments

Resolution

Moral Obligation

PRESENTED:____________________________

ADOPTED: ______________________________

ORDINANCE NO. 2019____.____

A RESOLUTION AUTHORIZING AND APPROVING EXECUTION OF A MORAL OBLIGATION AGREEMENT BY AND BETWEEN THE CITY OF DANVILLE, VIRGINIA AND VIRGINIA BANK AND TRUST COMPANY.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Danville, Virginia that a Moral Obligation Agreement, substantially in the form attached hereto and made a part hereof, between the City of Danville and Virginia Bank and Trust Company be, and the same hereby is, approved; and

BE IT FURTHER RESOLVED that the City Manager, or his designee, be, and he is hereby, authorized and directed to execute such Moral Obligation Agreement on behalf of the City.

APPROVED:

________________________________
MAYOR

ATTEST:

________________________________
CLERK

Approved as to Form and
Legal Sufficiency:

________________________________
City Attorney

# MORAL OBLIGATION AGREEMENT OF CITY OF DANVILLE

**THIS MORAL OBLIGATION AGREEMENT** made as of the 20th day of August, 2019, by and between the CITY OF DANVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "City"), and VIRGINIA BANK AND TRUST COMPANY, a Virginia corporation ("Virginia Bank"), to-wit:

**BACKGROUND**

A. The Industrial Development Authority of Danville, Virginia (the "**Authority**") was created under the Industrial Development and Revenue Bond Act (§15.2-4900 et seq.) of the Code of Virginia to promote development, industry and trade.

B. The Authority secured a loan from Virginia Bank in an amount not to exceed in the aggregate Two Million Seven Hundred Fifty Thousand and 00/100 Dollars ($2,750,000.00) (the "**Loan**"), pursuant to that certain Loan Agreement dated August 26, 2014, by and between the Authority and Virginia Bank (the "**Loan Agreement**"), as evidenced by that certain Promissory Note dated August 26, 2014, made by the Authority in favor of Virginia Bank, for the purpose of acquiring and leasing the building and property located at 145 Cane Creek Boulevard, Danville, Virginia (the "**Project**"), in an effort to induce Sky Valley Foods, Inc., to locate its operations and activities to the City, thereby promoting development and the economy of the City.

C. As a condition to the advancement of the Loan by Virginia Bank to the Authority and as part of the security for the Loan, Virginia Bank required the Moral Obligation of the City to repay the Loan with Virginia Bank in the event the Authority fails to do so, and the City and Virginia Bank entered into that certain Moral Obligation Agreement of City of Danville dated July 16, 2014, evidencing the same (the "**Prior Moral Obligation Agreement**").

D. In October 2015, the Authority obtained a commitment from Virginia Bank to advance an additional Five Hundred Thousand and 00/100 Dollars ($500,000.00) to the Authority, increasing the maximum principal amount of the Loan from Two Million Seven Hundred Fifty Thousand and 00/100 ($2,750,000.00) to Three Million Two Hundred Fifty Thousand and 00/100 Dollars ($3,250,000.00) (the "New Loan"), to provide financing for additional improvements in connection with the Project, and as part of that commitment and as part of the security for the New Loan, Virginia Bank required the Moral Obligation of the City to repay the New Loan with Virginia Bank in the event the Authority fails to do so.

E. The authority has now obtained a commitment from Virginia Bank to extend the existing terms of the loan for six months, through March 10, 2020, in order for a new tenant, Litehouse Foods, to locate and operate at 145 Cane Creek Boulevard, an as part of the six-month extension, Virginia Bank required the exisiting Moral Obligation of the City to also be extended six months to coincide with the new maturity date. The Moral Obligation provides Virginia Bank the security that the City will repay the Loan with Virginia Bank in the event the Authority fails to do so.

