



DANVILLE CITY COUNCIL REGULAR MEETING AGENDA

MUNICIPAL BUILDING

March 7, 2023

7:00 PM

PRESIDING: Alonzo L. Jones, Mayor

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

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

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

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

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

Time and Place of Meeting

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

Communications from Visitors

Communication from Visitors is an opportunity for citizens to address Council on matters not on the agenda. Citizens who desire to speak on matters not listed on the agenda or on matters which do not have a public hearing, will be heard at this time. Citizens who desire to speak on agenda items that have a public hearing will be heard when the agenda item is considered and the public hearing is opened. Each speaker shall clearly state his or her name and address. Each individual speaker shall have three uninterrupted minutes. A representative of a group may have up to five 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 - L.G. "LARRY" CAMPBELL, JR.

PLEDGE OF ALLEGIANCE TO THE FLAG

ANNOUNCEMENTS AND SPECIAL RECOGNITIONS

- A. Proclamation: National Public Defenders Day
Presented to: Danville Public Defenders Office

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.

1. PUBLIC HEARING

- A. Consideration of Approval of Meeting Minutes.
Council Letter Number CL - 366.
Consideration of Approval of Minutes from Regular Council Meeting held on February 7, 2023.
- B. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for the 2021 Assistance to Firefighters Grant.
Council Letter Number CL - 16.
An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for a Grant from the Department of Homeland Security in an Amount of \$97,447 and a Local Share in the Amount of \$9,745 for a Total Appropriation in the Amount of \$107,192, and Appropriating Same.
FINAL ADOPTION

- C. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for the Fiscal Year 2023 Comprehensive Services Act Appropriation.
Council Letter Number CL - 27.
An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance by Appropriating Comprehensive Services Act Funds and Providing Local Matching Funds for a Total Amount of \$4,780,388 and Appropriating Same.
FINAL ADOPTION

NEW BUSINESS

- A. Consideration of a Special Use Permit at 501, 505, & 539 Craghead Street.
Council Letter Number CL - 340.
 - 1. Public Hearing

2. An Ordinance Granting Special Use Permit Application PZ23-00003, filed by Garrett Shifflett, Requesting a Special Use Permit to Allow Multifamily Residential Dwellings in Excess of the Maximum Density at 501, 505, & 539 Craghead Street (Parcel #21355) in Accordance with Article 3.L.C Item 13.

- B. Consideration of a Resolution Approving and Authorizing the Comprehensive Agreement between the School Board of the City of Danville and Branch Builds, Inc.
Council Letter Number CL - 367.

A Resolution of the Council of the City of Danville Virginia Approving and Authorizing the Comprehensive Agreement Between the School Board of the City of Danville and Branch Builds, Inc. to Perform Final Design and Construction of a New G.L.H. Johnson Elementary School, in Accordance with Virginia Code § 56-575.16(5).

- C. Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for Appropriation of Opioid Settlement Funds.
Council Letter Number CL - 28.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance by Increasing Revenues from the National Opioids Settlement Trust and Opioid Abatement Authority in the Amount of \$1,087,500 and Appropriating the Same.

FIRST READING

- D. Consideration of State Aviation Capital Grant Funding.
Council Letter Number CL - 339.

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for Additional State Aviation Funding in the Amount of \$260,409 with a Local Share in the Amount of \$129,774 for a Total Amount of \$390,183 and Appropriating Same.

FIRST READING

COMMUNICATIONS FROM VISITORS

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

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 - 366

CONSENT AGENDA A.

City Council REGULAR MEETING

Meeting Date: March 7, 2023

Subject: Consideration of Approval of Minutes

From: Susan DeMasi, City Clerk

COUNCIL ACTION

Consideration of Approval of Minutes from Regular Council Meeting held on February 7, 2023.

Attachments

1. Meeting Minutes
-

February 7, 2023

The Regular February meeting of the Danville City Council was held on February 7, 2023, at 7:00 p.m. in the Council Chambers located on the Fourth Floor of the Municipal Building. The following Council Members were present: James B. Buckner, L.G. "Larry" Campbell Jr., Bryant Hood, Mayor Alonzo L. Jones, Barry Mayo, Dr. Gary P. Miller, Sherman M. Saunders, J. Lee Vogler, Jr., and Madison J.R. Whittle (9). Mr. Whittle entered the meeting at 7:05pm and left at 7:45pm.

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

Vice Mayor Miller gave Invocation followed by the Pledge of Allegiance.

ANNOUNCEMENTS AND SPECIAL PRESENTATIONS

Proclamation: International Business Appreciation Day
Presented to: Corrie Bobe, Director of Economic Development

Ms. Bobe thanked City Council for the honor presented, to celebrate diversity in the community. Danville was very fortunate to have a large number of international firms decide to invest in Danville and Pittsylvania County as well as continue to grow successfully. An invitation was extended to residents to help celebrate this day on Sunday, February 12 for all the investments that have been made by corporate clients.

COMMUNICATIONS FROM VISITORS

Mayor Jones asked all the firefighters in attendance to please stand, and spoke about the house fire that happened a few weeks ago on Lewis Street, that claimed the life of a resident. Mayor Jones stated on behalf of Council, the City Manager, and City staff, thank you for the outstanding work they did, and Council wanted them to know that they sincerely appreciated all they have done and were doing.

Mayor Jones recognized Kenny Lewis, 117 Skylark Drive, who came before Council to discuss the faith-based tutorial program entitled *Better Together*. This nonprofit program works with businesses, churches, daycares, Danville City school board, community centers, Averett, and DCC to set up homework centers to help children succeed. Better Together has six target areas but was making education it's number one priority. Mr. Lewis encouraged Council to help do all they can to get the education system back to where it should be. The program currently has twenty sites and received a federal grant that pays for teachers to come and tutor the youth. Jean Johnson from Evening Light Cathedral Church spoke to Council about the impact this program has on the youth and the excitement that they show. Mrs. Johnson thanked Council, the school board, and the supporters of the program. Council Members thanked Mr. Lewis for his vision and work he was doing in the community. The website for the tutorial program was www.dcbtp.com and the contact number was 434-710-6100. Referrals can be submitted online.

Mayor Jones recognized the following members of the Danville Fire Department and citizens who appeared before Council to discuss fire fighter pay, resources, service to the community, staffing, training, retention, and hours.

February 7, 2023

Rorer Payne, 3921 Sandy Creek Road, Dry Fork VA.
Nathan Sergeant, 1455 River Ridge Road
Jennifer Burke, 1252 Vandola Church Road, Danville
Tom Collins, 909 Poplar Trace, Danville

CONSENT AGENDA

Mayor Jones opened the floor for a Public Hearing regarding Budget Appropriation Items. Notice of the Public Hearing was published in the *Danville Register & Bee* on January 31, 2023. No one present desired to be heard and the Public Hearing was closed.

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

Minutes from the Regular Council Meeting held on January, 3, 2023. Draft copies of the minutes had been distributed prior to the meeting.

Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance for Grant Funds for Litter Control and Recycling Efforts.

An Ordinance entitled, Ordinance No. 2023-01.07, an Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Anticipate Grant Funds from the Commonwealth of Virginia for Litter Control and Recycling Efforts in the Amount of \$14,536 and Appropriating Same.

Consideration of Amending the Fiscal Year 2023 Budget Appropriation Ordinance in the Amount of \$741,024 from the Department of Criminal Justice Services.

An Ordinance entitled, Ordinance No. 2023-01.06, an Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance by Increasing Revenue from Virginia Department Criminal Justice Services ARPA Law Enforcement Technology Grant in the Amount of \$741,024 and Appropriating Same.

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

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

Mayor Jones yielded to City Manager Ken Larking and asked him to let everyone know what Council asked him to do with regard to the budget and salaries. Mr. Larking explained that pay studies were normally done every five years but this time it has been accelerated to a three-year cycle due to the pandemic, in regards to pay. It was important to remember that not all organizations do their pay studies at the same time, and that was why pay was never the same. It was important to look at every job's pay to make sure all employees were paid as competitively as possible. Doing this during the March time frame was better to make sure there were revenues to cover the pay increases for the upcoming budget. They do not want to make a promise to pay more when they do not know if it was feasible at the moment. They were going through this process as quickly as they can and will make adjustments based on what can be afforded. Mayor Jones asked Mr. Larking to explain what has been done in January and February of this year. Mr. Larking stated in January, a pay increase was planned for all employees except police officers, to

February 7, 2023

match minimum wage. Mayor Jones stated that while education was a top priority for Council so was employee pay, getting all employee's pay to where it needs to be.

Council Member Vogler stated he did not need another study to show him what the firefighters needed to be paid. Council has seen that one, and it stated what firefighters should be paid. He cannot speak for other Council Members, but knows during this budget process his goal was to get the pay to where the study that had already been done stated it should be. Mayor Jones noted that was what all Council Members have stated, and Mr. Vogler noted that was what they were trying to do. He thanked the firefighters for coming to speak, and stated Council was actively working on it through this budget process. Mayor Jones stated this Council cares about every last one of its employees, and they appreciate the firefighters and their families. Mayor Jones also thanked the City Manager for the excellent job that he was doing, listening to Council, and doing the things that he was doing.

APPOINTMENTS

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

Resolution No. 2023-02.01 – A Resolution Appointing Morgan Clarke to the Planning Commission.

Resolution No. 2023-02.02 – A Resolution Reappointing Sherman M. Saunders to the Staunton River Regional Industrial Facility Authority.

Resolution No. 2023-02.03 – A Resolution Reappointing J. Lee Vogler, Jr., to the Staunton River Regional Industrial Facility Authority.

Resolution No. 2023-02.04 – A Resolution Reappointing L.G. "Larry" Campbell, Jr., to the Staunton River Regional Industrial Authority.

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

VOTE: 8-0-1
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, and Vogler (8)
NAY: None
ABSENT: Whittle (1)

NEW BUSINESS

CONSIDERATION OF REZONING PARCEL #73039 FROM PS-C PLANNED SHOPPING CENTER COMMERCIAL TO M-R MULTIFAMILY RESIDENTIAL

Mayor Jones opened the floor for a Public Hearing regarding rezoning Parcel #73039. Notice of the Public Hearing was published in the *Danville Register & Bee* on January 24, 2023 and January 31, 2023.

Mayor Jones recognized applicant Brian Wilson, 1317 Ringgold Church Road, who spoke to Council about his request to rezone the property; they were currently considering apartment buildings or residential housing at the site. They have spoken with other contractors who may have

February 7, 2023

an interest in partnering with them or working independently to develop that area. No one further desired to be heard and the Public Hearing was closed.

Council Member Vogler stated one of the biggest needs they have in the City was housing, and thanked Mr. Wilson for stepping up to help with that.

Council Member Vogler **moved** for adoption of an Ordinance entitled:

ORDINANCE NO. 2023-02.01

AN ORDINANCE REZONING PARCEL ID #73039 FROM PS-C PLANNED SHOPPING CENTER COMMERCIAL TO M-R MULTIFAMILY RESIDENTIAL.

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

VOTE: 8-0-1
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, and Vogler (8)
NAY: None
ABSENT: Whittle (1)

CONSIDERATION OF AMENDING CHAPTER 41 ENTITLED “ZONING ORDINANCE” OF THE CITY OF DANVILLE TO REMOVE REQUIREMENTS OF CURB AND GUTTER ON ALL NEW PUBLIC ROADS

Mayor Jones opened the floor for a Public Hearing regarding Amending the Zoning Ordinance. Notice of the Public Hearing was published in the *Danville Register & Bee* on January 24, 2023 and January 31, 2023. No one present desired to be heard and the Public Hearing was closed.

Council Member Buckner **moved** for adoption of an Ordinance entitled:

ORDINANCE NO. 2023-02.02

AN ORDINANCE AMENDING CHAPTER 41 ENTITLED “ZONING ORDINANCE” OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED, MORE SPECIFICALLY, TO AMEND ARTICLE 3.B SECTION A, ARTICLE 3.C SECTION A, ARTICLE 3.D SECTION A, ARTICLE 3.E SECTION A, ARTICLE 3.F SECTION I, ARTICLE 3.G SECTION I, ARTICLE 3.H SECTION I, TO REMOVE REQUIREMENTS OF CURB AND GUTTER ON ALL NEW PUBLIC ROADS.

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

Council Member Buckner questioned if this was from a study completed recently by the Army Corp of Engineers; was it saying the old way of doing this was not best for run off and drainage. Director of Planning Renee Burton stated that she has not seen a study done by the Army Corp, but that staff has done their own research, and Best Management Practices has determined that this was a better alternative than curb and gutter throughout the developments. Council Member Vogler asked Ms. Burton to elaborate a little more on the environmental side of it, and Ms. Burton stated that the Zoning Code was adopted in February 2004 and that was when the curb and gutter recommendation or requirement was placed into effect. They have determined with EPA studies and Best Management Practices for storm water conveyance systems that curb and gutters do not

February 7, 2023

have the benefits that they had anticipated. Staff was now looking at pollution and debris that was accumulating in the curb and gutter, which makes street cleaning difficult. The removal of this requirement means looking at better green alternatives for the system moving forward.

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

VOTE: 8-0-1
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, and Vogler (8)
NAY: None
ABSENT: Whittle (1)

CONSIDERATION OF AMENDING CHAPTER 35 ENTITLED “SUBDIVISION ORDINANCE” OF THE CITY OF DANVILLE TO ELIMINATE CURB AND GUTTER REQUIREMENTS AND CREATE ITEM K. ENTITLED “STREETLIGHTS”

Mayor Jones opened the floor for a Public Hearing regarding Amending the Subdivision Ordinance. Notice of the Public Hearing was published in the *Danville Register & Bee* on January 24, 2023 and January 31, 2023. No one present desired to be heard and the Public Hearing was closed.

Council Member Vogler **moved** for adoption of an Ordinance entitled:

ORDINANCE NO. 2023-02.03

AN ORDINANCE AMENDING CHAPTER 35.5, ENTITLED “SUBDIVISION ORDINANCE” OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED, MORE SPECIFICALLY, TO AMEND ARTICLE 4, SECTION B, ITEM 1, SUBSECTION H, TO ELIMINATE THE CURB AND GUTTER REQUIREMENT AND TO CREATE SUBSECTION K, ENTITLED “STREETLIGHTS”.

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

VOTE: 8-0-1
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, and Vogler (8)
NAY: None
ABSENT: Whittle (1)

CONSIDERATION OF THE DONATION OF FACILITY IMPROVEMENTS BY THE DANVILLE SCIENCE CENTER AT THE OLD SOUTHERN RAILWAY ADMINISTRATION BUILDING LOCATED AT 657 CRAGHEAD STREET

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

RESOLUTION NO. 2023-02.05

A RESOLUTION APPROVING AND AUTHORIZING THE ACCEPTANCE OF A DONATION OF FACILITY IMPROVEMENTS AT THE DANVILLE SCIENCE CENTER.

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

February 7, 2023

VOTE: 8-0-1
AYE: Buckner, Campbell, Hood, Jones, Mayo,
Miller, Saunders, and Vogler (8)
NAY: None
ABSENT: Whittle (1)

**CONSIDERATION OF AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION
ORDINANCE FOR A VIRGINIA LAND CONSERVATION FOUNDATION GRANT
APPROPRIATION**

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

ORDINANCE NO. 2023-02.03

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE BY INCREASING REVENUE FROM A VIRGINIA LAND CONSERVATION FOUNDATION GRANT IN THE AMOUNT OF \$500,000 AND APPROPRIATING THE SAME.

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

COMMUNICATIONS

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

Council Member Saunders noted with regard to the firefighters, he has been there twenty-five years, and every single year he has voted on and supported every single thing that they do. Mr. Saunders stated his name was called out tonight and that was okay. He wanted them to know that he supported the fire department; it was not just words, it was in the record. He also supports the City Manager who was doing an excellent job. They have 1,100 employees, fairness was imperative, that every employee was treated fairly. Fairness was always his number one priority, it was now and for the time that he has worked with the City Manager it was his as well. Mr. Saunders noted that all Council Members support public safety and they also support all 1,100 employees. He will continue to support them, he supports all 1,100 employees. When they ask for something, it was their right to do, the Constitution gives them the right to petition their government; they have come and done that very well and continued to come. Council hears them loud and clear. They also have a thousand more employees that they have to make sure were treated fairly as well.

Council Member Vogler stated that he had a few questions he wanted to bring up noting that some constituents contacted him, about Tyson Foods and the construction work that was going on there. That was a RIFA project so it was joint City and County. A few citizens mentioned when there was that amount of construction going on the roads can get muddy and messy, and depending on the weather it can be a little dangerous at times. There were no warning signs for people driving through to let them know about the road conditions, was that something the City can make happen out there. Mr. Vogler stated that as the City continues to grow downtown, the amount of pedestrian and vehicle traffic has increased, and several people were concerned about vehicles speeding down Craghead Street. Can the City look into practices to improve pedestrian safety with the police department. Mr. Vogler also asked Mr. Larking who was responsible for the American flag at the historical cannon; the flag was not in the condition that an American flag should be in. Last

year Mr. Vogler asked Council to consider raising the eligibility cap for seniors and the permanently disabled to receive tax relief. The previous amount was capped at \$20,000; he asked if it could be raised to \$40,000; Council and staff worked out a compromise where the amount was raised to \$30,000 and he was appreciative of that. They wanted to see what the budgetary impact would be before they made the jump to \$40,000. Mr. Vogler noted he was pleased to report that 46% more seniors received tax relief this past year; the budgetary impact to the City was minimal at \$17,000. With that in mind, he asked that Council revisit the \$40,000 threshold; with the growth and prosperity that Danville was seeing, they still need to help those who need help the most.

Council Member Campbell thanked Council Member Saunders for his statement, and reminded the firefighters that Council supports them 100%. Rev. Campbell stated that they respect the firefighters but at the same time Council wants to be respected as well. He has spoken to several of the firefighters and it was very disturbing to him with all the prosperity in Danville that the City was underpaying their employees. He highly respects the City Manager because this was a hard job that he has, and also respects the 1,100 employees that were not firefighters. What they were trying to do, was to be fair. Council was thankful for the work they do in the community, and understand how dangerous it was. Council stands behind them, but asked they give the City time to work this out so that they can be fair to all employees.

Council Member Hood stated that he wanted to use the word "responsibility"; it was Council's responsibility to make the best decisions with what was presented, for all Danville citizens, and employees. He appreciated everyone who came out tonight. Council supports their employees and citizens of this great City. Mr. Hood thanked the City Manager and Deputy City Manager for continuously doing diligent work, and working with Council. They will work to resolve this issue; they have Council's support. Mr. Hood thanked all the members of Council because they work diligently together to resolve these issues.

Council Member Mayo stated that each member has stated that they were one. The Mayor has done an excellent job leading Council; they work with the City Manager, Deputy City Manager, City Attorney, and City Clerk as a team and they do a wonderful job. To the fire department, Council hears them and hears them every time. The service they provide for the City was needed. They see them working every day and know they were doing their job. Mr. Mayo thanked Kenny Lewis for bringing the faith-based tutorial programs to the youth to help them thrive. Yesterday at the House of Hope was a wonderful opening; it was good to see the homeless being helped.

Vice Mayor Miller stated as mentioned by the Mayor, Council has three priorities which were education, economic development, and public safety; he considered this a major public safety problem. All of Council was disturbed by the inequity of pay between the City's fire department, and other communities. He has had conversations with other Council Members and have pledged that they were going to make this right. Dr. Miller stated he also doesn't need another pay study; it was self-evident, the numbers were there. They have pledged to make it right, and they will make it right; they just have to figure out how to pay for it and make it fair in a way that was fair to the other employees and taxpayers.

Mayor Jones thanked Council for their comments, and when he said it was never going to be Council against them, this was what he meant. A couple of months ago the newspaper printed the salaries of the schoolteachers, but only printed out those making \$55,000 or more. He asked one of the school board members what that number would be on the opposite side, the number of schoolteachers going into the schools every day who were not in that \$55,000 pay range. He has been on the school board, worked in the school system and they cannot imagine the number of school employees not making \$55,000 or more. All the training that they have to go through and

February 7, 2023

all they deal with on a daily basis with children who have all types of issues. He thought of the Public Works individuals who through all kinds of weather go into the communities pulling trash, getting up leaves and all types of debris. Utility workers who when a storm comes, they go out in thunder and lightning with power outages, those employees were out there working very hard. They hear all the public outcry and appreciated the firefighters, the utility workers, the public works employees; they appreciated every City employee. What was disturbing to him was, no one knows the City Manager's family was totally disrespected; he doesn't talk about it. You cannot force your way to make things happen by going past his house and blowing the horns by the fire department. Members of Council that heard the news got upset with the City Manager because those individuals were not dealt with. He and his family have been totally disrespected and he turned it over to HR. This Council was not happy with the results from HR because this was not how they operate in Danville. As Council Member Saunders stated, come before your Council and talk to them. They don't have to scream at Council or disrespect them; it was never going to be Council against them. Mayor Jones noted he was not happy with what the teachers, firefighters or other City employees were getting paid.

The Economic Development department worked so hard to bring in Caesar's and Tyson's, because that brings in more revenue to the community. Mayor Jones thanked the firefighters, for bringing the issue to their attention; they were so busy trying to revitalize and reimagine Danville by bringing in industries to the community that they had to take a pause and focus on the employees. Council talked about supporting all of their City employees but they also have to think about the citizens in the City of Danville. If Council makes commitments that they cannot meet then they have to go to the public and say they were going to raise taxes. Council was pausing; that does not mean that Danville was going to stop growing but now it was time for them to think about other priorities. To the City Manager, Council Member Saunders talked about him and the great work he was doing; not one firefighter clapped. They have been blasting him on Facebook and they were happy about it. When they go low Council doesn't go low. Council was determined that they were going to move Danville forward.

The firefighters were going to get what they deserve, all the City employees were going to get what they deserve and at the same time Council was not going to tax their citizens to get there. The City was moving forward and the last thing Council was going to do was take five steps backward. Mayor Jones noted that Mr. Larking was a good City Manager, and was sorry for what he and his family were put through. He doesn't know many individuals that when someone goes and tries to do something to someone's family, they can still sit here when their family was disrespected. Mayor Jones stated he was going to do everything they can, not just for the firefighters but for all City employees.

ADJOURNED: 8:36pm.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Council Letter

City of Danville, Virginia



CL - 16

CONSENT AGENDA B.

City Council REGULAR MEETING

Meeting Date: March 7, 2023

Subject: 2021 Assistance to Firefighters Grant.

From: April Neal, Administrative Assistant

COUNCIL ACTION

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for a Grant from the Department of Homeland Security in an Amount of \$97,447 and a Local Share in the Amount of \$9,745 for a Total Appropriation in the Amount of \$107,192, and Appropriating Same.

FINAL ADOPTION

SUMMARY

The City has received notification from the Department of Homeland Security that the Danville Fire Department has been approved to receive funding from the 2021 Assistance to Firefighters Program in the amount of \$97,446.70 for the purchase of PPE Washer/Extractor/Dryer, with local funding of \$9,744.68.

BACKGROUND

Funds from the department of Homeland Security are given to the Assistance to Firefighters Program to assist in helping localities throughout the Commonwealth to upgrade their equipment for the safety of the public and firefighters, with respect to fire and fire-related hazards. The grant must be used within twenty-four months of receipt of funds.

RECOMENDATION

It is recommended that City Council approve the attached Ordinance amending the Fiscal Year 2023 Budget Appropriation by increasing revenue to anticipate the receipt of the grant funds, from the Department of Homeland Security.