**NOW, THEREFORE**, for and in consideration of the foregoing promises 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. In the event the Authority fails to repay the indebtedness created by the Loan provided by Virginia Bank in accordance with the terms of repayment stated therein, the City hereby acknowledges that, to the extent permitted by law, it has a moral obligation to pay Virginia Bank such amounts otherwise due from and payable by the Authority. In the event of nonpayment by the Authority, Virginia Bank, by its duly authorized representative, shall submit an appropriation request to the City in the amount sufficient to make current payments on the New Loan then due Virginia Bank by the Authority and to protect and maintain the Authority's ownership interest in the Project (the "Deficiency Amount"). Subject to the making of an appropriation pursuant to the provisions of this Paragraph 1, the City shall pay Virginia Bank the amount of such appropriation as soon as practicable.

2. Virginia Bank shall apply any funds so appropriated and paid to it by the City pursuant to this Agreement toward the Authority's obligations under the New Loan provided by Virginia Bank.

3. Until such time that there is no longer a Deficiency Amount, the City Manager of the City (the "City Manager") shall include the Deficiency Amount due Virginia Bank with respect to the New Loan Amount in his budget submitted to the City Council for the following fiscal year as an amount to be appropriated to or in respect of the Project. The City Manager shall deliver to Virginia Bank, within fifteen (15) days after the adoption of the City's budget for each fiscal year in which a Deficiency Amount was requested as provided herein, but not later than July 15 of each year, a letter, on letterhead of the City Manager's Office, stating whether the City Council has appropriated for payment to Virginia Bank an amount equal to the Deficiency Amount.

4. If at any time Virginia Bank believes there is a Deficiency Amount or that amounts appropriated by City Council are insufficient to fulfill the Authority's New Loan obligations, Virginia Bank shall notify the City Manager of the Deficiency Amount or such insufficiency and the City Manager shall request a supplemental appropriation from City Council in the amount necessary to make such payment.

5. The City Manager shall present each request for appropriation pursuant to paragraph 4 above to City Council and City Council shall consider such request at City Council's next regularly scheduled meeting at which it is possible to satisfy any applicable notification and all other legal requirements. Not later than five (5) business days after such meeting, the City Manager shall notify Virginia Bank as to whether the amount so requested was appropriated. If City Council shall fail to make any such appropriation, the City Manager shall add the amount of such requested appropriation to the amount to be requested in the next fiscal year.

6. The City Council hereby undertakes a non-binding obligation to appropriate such amounts as may be requested from time to time pursuant to paragraphs 3, 4 and 5 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.

7. Nothing herein contained is or shall be deemed to be a lending of the credit of the City to Virginia Bank, the 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.

8. 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 Virginia Bank: Virginia Bank and Trust Company
336 Main Street
P. O. Box 3447
Danville, VA 24543
Attention: President/CEO

9. 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 the agreement of the parties hereto to the full extent permitted by law. This Agreement contains the entire agreement and understanding of the parties to this Agreement with respect to the transactions contemplated hereby; and this Agreement supersedes all prior understandings and agreements of the parties with respect to the subject matter hereof, including the Prior Moral Obligation Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City of Danville, Virginia has caused its name to be subscribed to this Moral Obligation Agreement by its City Manager, as authorized by the City Council, City of Danville, and its seal to be hereto affixed and attested by the City Clerk, and Virginia Bank has caused its name to be subscribed to this Moral Obligation Agreement by Jerry Oakes, its duly authorized representative, and its seal to be affixed and attested, all as of the date first above written.

**CITY COUNCIL, CITY OF DANVILLE**

By:______________________________________

Name: Ken F. Larking, City Manager

(SEAL)

Attest:

________________________________

City Clerk

**VIRGINIA BANK AND TRUST COMPANY**

By:______________________________________

Name: Jerry Oakes

Title: President

(SEAL)

Attest:

________________________________

Title:

________________________________

# Council Letter
## City of Danville, Virginia

**CL-2165** **New Business Item #: E.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** Transcontinental Pipeline Turn-Back Capacity Proposal

**From:** Jason Grey, Utilities Director

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**COUNCIL ACTION**

Business Meeting: 08/20/2019

**SUMMARY**

The Transcontinental Pipeline (Transco) proposes to take back the capacity the City has from Station 30 to Station 65 (see attached Transco map), or 2,875 DT of our firm transportation capacity, and swap it with Station 65 capacity. In exchange for this option, Transco would commit to take back the Station 30 capacity and offer us a discount on the reservation rate that equates to $0.08/dekatherm. They will help lower the natural gas commodity costs with an expected savings of approximately $83,950 per year. The agreement with Transco would be for a ten-year term effective November 1, 2019, or the date Transco receives the necessary authorizations from Federal Energy Regulatory Commission (FERC).

Additionally, Transco would notify us by November 15, 2019, whether they will exercise a second option for the remainder of the Turn Back Capacity from station 45 to station 65 (an additional 4,227 dekatherms per day), and what the effective date of the turn back will be. The effective date would be between October 1, 2020 and April 1, 2021, subject to receiving the FERC authorizations. This action would help lower natural cost with an expected savings of $123,428 per year. If Transco decides to exercise this option, this would also be structured as a 10-year agreement.

This proposal assures an $83,950 annual savings at Station 30 beginning November 1, 2019, and the potential for an additional annual savings of $123,428 at Station 45 beginning between October of 2020 and April of 2021. The total savings that would be passed through the purchase gas adjustment would be $207,378.40 if Transco elected to pursue the optional 4,227/dekatherms per day.

**BACKGROUND**

The City has received a proposal from the Transcontinental Pipeline that would grant them, as an option, to take back a portion of our utilized production-area capacity in exchange for a discount on our reservation rate. The portion of the "Turn Back Capacity" they are offering to take allows us to source 17% of our daily supply at its receipt point, Station 30 (see attached map). The remaining receipt points of our contract, namely Stations 45, 50, and 62, make up an additional 25%, 19%, and 39% respectively. At Station 65, our capacity is fully telescoped, and we can take 100% of our supply there. For a number of years, we have sourced all of our supply at Station 65 and have not used the upstream receipt points.

**RECOMMENDATION**

Staff recommends that City Council approve Transco's proposal of releasing 2,875 dekatherms per day of firm transportation capacity between stations 30 to 65 with an additional option of 4,227 dekatherms per day between stations 45 and 65.

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**Attachments**

Resolution

Transcontinental Pipeline Map

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PRESENTED: ____________________

ADOPTED: ______________________

RESOLUTION NO. 2019-____.____

A RESOLUTION APPROVING AND AUTHORIZING THE CITY OF DANVILLE, VIRGINIA TO ENTER INTO A TURN-BACK CAPACITY AGREEMENT WITH THE TRANSCONTINENTAL PIPELINE COMPANY, LLC.

WHEREAS, the Transcontinental Pipeline Company, LLC has proposed a ten-year agreement to give the City a discounted natural gas capacity rate to swap up to 2,875 dekatherms of firm transportation capacity from station 30 to station 65; and

WHEREAS, the City expects to save approximately $83,950/year starting in November 1, 2019 through October 31, 2029 that could be passed along to the City's natural gas customers; and

WHEREAS, Transcontinental Pipeline Company, LLC has also proposed an optional ten-year agreement to give the City a discounted natural gas capacity rate to swap up to an additional 4,227 dekatherms of firm transportation capacity from station 45 to station 65; and

WHEREAS, the City expects to save approximately an additional $123,438/year starting in late 2020 or early 2021 if the Transcontinental Pipeline Company, LLC moves forward with the option on the additional 4,227 dekatherms of firm transportation capacity from station 45 to station 65.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Danville, Virginia, it hereby approves and authorizes the City to enter into a ten-year agreement to give the City a discounted natural gas capacity rate to swap up to 2,875 dekatherms of firm transportation capacity from station 30 to station 65; and

BE IT FURTHER RESOLVED, by the Council of the City of Danville, Virginia, it hereby approves and authorizes the City to enter into the proposed optional ten-year agreement to give the City a discounted natural gas capacity rate to swap up to an additional 4,227 dekatherms of firm transportation capacity from station 45 to station 65; and

BE IT FINALLY RESOLVED, by the Council of the City of Danville, Virginia, that the City Manager, be, and is hereby, authorized and directed to execute the Turn-Back Capacity agreement.