Attachments

1. Ordinance
-

PRESENTED: _____

ADOPTED: _____

RESOLUTION NO. 2023-_____._____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR A GRANT FROM THE DEPARTMENT OF HOMELAND SECURITY IN AN AMOUNT OF \$97,447 AND A LOCAL SHARE IN THE AMOUNT OF \$9,745 FOR A TOTAL APPROPRIATION IN THE AMOUNT OF \$107,192, AND APPROPRIATING SAME.

WHEREAS, the City has been notified by the Department of Homeland Security that the Danville Fire Department has been awarded a grant; and

WHEREAS, the grant funds are to be used to upgrade equipment.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia, that the Fiscal Year 2023 Budget Appropriation Ordinance be, and is hereby, amended by increasing revenue from an Assistance to Firefighters Grant from the Department of Homeland Security through the Federal Emergency Management Agency, in an amount of \$97,447 and local match funds of \$9,745, for a total of \$107,192 to provide for the purchase of equipment, and appropriating the same, such revenue and appropriations to be as follows:

ANTICIPATED REVENUE

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
2021 Assistance to Firefighters State Categorical Aid	61842000-47144	\$ 97,447
Local Share Transfer In from General Fund	61842000-6101	<u>\$ 9,745</u>
	Total	<u>\$ 107,192</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
2021 Assistance to Firefighters	61842999-50	<u>\$ 107,192</u>

AND BE IT FURTHER ORDAINED, that a transfer from Special Grants Unallocated revenue and appropriation is hereby authorized to cover the local share as follows:

<u>TRANSFER FROM</u>		
<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Special Revenue Fund		
Transfer In from General Fund	60098000-6101	(\$ 9,745)
Unallocated	60098000-6999	(\$ 9,745)

AND BE IT FURTHER ORDAINED, that this appropriation shall be a continuing appropriation and shall carry forward from year to year until expended for the purpose for which appropriated; and

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

APPROVED:

Mayor

ATTEST:

Clerk

Approved as to
Form and Legal Sufficiency:

City Attorney

Council Letter City of Danville, Virginia



CL - 27

CONSENT AGENDA C.

City Council REGULAR MEETING

Meeting Date: March 7, 2023

Subject: Fiscal Year 2023 Comprehensive Services Act Appropriation.

From: Henrietta Weaver, Budget Director

COUNCIL ACTION

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance by Appropriating Comprehensive Services Act Funds and Providing Local Matching Funds for a Total Amount of \$4,780,388 and Appropriating Same.

FINAL ADOPTION

SUMMARY

The Comprehensive Services Act (CSA) was enacted in Fiscal Year 1994, by the Virginia General Assembly, for the purpose of eliminating duplication of services for at-risk children and families. Whenever possible, CSA services must be child specific and community based. Services may be residential or non-residential, private or public, and must be responsive to the child's unique needs and culture. These services may currently exist within the public agencies, such as mental health, social services, education, and court services, or may be available privately. Examples include, but are not limited to: substance abuse counseling, respite care, psychological evaluations, transportation services, home-based therapy, family counseling, parent training, therapeutic foster care, job coaching, after school care, recreation, and housing assistance.

In January 2013, the City began operating its own Community Policy and Management Team (CPMT). This resulted from the request of Pittsylvania County to dissolve the joint Danville-Pittsylvania County Community Policy and Management Board (CPMB). A full-time person has been hired under the Division of Social Services to coordinate the City only program. There has been no increased administrative cost to the City as the administration funds that were being paid to Pittsylvania County are now being used to support the City only program.

BACKGROUND

Daily, the schools, social services and court service units are faced with a number of societal issues, such as locating services for abused, neglected, delinquent and special services children with significant mental and physical health impairments. In addition, these organizations work with children with behavioral problems that require specialized placements for treatment, truancy, and children whose disabilities are so severe they are unable to function within the community. These disabilities and behavioral issues include, but are not limited to: Autism, Bipolar Disorder, Schizophrenia, Sexual Reactive Disorder, Post Traumatic Stress Disorder, Suicidal Ideation, Conduct Disorder, Attachment Disorder, and Mental Retardation. The overall focus of CSA continues to be servicing at-risk children and families. Great strides have been made in bringing additional resources for services to the

community. Service providers are meeting the increased demand for specialized programs while trying to manage the costs of such programs. The community partners continue to be faced with younger children whose disabilities are so severe that many times the children cannot be treated locally. The agencies that serve on the CPMT explore all options to provide for the needs of Danville's families and children by utilizing cost-effective measures to reduce expenditures to the locality. These measures include using Medicaid vendors, when appropriate, reviewing progress reports prior to authorizing additional service units, when feasible, and reviewing eligibility for IV-E funding which reimburses the locality 100% of allowable costs.

RECOMMENDATION

It is recommended that the City Council adopt the attached ordinance to approve Fiscal Year 2023 State and local funding for the CSA program. The required local match is included in the Adopted Fiscal Year 2023 City of Danville Budget.

Attachments

1. Ordinance
-

PRESENTED: _____

ADOPTED: _____

RESOLUTION NO. 2023-____.____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE BY APPROPRIATING COMPREHENSIVE SERVICES ACT FUNDS AND PROVIDING LOCAL MATCHING FUNDS FOR A TOTAL AMOUNT OF \$4,780,388 AND APPROPRIATING SAME.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance be, and is hereby, amended by increasing revenues to anticipate the State and Local funds for the Comprehensive Services Act fund and appropriating such funds within the Special Grants Fund, such appropriation to be as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Categorical Aid – State:		
Comprehensive Services Act -		
Pools Funds	60315000-45560	\$ 3,547,350
Administrative Funds	60315000-45570	20,400
Local Share		
Transfer in from General Fund	60315000-6101	<u>1,212,638</u>
	Total	<u>\$ 4,780,388</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Comprehensive Services Act:		
Outside Services	60315000-52349	\$ 4,500,000
CSA Medicaid	60315000-55570	140,000
Salaries, Fulltime	60315000-51100	80,760
Local Only – CSA	60315000-55420	25,000
Group Health Insurance	60315000-51600	11,577
FICA	60315000-51450	5,819
Retirement	60315000-51525	4,286
Travel & Training	60315000-54900	2,400
Temporary Services	60315000-52190	2,000
Office Supplies	60315000-55820	2,000
PS-Office Supplies	60315000-52655	1,400
Print Shop	60315000-52650	1,200
Dues	60315000-56242	1,200
Postage	60315000-54050	1,000
Telephone	60315000-54100	1,000
Materials & Supplies	60315000-55930	500
Group Life Insurance	60315000-51630	246
	Total	<u>\$ 4,780,388</u>

TRANSFER FROM

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Special Revenue Fund		
Undesignated	60098000-6101	\$ (112,638)
Administrative Expense DSS	60098015-6101	<u>(600,000)</u>
	Total	<u>\$ (712,638)</u>

Undesignated	60098000-6999	\$ (112,638)
Administrative Expense DSS	60098015-6999	<u>(600,000)</u>
	Total	<u>\$ (712,638)</u>

AND BE IT FURTHER ORDAINED, that a flexible budget is hereby authorized whereby appropriations may be increased to the extent that actual revenues from the CSA Pool Fund exceeds the original budget amount; and

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

APPROVED:

Mayor

ATTEST:

Clerk

Approved as to
Form and Legal Sufficiency:

City Attorney

Council Letter

City of Danville, Virginia



CL - 340

NEW BUSINESS A.

City Council REGULAR MEETING

Meeting Date: March 7, 2023

Subject: Consideration of Special Use Permit 501, 505, & 539 Craghead Street.

From: Renee Burton, Division Director of Planning

COUNCIL ACTION

1. Public Hearing
2. An Ordinance Granting Special Use Permit Application PZ23-00003, filed by Garrett Shifflett, Requesting a Special Use Permit to Allow Multifamily Residential Dwellings in Excess of the Maximum Density at 501, 505, & 539 Craghead Street (Parcel #21355) in Accordance with Article 3.L.C Item 13.

SUMMARY

Special Use Permit Application PZ23-0003, filed by Garrett Shifflett requests a Special Use Permit to allow multi-family residential dwellings in excess of maximum allowed density at 501, 505, & 539 Craghead Street in accordance with Article 3.L.C Item 13 of the Zoning Code.

BACKGROUND

The Imperial Tobacco building at 501, 505, & 539 Craghead Street, previously served as a prizery and storage warehouse. There are approximately 155,000 square feet of building improvements located on 1.9 acres within the Tobacco Warehouse Commercial zoning district. The subject property consists of two five-story factories constructed in the late 19th century which serve as anchors to the two- and three-story structure between them. The surrounding property consists of mixed-use development.

The applicant is proposing an adaptive reuse of the subject property into 250 one- and two-bedroom apartment units.

The property is served by public utilities. Development of the subject property with multi-family residential units is in character with the surrounding properties. The 2030 Comprehensive Land Use Plan identifies the area as Mixed Use.

Article 3.L.C Item 13 of the Zoning Code states that the maximum residential density is 24 dwelling units per net acre for multi-family dwellings. Density as presented by the applicant would be 132 units per acre. The density will be distributed within the 155,000 square feet of building improvements.

Development and parking plans have not been submitted for review. The outcome of this application affects both. While off-street parking is not required for residential development in the TW-C zoning classification, it is recommended and encouraged. When parking is provided, it must be provided in accordance with Article 8 of the Zoning Code which states that one space is required per dwelling unit.

Due to the subject property's location within the River District, approvals for site, parking, landscaping and signage must be received by the Planning Division and the River District Design Commission.

Development plans will be reviewed by the Planning Division for compliance with the Zoning Code.

Subsequently, plans will be reviewed by the River District Commission for compliance with the River District Design Guidelines.

Seventy (70) notices were sent to surrounding property owners within three hundred (300) feet of the property. Fifteen (15) responses were received: eleven (11) were unopposed and four (4) were opposed.

On February 13, 2023, the City Planning Commission voted 4-0 to recommend approval of Special Use Permit Application PZ23-0003 to allow multi-family residential dwellings in excess of maximum allowed density at 501, 505, & 539 Craghead Street in accordance with Article 3.L.C Item 13 of the Zoning Code.

RECOMMENDATION

It is recommended that City Council adopt an Ordinance granting a Special Use Permit in accordance with Article 3.L.C. Item 13 to allow multi-family residential dwellings in excess of maximum allowed density at 501, 505, & 539 Craghead Street in accordance with Article 3.L.C Item 13 of the Zoning Code.

Attachments

1. Ordinance
 2. Planning Backup
-

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2023 - _____._____

AN ORDINANCE GRANTING SPECIAL USE PERMIT APPLICATION PZ23-00003, FILED BY GARRETT SHIFFLETT, REQUESTING A SPECIAL USE PERMIT TO ALLOW MULTIFAMILY RESIDENTIAL DWELLINGS IN EXCESS OF THE MAXIMUM DENSITY AT 501, 505, & 539 CRAGHEAD STREET (PARCEL #21355) IN ACCORDANCE WITH ARTICLE 3.L.C ITEM 13.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia, that the report of the Planning Commission recommending approval of Special Use Permit Application PZ23-00003, filed by Garrett Shifflett requesting a Special Use Permit to allow multifamily residential dwellings in excess of the maximum density at 501, 505, & 539 Craghead Street (Parcel #21355) in accordance with Article 3.L.C Item 13, be and the same is hereby received; and

BE IT FURTHER ORDAINED, that in consideration of said report and the public hearing this day held by Council, Special Use Permit Application PZ23-00003, filed by Garrett Shifflett requesting a Special Use Permit to allow multifamily residential dwellings in excess of the maximum density at 501, 505, & 539 Craghead Street (Parcel #21355) in accordance with Article 3.L.C Item 13, is hereby approved.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:

CITY ATTORNEY



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

City Planning Commission

MEMORANDUM

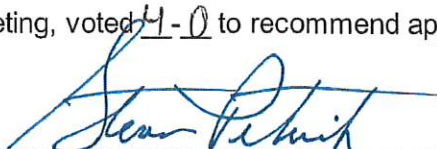
DATE: FEBRUARY 13, 2023
TO: CITY COUNCIL
FROM: CITY PLANNING COMMISSION
RE: SPECIAL USE PERMIT APPLICATION PZ23-00003

REQUEST

Special Use Permit Application PZ23-00003 Garrett Shifflett has requested a Special Use Permit to allow multi-family residential dwellings in excess of the maximum density at 501 Craghead Street in accordance with Article 3.L.C. Item 13.

RECOMMENDATION

The Planning Commission, at their February 13, 2023, meeting, voted 4-0 to recommend approval of Special Use Permit Request PZ22-00003 as submitted.


Mr. Steve Petrick, Chair



City of Danville
427 Patton Street, Suite 208
Danville VA, 24541
Phone: (434) 799-5260

City Planning Commission

STAFF REPORT

DATE: February 13, 2023

TO: Planning Commission

FROM: Renee Burton, Planning Division Director

RE: SPECIAL USE PERMIT APPLICATION – 501, 505, & 539 CRAGHEAD STREET (PARCEL 21355)

Special Use Permit Application PZ23-00003, filed by Garrett Shifflett has requested a Special Use Permit to allow multi-family residential dwellings in excess of maximum allowed density at 501, 505, & 539 Craghead Street according to Article 3.L.C.13 of the Danville Zoning Ordinance.

BACKGROUND

The Imperial Tobacco building at 501, 505, & 539 Craghead Street, previously served as a prizery and storage warehouse. There are approximately 155,000 square feet of building improvements located on 1.9 acres within the Tobacco Warehouse Commercial zoning district. The subject property consists of two five-story factories constructed in the late 19th century which serve as anchors to the two- and three-story structures between them. The surrounding properties consist of mixed-use development. The applicant is proposing an adaptive reuse of the subject property into 250 one- and two-bedroom apartment units.

The property is served by public utilities. Development of the subject property with multi-family residential units is in character with the surrounding properties. The 2030 Comprehensive Land Use Plan identifies the area as Mixed Use.

STAFF ANALYSIS AND RECOMMENDATION

Article 3.L.C.13 of the zoning ordinance states that the maximum residential density is 24 dwelling units per net acre for multi-family dwellings. Density as presented by the applicant would be 132 units per acre. The density will be distributed within 155,000 square feet of building improvements.

Development and parking plans have not been submitted for review. The outcome of this application affects both. While off-street parking is not required for residential development in the TW-C zoning classification it is recommended and encouraged. When parking is provided, it must be provided in accordance with Article 8 of the Zoning Code which states that one space is required per dwelling unit.

Due to the subject property's location within the River District, approvals for site, parking, landscaping, and signage must be received by the Planning Division and the River District Design Commission. Development plans will be reviewed by the Planning Division for compliance with the Zoning Code. Subsequently, plans will be reviewed by the River District Commission for compliance with the River District Design Guidelines.

The Planning Division recommends that the Planning Commission approve Special Use Permit Application PZ23-00003 for City Council approval. The City of Danville is currently experiencing a housing deficit. The development of multifamily dwelling units on the subject property could reduce this deficit and is in character with the area.

CITY PLANNING COMMISSION ALTERNATIVE ACTIONS

- Recommend continuation to a future meeting.
- Recommend approval as submitted.
- Recommend approval with conditions determined by the Planning Commission.
- Recommend denial.

ATTACHMENTS

- ✓ Application
- ✓ Zoning Map
- ✓ Property Ownership Map
- ✓ Future Land Use Map



City of Danville
Community Development
Planning Division

CITY PLANNING COMMISSION

SPECIAL USE PERMIT APPLICATION

Article 6, Section D. Application Requirements for Special Use Permit.

1. An application for a special use permit shall be made by the owner, contract purchaser with the owner's written consent, or the owner's agent, of the property on which the proposed use is to be located. The application shall be submitted to the Director of Planning/Zoning Administrator, and shall be accompanied by the filing fee of \$800.
2. If the request for a special use permit has been denied by City Council, a request in substantially the same form shall not be resubmitted within one (1) year of the date of denial.
3. The application shall include the following information:
 - a. A preliminary site plan in accordance with the Site Plan Regulations.
 - b. A description of the proposed use and, where applicable, the hours of operation and the proposed number of employees/patrons.
 - c. A written statement of proposed project compatibility with the following:
 - (1.) The Comprehensive Plan.
 - (2.) The applicable zoning district.
 - (3.) The surrounding properties.
 - (4.) Current and future neighborhood conditions.
 - (5.) Pedestrian and vehicular traffic patterns, on-site and off-site.
 - (6.) Adequate public facilities.
 - d. When requested by the Director of Planning/Zoning Administrator, the Planning Commission, or the City Council, the following information shall be provided by the applicant:
 - (1.) The architectural elevations and floor plans of proposed building(s).
 - (2.) Traffic impact analysis.
 - (3.) Fiscal impact analysis.
 - (4.) Parking and site circulation analysis.
 - (5.) Photographs of property and surrounding area.
 - (6.) Environmental impact statement.

PLANNING DIVISION PROVIDED INFORMATION

Application #: P223-003 PC Meeting Date: 2/7/23
Date Received: 1/11/23 Received By: Williss
Parcel ID: 21355 Address: 501 Craghead (505,539)
Existing Zoning: TW-C Future Land Use: _____

APPLICANT PROVIDED INFORMATION

Property Location (address/ID#): 501 Craghead Street

Applicant: Garrett Shifflett

Applicant's Address: 1630 Pope Avenue, Richmond, Virginia 23227

Applicant's Phone Number: 804.399.9921

Applicant's E-mail: garrettshifflett@gmail.com

Describe Proposed Request: Convert existing warehouse into approximately 250 1 and 2

Bedroom apartment Units In two phases, phase one will consist of approximately 115

apartment units and phase two will consist of approximately 135 apartment units.


Applicant Signature

1/10/2023
date


Property Owner Signature
(If not applicant)

1-10-23
date

REZONING DATA SHEET PZ23-003

PUBLIC HEARING DATE: FEBRUARY 13, 2023
PLANNING COMMISSION AT 3:00 PM

LOCATION OF PROPERTY: 501, 505, & 539 CRAGHEAD STREET (PARCEL ID 21355)