APPROVED:

______________________________
MAYOR

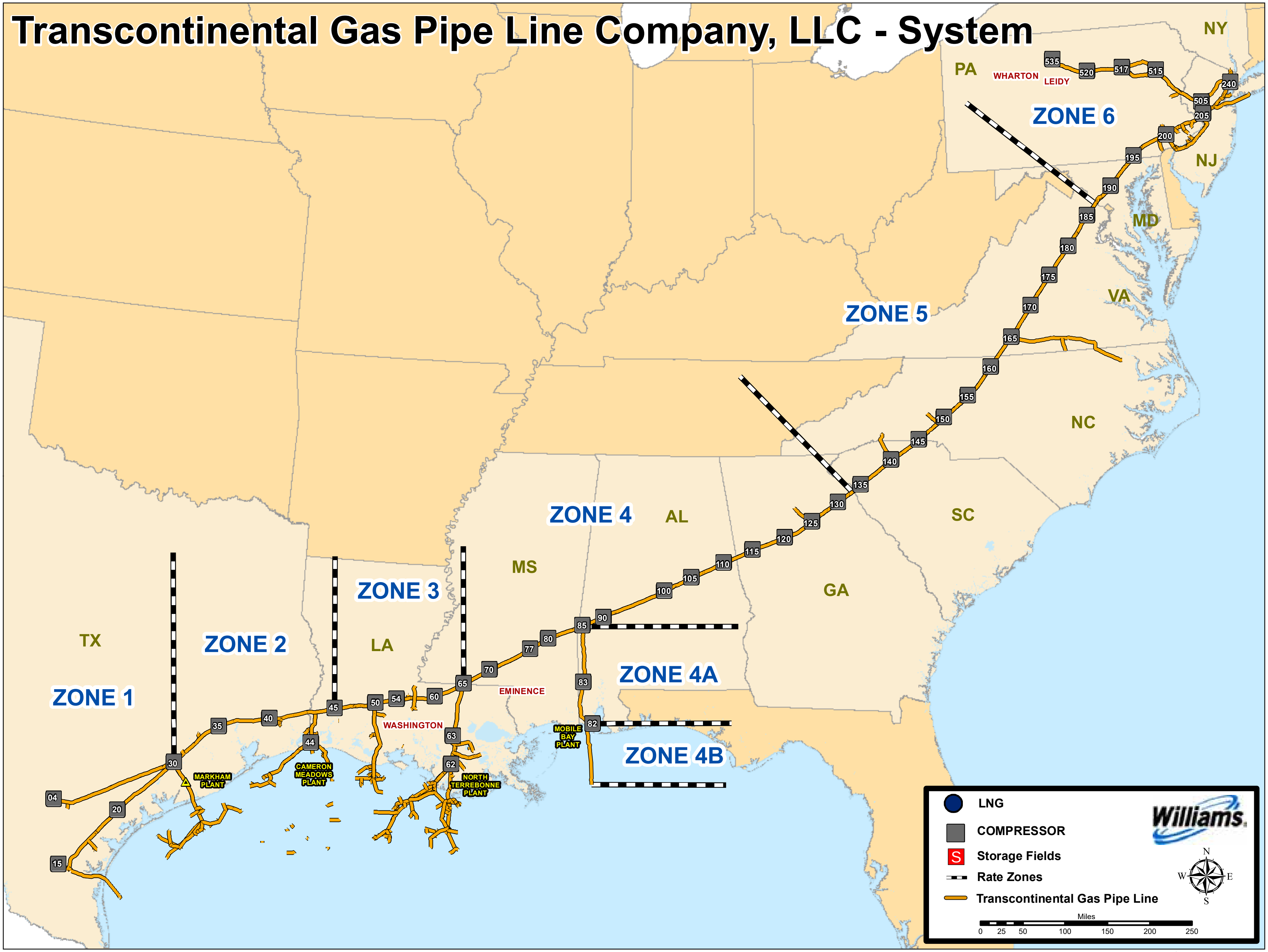
ATTEST:

______________________________
CLERK

Approved as to
Form and Legal Sufficiency:

______________________________
City Attorney

# Transcontinental Gas Pipe Line Company, LLC - System



# Council Letter
## City of Danville, Virginia

**CL-2166** **New Business Item #: F.**

**City Council Regular Meeting**

**Meeting Date:** 08/20/2019

**Subject:** Airport Rehabilitation Projects

**From:** Marc Adelman, Director of Transportation Services

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### COUNCIL ACTION

First Reading: 08/20/2019
Final Adoption: 09/03/2019

### SUMMARY

The Federal Aviation Administration and the Virginia Department of Aviation have approved grant funds to rehabilitate pavement infrastructure at the Danville Regional Airport. Federal and state funding will be provided to rehabilitate the terminal apron. In addition, state funding will be provided to assist with crack sealing, remarking the primary runway, and to rehabilitate an additional taxi-lane section located in the t-hangar area. Due to the scope of work associated with the apron rehabilitation project, which involves expanding the apron and a full scale rehabilitation of the tie-down area, it is anticipated the project will begin in October 2019 and conclude during the spring of 2020. However, the vast majority of the terminal apron pavement will be milled and repaved and should be completed by the end of 2019. The t-hangar taxi-lane rehabilitation project and maintenance work associated with the primary runway is expected to be completed during the fall of 2019.

### BACKGROUND

Bids were received in June 2019 to rehabilitate the terminal apron. Also this summer, bids were received to complete drainage modifications, crack seal and remark the primary runway, and a change order amount was requested from a contractor to rehabilitate an additional taxi-lane section located in the t-hangar area. The Federal Aviation Administration and the Virginia Department of Aviation will provide funding to rehabilitate the terminal apron, which is expected to start before the end of October and conclude during the spring of 2020. State funding will be provided to assist with completing maintenance work to the primary runway and to rehabilitate an additional taxi-lane section in the t-hangar area. Local funding is not needed to complete maintenance work for the primary runway since reprogrammed funds were set aside to complete possible repair requirements.

The apron rehabilitation project and t-hangar taxi-lane rehabilitation project were included in the FY 2019 Capital Improvement Plan and the maintenance work for the primary runway was identified in the FY 2020 Capital Improvement Plan. These funds are considered reprogrammed funds also. Construction activities for the t-hangar taxi-lane project and primary runway project are expected to be completed by November 2019. The bid amount received for the apron rehabilitation project was greater than identified in the FY 2019 Capital Improvement Plan since the project was rebid in 2019 after the airport received notice in 2018 that federal funding was not available to complete the project last fiscal year.

**RECOMMENDATION**

It is recommended that City Council approve an ordinance appropriating federal and state aviation grant funds and local matching funds for the apron rehabilitation project and t-hangar taxi-lane project.

**Attachments**

Ordinance

PRESENTED:________________________

ADOPTED: __________________________

ORDINANCE NO. 2019____.____

AN ORDINANCE AMENDING THE FISCAL YEAR 2020 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR ADDITIONAL FEDERAL AND STATE AVIATION FUNDING FOR MULTIPLE CONSTRUCTION PROJECTS AT THE DANVILLE REGIONAL AIRPORT IN THE AMOUNT OF $4,104,325 AND FOR THE LOCAL SHARE IN THE AMOUNT OF $282,664.65 TO BE PROVIDED FROM REPROGRAMMED FUNDS TRANSFERED FROM VARIOUS PROJECTS AND APPROPRIATING THE SAME.

WHEREAS, the Federal Aviation Administration determined the existing condition of the airport's terminal ramp requires rehabilitation; and

WHEREAS, the Virginia Department of Aviation determined that crack sealing, remarking, and drainage improvements should be completed related to the airport's primary runway; and

WHEREAS, the apron rehabilitation and t-hangar taxi-lane rehabilitation projects were included in the Capital Improvement Plan for Fiscal Year 2019 and maintenance work for the primary runway was included in the Capital Improvement Plan for Fiscal Year 2020; and

WHEREAS, the federal eligible portion of the terminal ramp project will be funded with federal aviation capital aid at ninety percent and the terminal ramp hangar parking 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 terminal ramp project and to complete repair work to the primary runway.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia that the Fiscal Year 2020 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 $3,553,544 and $550,781 such funds to be appropriated as follows:

## ANTICIPATED REVENUES

| Description | Account No. | Amount |
|---|---|---|
| Terminal Ramp Rehabilitation Project | | |
| Federal Aviation Administration Funds | 61379000-48420 | $ 3,553,544 |
| State Aviation Funds | 61379000-45712 | 315,871 |
| SUB-TOTAL | | $ 3,869,415 |
| Terminal Ramp Aircraft Parking Areas | | |
| State Aviation Funds | 61380000-45712 | 138,898 |
| Primary Runway Maintenance Work | | |
| State Aviation Funds | 61517000-45712 | 56,012 |
| T-Hangar Taxi-Lane Rehab Expansion | | |
| State Aviation Funds | 61109000-45712 | 40,000 |
| | TOTAL | $ 4,104,325 |

## ANTICIPATED EXPENDITURES

| Description | Account No. | Amount |
|---|---|---|
| Terminal Ramp Rehabilitation Project | 61379999-50 | $ 3,869,415 |
| Terminal Ramp Aircraft Parking Areas | 61380999-50 | 138,898 |
| Primary Runway Maintenance Work | 61517999-50 | 56,012 |
| T-Hangar Taxi-Lane Rehab Expansion | 61109999-50 | 40,000 |
| | TOTAL | $ 4,104,325 |

AND BE IT FURTHER ORDAINED by the Council of the City of Danville, Virginia, that the Fiscal Year 2020 Budget Appropriation Ordinance be, and it is hereby, amended by transfers from various projects to provide the local share for above projects for a total transfer in the amount of $282,664.65, such transfers to be appropriated as follows:

**TRANSFER FROM**

| Description | Account No. | Amount |
|---|---|---|
| Undesignated Capital | | |
| | Revenue | |
| Transfer In-General Fund | 60000000-6101 | $78,967.65 |
| | Appropriation | |
| Unallocated Capital Budget | 60000000-6999 | $78,967.65 |

**TRANSFER TO**

| Description | Account No. | Amount |
|---|---|---|
| Terminal Ramp Rehabilitation Project | | |
| | Revenue | |
| Transfer In-General Fund | 61379000-6101 | $78,967.65 |
| | Appropriation | |
| Project Budget | 61379999-50 | $78,967.65 |

**TRANSFER FROM**

| Description | Account No. | Amount |
|---|---|---|
| Undesignated Capital | | |
| | Revenue | |
| Transfer In-General Fund | 60000000-6101 | $34,724.40 |
| | Appropriation | |
| Unallocated Capital Budget | 60000000-6999 | $34,724.40 |

**TRANSFER TO**

| Description | Account No. | Amount |
|---|---|---|
| Terminal Apron Aircraft Parking Area | | |
| | Revenue | |
| Transfer In General Fund | 61380000-6101 | $34,724.40 |
| | Appropriation | |
| Project Budget | 61380999-50 | $34,724.40 |

**TRANSFER FROM**

| Description | Account No. | Amount |
|---|---|---|
| Airport Runway Rehab Construction | | |
| | Revenue | |
| Recoveries & Rebates | 60798128-43810 | $158,972.60 |
| | Appropriation | |
| Project Budget | 60798999-50 | $ 158,972.60 |

**TRANSFER TO**

| Description | Account No. | Amount |
|---|---|---|
| T-Hangar Taxi-Lane Rehab Expansion | | |
| | Revenue | |
| Recoveries & Rebates | 61517000-43810 | $158,972.60 |
| | Appropriation | |
| Project Budget | 61517999-50 | $158,972.60 |

**TRANSFER FROM**

| Description | Account No. | Amount |
|---|---|---|
| Undesignated Capital | | |
| | Revenue | |
| Transfer In-General Fund | 60000000-6101 | $10,000.00 |
| | Appropriation | |
| Unallocated Capital Budget | 60000000-6999 | $10,000.00 |

**TRANSFER TO**

| Description | Account No. | Amount |
|---|---|---|
| T-Hangar Taxi-lane Rehab Expansion | | |
| | Revenue | |
| Transfer In General Fund | 61109000-6101 | $10,000.00 |
| | Appropriation | |
| Project Budget | 61109999-50 | $10,000.00 |

AND BE IT FINALLY ORDAINED that all other accounts and provisions of the Fiscal Year 2020 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