PRESENT ZONE: TW-C TOBACCO WAREHOUSE COMMERCIAL DISTRICT

PROPOSED ZONE: NO CHANGE

ACTION REQUESTED: SPECIAL USE PERMIT FOR WAIVER OF MAXIMUM DENSITY

PRESENT USE OF PROPERTY: NOT DEVELOPED

PROPOSED USE OF PROPERTY: MULTIFAMILY RESIDENTIAL DWELLING

FUTURE LAND USE DESIGNATION: MIXED USE

PROPERTY OWNER (S): IM REAL ESTATE HOLDINGS LLC

NAME OF APPLICANT (S): GARRETT SHIFFLETT

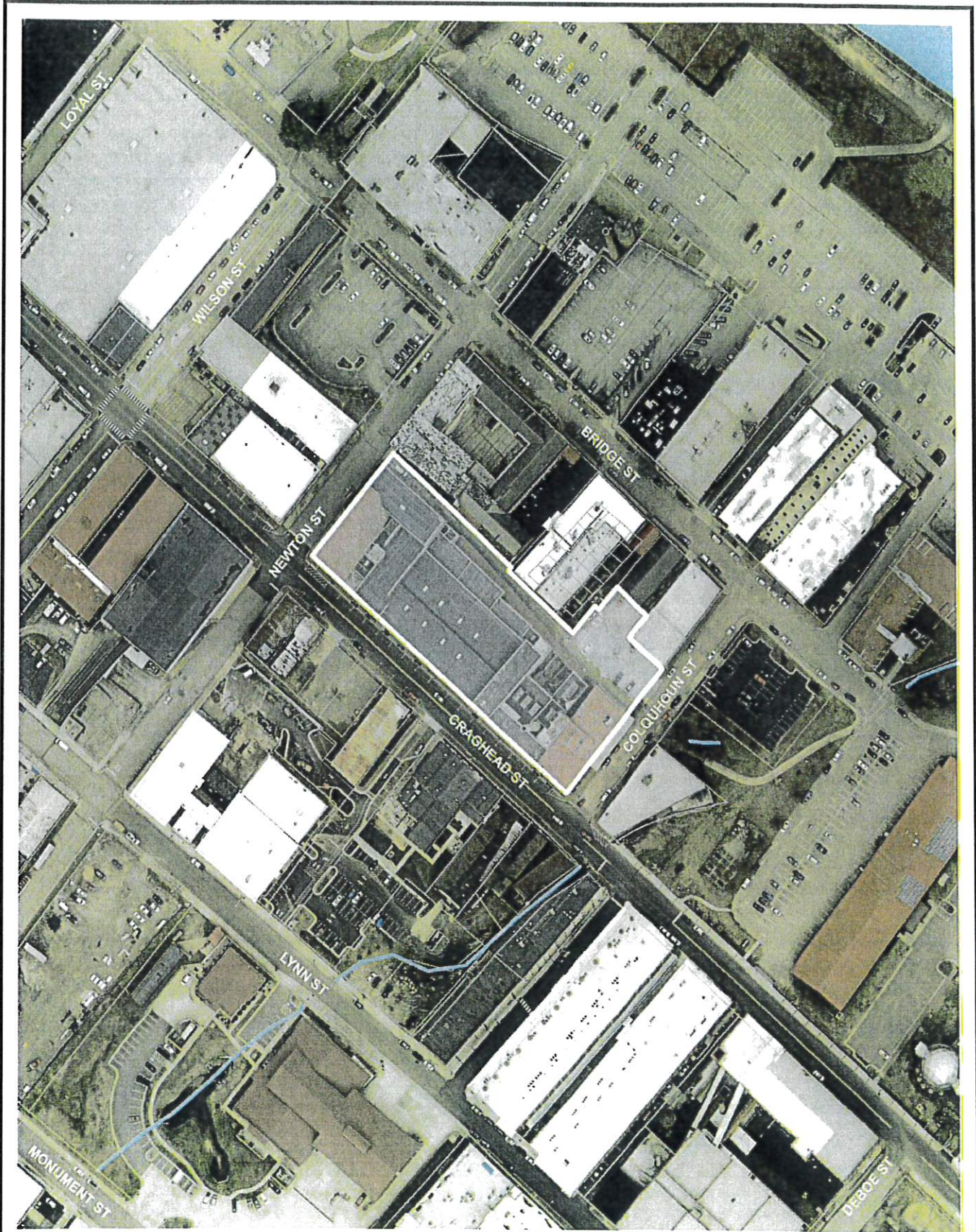
PROPERTY BORDERED BY: MIXED USE

ACREAGE: 1.9 ACRES TOTAL

CHARACTER OF VICINITY: MIXED USE

INGRESS AND EGRESS: COLQUHOUN ST

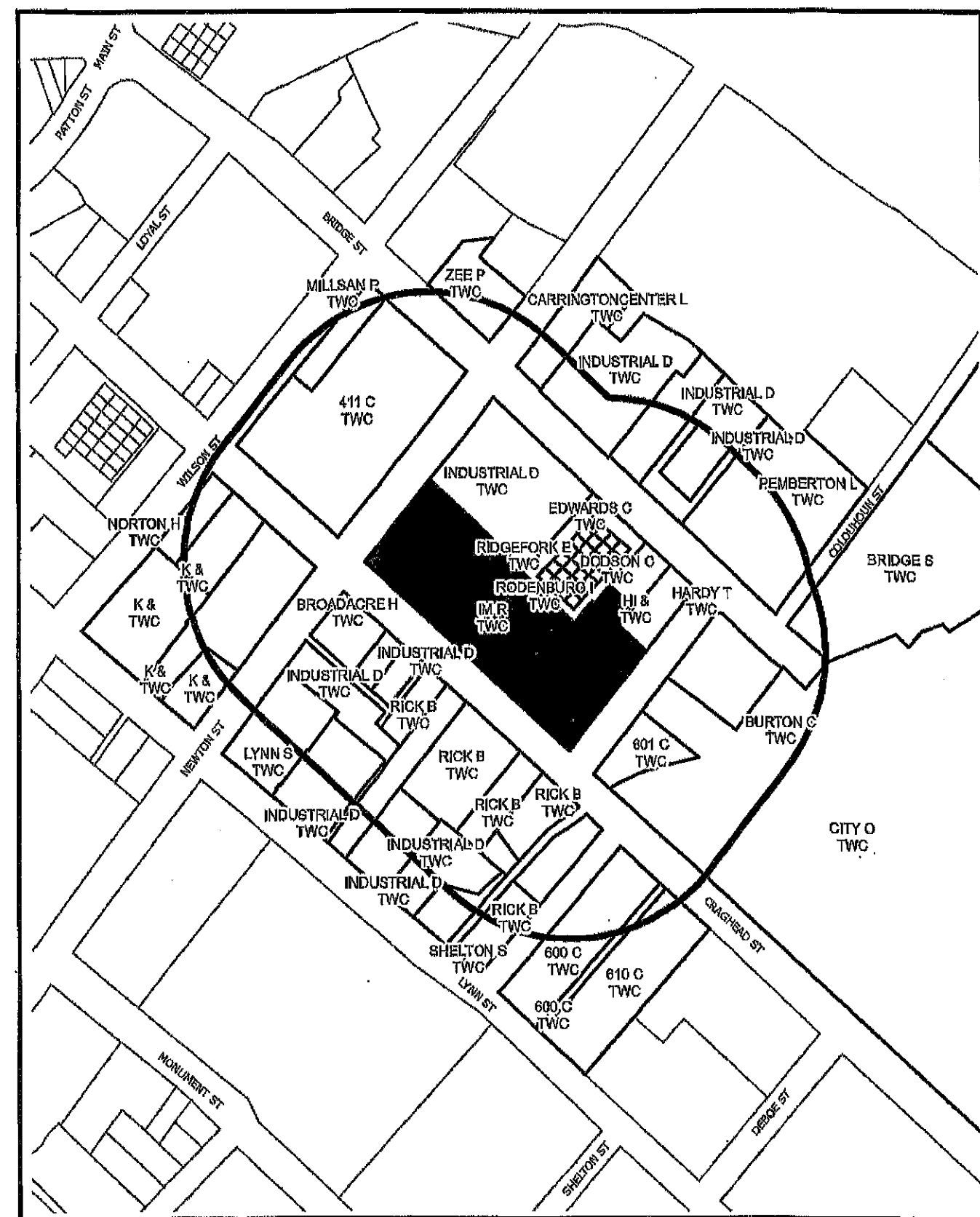
TRAFFIC VOLUME: HIGH



2019 AERIAL VIEW OF AREA SURROUNDING SUBJECT PROPERTY

Prepared by:
Planning Division
1/11/2023

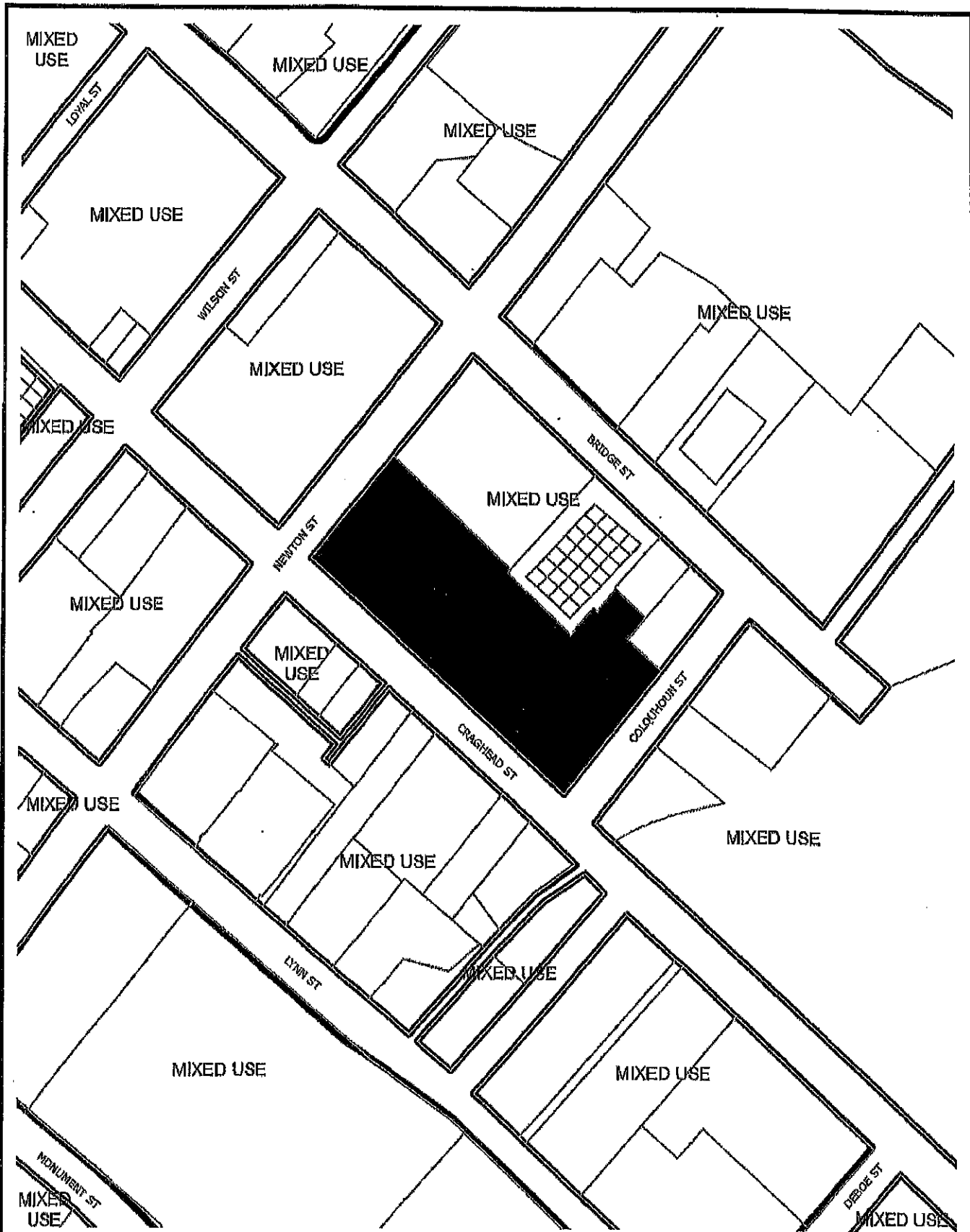
Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.



SURROUNDING PROPERTY OWNERS AND ZONING WITHIN 300 FEET OF SUBJECT PROPERTY

Prepared by:
Planning Division
1/11/2023

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.



YEAR 2030 LAND USE PLAN FOR AREA SURROUNDING SUBJECT PROPERTY

Prepared by:
Planning Division
1/11/2023

Disclaimer: Information contained on this map is to be used for reference purposes only. The City of Danville is not responsible for any inaccuracies herein contained. The City of Danville makes no representation of warranty as to this map's accuracy, and in particular, its accuracy in labeling, dimensions, contours, property boundaries, or placement or location of any map features thereon. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.

MEMORANDUM

DATE: FEBRUARY 13, 2023
TO: PLANNING COMMISSION
FROM: PLANNING STAFF
SUBJECT: RESPONSE FROM NEIGHBORING PROPERTY OWNERS

REQUEST: *Special Use Permit Application PZ23-00003, filed by Garrett Shifflett has requested a Special Use Permit to allow multi-family residential dwellings in excess of maximum allowed density at 501, 505, & 539 Craghead Street according to Article 3.L.C.13 of the Danville Zoning Ordinance.*

RESPONSES:

Seventy (70) notices were sent to surrounding property owners within three hundred (300) feet of the subject property. Fifteen (15) responses were received. Eleven (11) were unopposed (Womack and Amy Ramsey (10 statements from various LLCs). Four (4) were opposed (Zee Properties, Connecticut Classic Car LLC, Bridge Street Properties and Wallace).

COMMENTS:

I am not opposed provided developer provides adequate parking.

Lorraine Womack

I am opposed to this expansion of additional apartments until the City of Danville initiates specific plans to increase the parking spaces in the area. There are already parking problems and there is already another apartment complex coming online on Craghead Street in the next 6 months. With additional parking, this project is fine.

Zee Properties LLC

**Too many people-too many cars*

**Insufficient parking-parking not enforced*

**Insufficient services*

**The neighborhood will be ruined*

Connecticut Classic Car LLC

There is not enough parking in the area.

Bridge Street Properties LLC

Potential for excessive noise from traffic and people if density increased. Parking is limited already-want to maintain a flow of reasonable traffic-don't want congestion. Don't want really high rises if density is increased. Also amount/number of dogs already in the area causing issues-don't want to put more than allowed.

Wiley and Carole Wallace

Council Letter

City of Danville, Virginia



CL - 367

NEW BUSINESS B.

City Council REGULAR MEETING

Meeting Date: March 7, 2023

Subject: Approval of the Comprehensive Agreement to Perform Final Design and Construction of a new G.L.H. Johnson Elementary School.

From: W. Clarke Whitfield Jr., City Attorney

COUNCIL ACTION

A Resolution of the Council of the City of Danville Virginia Approving and Authorizing the Comprehensive Agreement Between the School Board of the City of Danville and Branch Builds, Inc. to Perform Final Design and Construction of a New G.L.H. Johnson Elementary School, in Accordance with Virginia Code § 56-575.16(5).

SUMMARY

As a part of the school bond referendum held on November 2, 2021, construction projects are planned for G.L.H. Johnson Elementary School. City Council approved the Interim Agreement at a prior meeting.

The Comprehensive Agreement is between the School Board of the City of Danville and Branch Builds, Inc. to perform final design and construction of a new G.L.H. Johnson Elementary School, in accordance with Virginia Code § 56-575.16(5).

BACKGROUND

The School Board of the City of Danville has chosen Branch Builds, Inc. to perform final design services for construction of a new G.L.H. Johnson Elementary School. Pursuant to Virginia Code § 56-575.16(5), City Council is required to approve the Comprehensive Agreement between the Danville School Board and Branch Builds, Inc. for a new G.L.H. Johnson Elementary School.

RECOMMENDATION

It is recommended that the City Council adopt the accompanying Resolution approving and authorizing the Comprehensive Agreement between the School Board of the City of Danville and Danville Branch Builds, Inc. to perform final design and construction of a new G.L.H. Johnson Elementary School, in accordance with Virginia Code § 56-575.16(5).

Attachments

1. RESOLUTION
 2. Agreement
 3. Exhibit D
 4. Exhibit F
-

PRESENTED: _____

ADOPTED: _____

RESOLUTION NO. 2023 - _____._____

A RESOLUTION OF THE COUNCIL OF THE CITY OF DANVILLE VIRGINIA APPROVING AND AUTHORIZING THE COMPREHENSIVE AGREEMENT BETWEEN THE SCHOOL BOARD OF THE CITY OF DANVILLE AND BRANCH BUILDS, INC. TO PERFORM FINAL DESIGN AND CONSTRUCTION OF A NEW G.L.H. JOHNSON ELEMENTARY SCHOOL, IN ACCORDANCE WITH VIRGINIA CODE § 56-575.16(5).

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

WHEREAS, pursuant to Virginia Code § 56-575.16(5) City Council is required to approve the comprehensive Agreement between the Danville School Board and Branch Builds, Inc. to perform final design and construction of a new G.L.H. Johnson Elementary School in accordance with Virginia Code § 56-575.16(5).

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

APPROVED:

Mayor

ATTEST:

Clerk

Approved as to
Form and Legal Sufficiency:

City Attorney

COMPREHENSIVE AGREEMENT

between

THE SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA

and

BRANCH BUILDS, INC.

for

DESIGN AND CONSTRUCTION OF

A NEW ELEMENTARY SCHOOL

Dated as of February____, 2023

THIS COMPREHENSIVE AGREEMENT (“Agreement” or “Contract”) is entered into as of February __, 2023 (“Effective Date”), between the SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA (“School Board” or “Owner”), a political subdivision of the Commonwealth of Virginia, and BRANCH BUILDS, INC. (“Contractor”), a Virginia stock corporation. The School Board and Contractor may be referred to individually as a “Party” and collectively as the “Parties.”

Recitals

1. The School Board has adopted its Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, establishing procedures for the development of public facilities through public-private partnerships (“Guidelines”), which procedures satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002, Chapter 22.1, Title 56, Code of Virginia, 1950, as amended (“PPEA”).
2. The School Board received an unsolicited proposal under the PPEA and the Guidelines for, among other things, the design and construction of renovations and additions to the former G.L.H. Johnson Elementary School.
3. The School Board determined that, among other things, it would be advantageous to proceed with procurement of the proposed projects using procedures for competitive negotiation, rather than using sealed, competitive bids, given the probable scope, complexity and urgency of the proposed projects; the merits of risk-sharing and the potential for added value; and the economic benefits from the proposed projects that might otherwise not be available.
4. The School Board advertised for competing proposals, as required by the PPEA and the Guidelines, and received one competing proposal from Contractor for the design and construction of a new Elementary School at the site of the former G.L.H. Johnson Elementary School (the “Project”).
5. After reviewing the proposals, the School Board selected Contractor’s proposed Project team, including all designated architects and engineers and other subcontractors, for negotiation of an interim agreement followed by this Agreement for the Project.
6. As required by the PPEA, the School Board has held a public hearing to receive citizen comment on Contractor’s proposal and the Project.
7. As required by the PPEA, the City Council of the City of Danville, Virginia, as the appropriating body for the School Board, has approved both the interim agreement and this Agreement.
8. Having considered the interim agreement, this Agreement and other relevant information, the School Board has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA

under the criteria of Section 56-575.4(C) of the Code of Virginia, 1950, as amended (the “Code”), and has posted this Agreement for public inspection in accordance with the PPEA and the Guidelines.

NOW THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated into this Agreement by reference.
2. **Contract Documents.** The Contract Documents are comprised of the following:
 - a. This Agreement, including all Exhibits attached to this Agreement. Exhibits incorporated herein include:
 - Exhibit A:** Definitions
 - Exhibit B:** Site Plan, Design Narrative, Plans, Drawings and Specifications
 - Exhibit C:** Contractor’s Proposal
 - Exhibit D:** Owner’s Terms and Conditions
 - Exhibit E:** Bond Forms
 - Exhibit F:** Construction Schedule and Reports
 - Exhibit G:** Allowances
 - b. The Project Schedule and Schedule of Values to be prepared by Contractor following the issuance of the Notice to Proceed as provided in Section 3, but only after approved in writing by the School Board.
 - c. Insurance Certificates, the Performance Bond, the Labor and Material Payment Bond, each Payment Application, and Certificates of Substantial and Final Completion.
 - d. The Construction Plans, Drawings and Specifications to be developed by Contractor under this Agreement, but only after approved in writing by the School Board.
 - e. Amendments, Modifications, Change Orders and Change Directives approved in writing by the School Board.
3. **Initial Submittals.** Within the timeframes set forth below, Contractor shall prepare and deliver to School Board three copies of the following Initial Submittals:

- a. **Schedule of Values.** Contractor shall deliver to the School Board's Project Manager and Authorized Representative a Schedule of Values in the format of a Payment Application with continuation sheets. The Schedule of Values will be submitted the School Board at the earliest possible date following the issuance of the Notice to Proceed but no later than seven (7) calendar days before the date scheduled for submittal of Contractor's initial Payment Application.
 - b. **Copies/cut sheets.** Within ninety (90) calendar days of the School Board's delivery to Contractor of the Notice to Proceed (unless a shorter period is provided in the Project Schedule), Contractor shall deliver to the School Board's Project Manager and Authorized Representative copies/cut sheets of all materials and equipment to be used to complete the Project. Submittal for materials will include; Project name, manufacturer's catalog cut, manufacturer's product specifications, standard color charts, statement of compliance with specification referenced standards, testing by recognized testing agency, application of testing agency labels, and seals and notation of coordination requirements. Submittals for equipment will include in addition to the foregoing, as applicable the following: Wiring diagrams showing factory-installed wiring, printed performance curves, operational range diagrams, and clearances required to the construction, if not indicated on accompanying shop drawings.
 - c. **Project Schedule.** Contractor shall deliver to the School Board's Project Manager and Authorized Representative a Construction Schedule (GANTT CHART), which shall include a comprehensive, fully developed, horizontal Gantt-chart-type schedule for all construction services. The Project Schedule will show the progress of Work on the Project using a critical path method (CPM) methodology. Contractor's Project Schedule shall comply with all the terms, conditions and requirements of the Construction Schedules and Reports attached hereto as **Exhibit F**. Contractor shall submit the Project Schedule to Owner within sixty (60) calendar days following Owner's issuance of the Notice to Proceed. This Project Schedule will indicate each significant construction activity separately and will identify the first workday of each week with a continuous vertical line. The Project Schedule will call for the Substantial Completion of the Project no later than July 31, 2025.
4. **Scope of Work.** Contractor shall perform, provide or cause to be provided all Work for the Project, including all remaining design services and all construction services.
 - a. Contractor shall assign the Contractor's personnel, the Architect/Engineer (including the A/E's personnel) and other subcontractors and consultants identified in Contractor's Proposal (the "Project Team") to furnish Work on the Project. Contractor shall not make changes to the Project Team without the School Board's consent, which consent will not be

unreasonably withheld, conditioned, or delayed. In addition to the Project Team, Contractor will provide such additional staff of licensed, certified, qualified, and experienced personnel as needed to complete the Project within the Contract Price and Contract Time. If any member of the Project Team fails to perform to the School Board's satisfaction, the School Board may, upon fifteen (15) days' written notice to Contractor, cause Contractor to remove such person(s) from the Project and replace them with other personnel of at least equivalent knowledge, skill and experience who are acceptable to the School Board.

- b. The Site Plan, Design Narrative and 10% Schematic Design Plans, Drawings and Specifications (which Contractor developed pursuant to the Parties' interim agreement) for the Project are attached hereto as **Exhibit B**. Pursuant to the interim agreement, Contractor will develop those Plans, Drawings and Specifications through completion of the 35% Design Development Plans, Drawings and Specifications before the Effective Date of this Agreement. The 35% Design Development Plans, Drawings and Specifications, once approved in writing by the School Board, will supersede and replace the 10% Schematic Design Plans, Drawings and Specifications in **Exhibit B**.
- c. The general character and scope of the Work are illustrated by the Site Plan, Design Narrative, and 35% Design Development Plans, Drawings and Specifications attached hereto as **Exhibit B**. Based on the School Board's approval of the 35% Design Development Plans, Drawings and Specifications, Contractor will prepare 65% Construction Plans, Drawings and Specifications for the Project. Contractor will submit the 65% Construction Plans, Drawings and Specifications to the School Board for approval. Based on the School Board's approval of the 65% Construction Plans, Drawings and Specifications, Contractor will prepare 100% Construction Plans, Drawings and Specifications for the Project. This Construction Drawings phase will include the preparation of building sections, detailed elevations, and floor plans. In this final design phase, Contractor will coordinate all architectural and engineering disciplines with the final proposed layout and, at the end of this final design phase, will present to the School Board final detailed design drawings, specifications and other construction documents for review and approval, as well as construction cost estimates indicating that the Project can be completed within the Contract Price and Contract Time. Contractor will, among other usual and customary tasks, provide final drawings and specifications that are required by the School Board for the Project; have the drawings reviewed and approved by governmental authorities, as needed; consult with the School Board's Project Manager to finalize and approve construction documents; refine cost estimates for the Project; and review the construction schedule.

- d. Contractor will furnish and provide all architectural and engineering services for the Project, including, but not limited to, all architectural and engineering materials, labor and equipment necessary for the development of Construction Plans, Drawings and Specifications. Contractor will perform all usual and customary tasks related to the Services that are reasonably required for the design of a complete, usable, and properly functioning Project, even if those tasks are not expressly enumerated in this Agreement.
- e. Contractor's design services include all architectural design, structural engineering, mechanical engineering, electrical engineering, plumbing engineering, civil engineering, surveying, subsurface utility engineering, landscape architecture, FF&E design, architectural interior design, kitchen design, technology improvements (including telecommunications, audiovisual and data), and security and fire protection design for the achievement of the foregoing milestones/tasks.
- f. Contractor will manage the architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project Team, and report progress to the School Board's Project Manager. Contractor will promptly notify the Project Manager if it becomes aware of any error, omission, or inconsistency during the development of Construction Drawings, Plans or Specifications or other aspects of the design services that may affect cost, progress, performance, furnishing, or timely completion of the Project.
- g. Contractor will contact governmental authorities required to approve the Construction Drawings, Plans and Specifications and entities providing utility services for the Project. Contractor will respond to applicable design requirements imposed by those authorities or entities. Contractor will incorporate requirements from such authorities and entities into its Construction Plans, Drawings and Specifications for the Project.
- h. Contractor shall complete the Construction Drawings, Plans and Specifications in a manner that ensures the Project will be completed within the Contract Price and the Contract Time, subject to any adjustments made to the foregoing in writing in accordance with this Agreement. Contractor will be responsible for the professional quality, technical accuracy, and the coordination of all Plans, Drawings and Specifications and other services and/or materials furnished by Contractor under the Contract Documents. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in the Construction Plans, Drawings and Specifications, and other services.
- i. In addition to all other design services and deliverables for the Project, Contractor will deliver to School Board in a timely and proper manner the

following: (i) Comprehensive set of original plan sheets, with original certification signatures, as would customarily be prepared in the industry for a project of this scope, in such sizes and numbers as may be reasonably necessary for the Project; (ii) Prepare and provide all necessary Project documents with original certification and regulatory approval signatures; (iii) Reproducible copy of all necessary Project documents prepared by the Consultant; (iv) All Project drawings in AutoCAD format together with any related symbol and/or font libraries, unless another format is authorized by Owner; and (v) Five (5) copies of all Project calculations, details, certifications, cost estimates, survey notes, charts, reports, floor plans, site plans, elevations, sections, details, studies, sketches, maps, and other documentation as may be reasonably required by the School Board for the performance of the Project.

- j. After the School Board approves, in writing, the Construction Plans, Drawings and Specifications developed by Contractor as part of the Work under this Agreement, the School Board will issue a Notice to Proceed with Construction on the Project. The School Board will not unreasonably withhold its approval and will comply with the timelines established in the agreed Project Schedule. Contractor shall carry out the Construction Work in accordance with the Construction Plans, Drawings and Specifications for the Project, and any additional detail drawings and instructions, approved in writing by the School Board. Contractor shall start the Work promptly upon the receipt of the Notice to Proceed and shall prosecute the Work regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with the Contract Documents. Contractor shall complete Construction of the Project within the Contract Price and the Project Schedule/Contract Time. Contractor shall perform all Work and shall furnish and provide all labor, materials, tools, equipment, and services required to complete the Project, all in strict accordance with the Contract Documents. It is understood and agreed that said labor, materials, tools, equipment, and services shall be furnished and said Work performed and completed under the direction and supervision of the Contractor and subject to the approval of the School Board.
- k. Submittals must be provided to the School Board's Project Manager for review and approval prior to commencement of any Work or installation or incorporation of any equipment or supplies into the Project. School Board's Project Manager shall have no less than ten (10) business days to approve any submittal, unless otherwise agreed in writing. Contractor will modify and resubmit submittals in accordance with School Board's exceptions.
- l. Contractor shall maintain a complete set of Drawings and submittals, including draft as-built drawings, onsite at all times. Among other things,

the marked documents shall reflect (i) all deviations from the Drawings made during construction, (ii) details in the Work not previously shown on the Drawings, (iii) changes to existing conditions or existing conditions found to differ from those shown on the Drawings, and (iv) the actual installed position of equipment, controls and other system information required for Owner's use and maintenance of the Work. These shall be delivered to Owner and Project Manager upon Substantial Completion of the Work (or any termination of this Contract).

- m. Contractor shall coordinate with the Project Manager with regard to interpreting and clarifying the Plans, Drawings and Specifications.
- n. Contractor will maintain a written record of all Project meetings. Meeting minutes shall be submitted to the School Board not more than 10 days after the meeting.
- o. Should Contractor, at any time, develop a concern that it cannot complete the Project within either the Contract Price or the Contract Time, it shall immediately notify the School Board's Project Manager of the concern and the cause for the inability to comply with the Contract Price or the Contract Time and inform the School Board of the action(s) Contractor proposes to reduce costs or otherwise conform to the Contract Price and/or Contract Time; provided, however, no change in the School Board's scope or reduction in quality will be approved. Nothing herein shall entitle Contractor to an increase in the Contract Price or extension of the Contract Time or alleviate Contractor from its obligation to complete the Project within the Contract Time and Contract Price. Contractor shall ensure that the Contract Price is not exceeded, but if it is exceeded, Contractor shall be solely responsible for any excess over the Contract Price.

5. **Interpretation; Intent and Incorporation.**

- a. The Contract Documents are intended to ensure that Contractor completes the Project and all obligations required by the Contract Documents within the Contract Time for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict and to accomplish the Project contemplated hereby. Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all Contract Documents, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect. Whenever possible, the Contract Documents must be read as a whole with all parts being harmonized so as to avoid conflict. In the event of a conflict between or among the Contract Documents, the precedence of the Contract Documents shall be in the following order: (i) Amendments, Modifications, Change Orders and

Change Directives to the Contract; (ii) the Construction Plans, Drawings and Specifications (after having been approved in writing by the School Board); (iii) this Agreement, including all Exhibits to this Agreement.

- b. Contractor will perform all usual and customary design and construction tasks related to the Work that are reasonably required for a complete, usable, and properly functioning Project, even if those tasks are not expressly enumerated in the Contract Documents.
- c. Terms, words, and phrases used in the Contract Documents, including this Agreement, shall have the meanings given to them in the Contract Documents, including without limitation the Definitions in **Exhibit A**. Where no meaning is provided in the Contract Documents, words and phrases shall be interpreted in a manner consistent with industry standards.

6. **Ownership of Work Product.**

- a. **Work Product.** Conditioned only upon payment of fees due to Contractor for services that have been performed under the Contract, all Plans, Drawings, Specifications, and other documents and data furnished by Contractor to the School Board under the Contract (collectively, the “Work Product”), whether fully or partially completed, are deemed to be the sole property of the School Board, which shall include but not be limited to all Work Product for the Project that has been or will be prepared or created by or on behalf of Contractor for the Project, as well as any and all derivations, modifications, changes, translations, revisions, elaborations, adaptations, or transformations of the Work Product. This provision shall not relieve Contractor from, or modify Contractor’s sole responsibility for, any and all liability for all of its Work under the Agreement (including labor and materials). It is understood and agreed that all Work Product prepared by or on behalf of Contractor for this Project will be applicable only in respect to the Project. The Work Product is not intended or represented to be suitable for use or reuse by the School Board or others for a material extension of the Project or on any other project. The School Board has the right, itself or by and through other design professionals, to modify the Work Product prepared by Contractor for use in connection with the Project. In such event, Contractor shall have no liability for such modifications. Contractor shall ensure that its consultants agree in writing to the granting of limited, irrevocable, and non-exclusive licenses for use in this Project of the Work Product produced by the consultants for Contractor that Contractor has agreed to provide to the School Board in this Agreement.
- b. **Work Product Representations and Warranties.** Contractor represents and warrants that the Work Product being provided under this Agreement will not infringe on any United States or foreign patents, copyrights or other intellectual property rights, and that Contractor has all requisite

licenses and agreements from third parties for the provision of such Work Product. If necessary, Contractor shall obtain and provide to the School Board any and all rights, title, interests, licenses, copyrights, trademarks, and other intellectual property rights or interests in the Work Product being provided for the Project upon payment in accordance with the terms of this Agreement. Contractor warrants that the use of any Work Product provided to the School Board by Contractor shall not infringe upon any United States or foreign patents, copyrights, or other intellectual property rights.

- c. **Retained Rights of Contractor.** The School Board acknowledges that Contractor or its consultants may have developed materials prior to entering into this Agreement, and may own other patent, trade secret, and proprietary rights in techniques and concepts related to design elements that were not conceived or first produced by Contractor in connection with this Project (collectively “Contractor Intellectual Property”). Contractor Intellectual Property is proprietary to Contractor and shall remain Contractor's exclusive property. Contractor hereby grants to the School Board an irrevocable non-exclusive license to Contractor Intellectual Property to the extent it is incorporated in any Work Product delivered to the School Board by Contractor hereunder. Submission or distribution of any Work Product to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of Contractor and/or their consultants.
- d. **Record As-Built Drawings.** Prior to Final Completion, Contractor shall deliver to Owner five (5) full sets of record as-built drawings for the Project. The record drawings shall contain a final set of drawings showing the as-built condition of the Project, including all conditions, locations, and dimensions. The record drawings shall contain the plans, specifications, addenda, shop drawings, and any other information necessary to show the final condition of the Project, the actual locations of any permanent structures, piping, and utilities, the depths of foundations, pilings, and caissons, and the integration of any Change Orders/Change Directives into the Work carried out pursuant to the Project. Record drawings shall constitute Work Product under the Contract, and all intellectual property rights in the record drawings shall belong to the School Board.
- e. **Intellectual Property Indemnity.** To the maximum extent permitted by applicable law, Contractor shall defend, indemnify, and hold harmless the School Board, its employees, officers, boards, board members, representatives, and agents against liability, including costs and attorney's fees, arising from any claim of patent, copyright, or trademark infringement (or unauthorized use) arising from or related to the Work furnished under this Contract or the Work Product delivered under this

Contract. These obligations shall survive the termination or expiration of this Contract for a period of five (5) years.

7. **Contract Price.**

- a. **Contract Price.** Contractor will perform all of the Work for the Project for the Contract Price, which is the guaranteed maximum price for the Project. The School Board will pay Contractor, for all of the Work for the Project, the fixed Contract Price. The Contract Price is \$_____, which equals the total Project Budget (\$_____) less the amount paid pursuant to the parties' interim agreement (\$883,600.00). The Contract Price will be subject only to adjustments made in accordance with this Agreement. Unless otherwise provided in the Contract Documents, the Contract Price includes all sales, use, consumer, and other taxes imposed by law or any governmental authority. Contractor shall be wholly responsible to fully complete the Project at no compensation above the Contract Price, subject only to any adjustments in the Contract Price made in writing in accordance with this Agreement.
 - i. Contractor acknowledges and agrees that the Contract Price is full and complete compensation for the Work to be performed by Contractor, and by any and all subcontractors, under this Agreement. The Contract Price includes all costs and expenses to be incurred by Contractor in performing the Work. Contractor shall submit to Owner's Authorized Representative and Project Manager updated estimates of construction costs for the Project at the completion of the following design phases: 35% Design Development Documents; 65% Construction Documents; and 100% Construction Documents. If any estimate of the construction costs submitted by Contractor to Owner indicates that the construction costs for the Project will exceed the Contract Price stated above, then the Contractor, the Owner and the Owner's Project Manager shall work collaboratively to revise the Plans and Specifications and adjust the scope of the Work or quality of the Work, so as to reduce the estimated construction costs so that they do not exceed the Contract Price. No costs and expenses will be reimbursed over and above the amount of the Contract Price, subject to any adjustments made pursuant to this Agreement. Contractor covenants and agrees that the Contract Price stated herein is full, complete, just and adequate compensation for the Services. There shall be no increase in the Contract Price without the School Board's express prior written authorization.
 - ii. Contractor represents and warrants that it has visited the Project site and become familiar with and is satisfied as to the general location and site conditions that may affect cost, progress, performance, furnishing, and completion of the Project. Contractor

represents and warrants that it is familiar with and will comply with all federal, state, and local laws and regulations in effect at the time this Agreement is executed, that may affect cost, progress, performance, furnishing, and completion of the Project. Contractor shall bear all costs resulting from the location, site conditions, laws, regulations, and other conditions and circumstances being different from what Contractor expected or resulting from the amount, nature, or character of the work being more or different from what Contractor expected.

- b. **Change Orders/Change Directives.** Proposed changes from either Party should be submitted in writing, with sufficient clarity and detail for the other Party to evaluate the proposed change. Contractor shall submit Change Order proposals to the School Board's Project Manager. The School Board may issue Change Directives to Contractor. The Parties shall negotiate in good faith and as expeditiously as possible regarding Change Orders/Change Directives. All Change Order proposals from Contractor must include documentation itemizing the estimated quantities and costs of materials, equipment, and labor required for the Work.

- c. **Subcontractor Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, the following markups shall be allowed on such changes:

For Subcontractors (at any tier) (other than design/engineering consultants): 10.0% of such Subcontractor's (at any tier) actual cost.

- d. **Allowances.** The Contract Price includes the allowances detailed in **Exhibit G**. In the event that any portion of an allowance is not used, the Contract Price will be reduced by that unused amount. In the event that the costs exceed the allowance, the Contract Price will be increased to reflect the actual cost.

- e. **Change in Contract Price Relating to Modification of Design.** For changes to the Work requested by the School Board in writing after School Board's approval of the 35% Drawings, Plans and Specifications or its approval of the of the 65% Drawings, Plans and Specifications, if such changes add to the scope of the Work, Contractor shall, upon the written request of the School Board's Authorized Representative, make the necessary design drawing and specification revisions; prepare and issue requests for proposal describing the modifications; prepare estimates, drawings and specifications as required; evaluate proposals and make recommendations to the School Board's Authorized Representative. The amounts payable by the School Board for any change under this paragraph will be negotiated and will be subject to the agreement of the School Board and will include all actual design and preconstruction costs and a Contractor Mark-Up capped at 10% of those actual design costs.

- f. **Contingency.** Expenditures from Contractor's Contingency, which contingency amount will not exceed three percent (3%) of the total subcontracted cost of Work and will be included in the Contract Price, must be reviewed in advance by the Owner's Authorized Representative. Contractor must submit a completely documented notification for the Owner's Authorized Representative's review justifying why the use of the Contractor's Contingency is needed. Contractor may only use the Contingency for (i) material changes in the general scope, extent or character of Work on the Project or the design of the Project; (ii) material changes in the Project Schedule that affect construction costs; (iii) changes in applicable laws, rules, regulations, ordinances, codes or orders enacted subsequent to the execution of this Agreement that affect construction costs; (iv) scope gaps between trade contractors; (v) contract default by subcontractors; (vi) constructability issues; (vii) price escalation unknown at the time of GMP; and (viii) material substitution as a result of unusual and extended lead times for materials. Contractor will keep the Owner advised of any prospective or proposed expenditures from the Contractor's Contingency. The parties agree that any excess Contractor's Contingency at the completion of the Project shall be subject to divided between the parties as follows: 50% to the Contractor and 50% to the Owner.

8. **Payment.**

a. **Progress Payments**

- i. Contractor shall submit to the School Board on the twentieth (20th) day of each month a Payment Application for Work performed during the immediately prior month in accordance with the Project Schedule and the Schedule of Values prepared in accordance with Section 3. Each Payment Application shall bear a certificate that, to the best of Contractor's knowledge and belief, (1) all Work during the pay period was carried out in accordance with the Contract Documents and any applicable laws and permits, (2) all subcontractors and materialmen required to be paid previously during the course of the Contract have been paid, and (3) Contractor is legally entitled to payment. All Payment Applications shall be submitted to the School Board's Authorized Representative at the following address:

Dr. Wayne Lyle, Chief Operations Officer
Danville Public Schools
341 Main Street, Suite 100
Danville, VA 24541

- ii. The Parties shall have monthly progress/pay meetings at times established by the School Board. Additional meetings will be

scheduled as needed. Contractor, the Project Manager, any A/E's who have provided design work during the previous month, and representatives of principal subcontractors, if any, providing Work in the previous month must attend the monthly meeting. The attendees will discuss:

1. Progress of the Work;
2. Status of any pending or proposed Change Orders and Change Directives;
3. Status of any pending Claims;
4. Any general issues with the Work;
5. Any potential delays due to Adverse Weather, transportation delays, issues with price or availability of materials, or similar matters;
6. Such other matters as, in the judgment of the attendees, may make the progress of the Work continue more smoothly.

iii. The School Board will endeavor to make payment for Work properly performed in accordance with the Contract Documents within thirty (30) days after receipt of each properly submitted and accurate Payment Application; provided, however, the School Board shall have no more than forty-five (45) days following receipt of the Payment Application to make payment. Each payment shall be in the approved amount, less the total of payments previously made and less amounts properly withheld. The School Board may pay Contractor electronically or by paper check. Payments will either be mailed or deposited into a checking account. If Contractor requests electronic payment, the School Board will attempt to accommodate that request; however, Contractor must provide the School Board with all information required for electronic payment of invoices.

b. **Prompt Payment to Subcontractors and Materialmen.** Contractor shall be liable for the entire amount owed to any subcontractor or materialman with which it subcontracts; provided, Contractor shall not be liable for amounts otherwise reducible due to the subcontractor's or materialman's noncompliance with the terms of its subcontract. In the event that Contractor withholds all or a part of the amount promised to the subcontractor or materialman under its subcontract, Contractor shall notify the subcontractor or materialman, in writing, of its intention to withhold all or a part of the payment with the reason for nonpayment. Payment by the School Board to Contractor shall not be a condition precedent to payment to any lower-tier subcontractor. Further, within seven (7) days after receiving any progress payment from the School Board, Contractor must either:

- i. Pay each subcontractor or materialman its proportionate share of the total payment received from the School Board attributable to the Work performed or materials provided; or
- ii. Notify the School Board and the subcontractor or materialman, in writing, of its intention to withhold all or part of the subcontractor's or materialman's payment with the reason therefor.
- iii. Contractor shall pay interest at the rate of one (1) percent per month to the subcontractor or materialman on all amounts owed by Contractor that remain unpaid after seven (7) consecutive, calendar days following receipt by Contractor of payment from the School Board for work performed by the subcontractor or materialman under that subcontract, except for amounts withheld as allowed in subsection b.ii. above.
- iv. Contractor shall insert in each of its subcontracts a provision requiring each subcontractor and materialman to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor or materialman.
- v. Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section shall not be construed to be an obligation of the School Board. This Contract may not be modified for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.
- vi. Contractor shall provide the School Board with its federal employer identification number.
- vii. In the event a dispute between Contractor and a subcontractor or materialman, in the reasonable apprehension of the School Board, would disrupt the critical path of the Project such that it would endanger public safety, result in a violation or potential violation of any term of the School Board's financing for the Project the School Board reserves the right to pay such subcontractor or materialman directly and withhold such payment from Contractor's final payment or retainage. Contractor may make a claim for any such sum, which shall be adjudicated through the claims process.

c. Retainage on Progress Payments.

- i. The School Board will retain five percent (5%) of the amount of each Payment Application for construction Work on the Project. The School Board will not retain any percent of the portion of

Contractor's Payment Application applicable exclusively to design Work on the Project.

- ii. Upon Final Completion of the Project and approval of the final Payment Application, the School Board shall release to Contractor all retained amounts.
- d. **Final Payment.** Contractor shall submit its final Payment Application to the School Board after Final Completion of the Project in accordance with the Contract Documents (including without limitation Section 14.7 of the Owner's Terms and Conditions). If the School Board finds that all portions of the Work (including without limitation any punch list items identified by the School Board or Contractor) have been completed and Contractor has satisfied all other requirements of the Contract Documents, the School Board shall make payment on the final Payment Application within forty five (45) days after receipt of the same.
- e. **Lender Requirements.** In the event that the School Board obtains a loan or other financial assistance from a third party in connection with the financing of the Project, Contractor shall comply with all commercially reasonable conditions established by such lender or other financial source in connection with Payment Applications under this Agreement.
- f. **Invoice Documentation.** Each invoice shall include Contractor's federal employer identification number and Owner's Purchase Order number. Each invoice shall identify the Work that Contractor has completed during the period since the last invoice. Each invoice shall state the amounts previously invoiced and, if different, the amounts approved for payment, the amounts paid previously, and the amount of the current invoice.
- g. **Payment Not Acceptance or Waiver.** The School Board's review, approval or acceptance of, or payment for, any Work under this Contract shall not constitute acceptance of defective or nonconforming Work, nor shall it relieve Contractor of any responsibility for any errors or omissions in connection with the Work, be construed as a waiver of any warranty, of any rights under this Contract or of any cause of action arising out of the performance or non-performance of this Contract, or operate to release Contractor from any obligation under the Contract.

9. **Contract Time and Project Schedule.**

- a. **Construction Drawings.** Following the School Board's approval of the 35% Design Development Plans, Drawings and Specifications, Contractor shall proceed uninterrupted in its development of Construction Plans, Drawings and Specifications. Contractor shall submit final Construction Plans, Drawings and Specifications to the School Board no later than ninety (90) calendar days after the execution of this Contract.

- b. **Commencement Date for Construction.** Following Contractor's completion and the School Board's approval of the Construction Plans, Drawings and Specifications, the School Board shall issue a written Notice to Proceed with Construction. The Construction Work on the Project shall commence at the time set forth in the School Board's written Notice to Proceed ("Commencement Date") unless the Parties mutually agree otherwise in writing. After the issuance of the Notice to Proceed, Contractor shall prepare and deliver to the School Board the Initial Submittals required under Section 3 of this Agreement.
- c. **Preconstruction Activities.** In addition to the development of Construction Plans, Drawings and Specifications, which Contractor will complete and submit to the School Board for approval prior to the Notice to Proceed, the School Board may authorize, in writing, for Contractor to perform other preconstruction activities, including other design services, prior to giving the Notice to Proceed. Contractor will perform all such preconstruction activities as directed by the School Board.
- d. **Preconstruction Meeting.** Within fourteen (14) days following receiving Notice to Proceed, the Parties shall have a preconstruction meeting. Project managers from Contractor, the Contractor's A/E, the School Board, and principal subcontractors must attend the preconstruction meeting. Among matters to be addressed are: (1) the status of the Project Schedule and Schedule of Values; (2) procedures for approval of Submittals; (3) Change Order and Change Directive procedures; (4) potential issues with materials or labor; and (5) any other matters the Parties or subcontractors believe would advance the Project.
- e. **Substantial Completion and Final Completion.**
 - i. Substantial Completion will be no later than July 31, 2025. Final Completion shall be no more than sixty (60) days after Substantial Completion. When Contractor considers that the Work, or any portion thereof which the Owner agrees to accept separately, is Substantially Complete, Contractor shall submit to the School Board's Authorized Representative a comprehensive list of items to be completed or corrected prior to Final Payment or acceptance of the designated portion of Project. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
 - ii. If Contractor's critical path for performance of the Work is delayed due to strikes, fires, pandemic or epidemic, unusual delays in transportation, unavailability of materials, Adverse Weather in the Danville area, or other causes outside the control of Contractor or any of the subcontractors for which Contractor is responsible, the Contract Time for performance of the Work on the Project will be

reasonably extended by the number of days the critical path is extended. Adverse Weather will be taken into account for purposes of ascertaining delays only to the extent that actual construction operations are delayed. "Adverse weather" is defined as weather which is more severe than the average weather for the particular time(s) and date(s) in question as compared to the last 5-year average. The "average" shall be based on the "local climatological data" published by the National Oceanic and Atmospheric Administration for the Project area. It shall be the responsibility of the Contractor to furnish all data necessary to support its request.

iii. The Parties will schedule regular meetings during the design and construction of the Project to review the Project Schedule, any major issues that either Party has identified, Change Orders and Change Directives, and any other issues that may be identified by either Party to make sure that the Project is advancing toward completion within the Contract Time and Contract Price.

- f. **Liquidated Damages.** The Parties recognize that time is of the essence with respect to all dates set forth in the Contract, and that the School Board will suffer financial loss if Substantial Completion of the Work is not performed within the time specified in the Contract including any time extension(s) allowed pursuant to the Contract. The Parties further recognize the difficulty of proving actual loss to the School Board in the event of a failure to achieve Substantial Completion in accordance with the date established in the Contract. Accordingly, instead of requiring such proof, Contractor acknowledges that the rate of the liquidated damages set forth herein is reasonable and does not constitute a penalty. Contractor agrees that if Substantial Completion is not attained by the Substantial Completion date, Contractor shall pay on demand to the School Board One Thousand and no/100 Dollars (\$1,000.00) per day as liquidated damages for each calendar day that Substantial Completion extends beyond the Scheduled Substantial Completion Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by the School Board, which result exclusively from any delay in achieving Substantial Completion. Contractor hereby waives any defenses that the liquidated damages are a penalty or do not bear a reasonable relation to the actual damages.
10. **Plan of Finance.** The School Board will use its best efforts to arrange financing for the costs of the Project in a manner that results in the availability of funds in the amounts and at the times required to meet the projected needs for the Project.

11. **Permitting and Approvals.** Contractor shall be responsible for obtaining all necessary federal, state and local permits and approvals and conduct of the Project in compliance with all applicable laws and regulations.

12. **Construction.**

- a. All Construction provided or caused to be provided by Contractor shall be performed pursuant to the Contract Documents, in full compliance with all applicable laws and regulations, and applicable permits, both public and private.
- b. The School Board, its employees, its agents, and its consultants shall be afforded access to the Project during regular business hours, or at any time when Work is actually being carried out to ensure that Contractor's activities are acceptable to the School Board and are being performed in accordance with the Contract, and that the Work is being properly maintained.
- c. All Construction access points, roadways, paths, and other areas used for ingress and egress, site access, material handling and storage, and staging, shall be protected with sediment and erosion control measures in accordance with federal, state, and local requirements.
- d. All Construction access points, roadways, paths, and other areas used for ingress and egress, site access, material handling and storage, and staging shall be restored to their original condition or as otherwise required by federal, state and local permits and/or agreements with the respective landowners.

13. **Stop Work and Termination for Cause.**

a. **The School Board's Right to Stop Work.**

At any time and without cause, the School Board may suspend the Work or any portion thereof for a period of not more than thirty (30) consecutive days by notice in writing to Contractor which shall fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any such suspension if Contractor makes a claim therefor. Provided, however, if the School Board suspends Work or any portion thereof due to its reasonable judgment that Contractor has or is violating the Contract or any requirement thereof, including but not limited to violations of any applicable laws or regulations related to jobsite safety, then Contractor shall not receive any adjustment in the Contract Price or extension of the Contract Time, unless it is determined that no violation actually existed.

b. The School Board's Right to Terminate for Cause.

- i. If Contractor fails to: (i) provide or cause to be provided a sufficient number of skilled workers to complete the Work per the Project Schedule; (ii) supply the materials or equipment required by the Contract; (iii) comply with applicable laws and regulations; (iv) timely pay, without cause, subcontractors or materialmen; (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as it may be adjusted; (vi) prosecute the Work in a manner to ensure that the Work is completed within the Contract Price, as it may be adjusted; or (vii) perform material obligations under the Contract Documents, then the School Board, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the right to terminate the Contract as set forth herein.
- ii. If Contractor (a) becomes insolvent, (b) makes a general assignment for the benefit of its creditors, (c) commences or consents to any action seeking reorganization, liquidation or dissolution under any law relating to bankruptcy or relief of debtors, or (d) commences or consents to any action seeking appointment of a receiver or trustee for itself or its assets, then the School Board, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the right to terminate the Contract as set forth herein.
- iii. Upon the occurrence of an event set forth in Section 13.b.i. or Section 13.b.ii. above, the School Board may provide written notice to Contractor that it intends to terminate the Contract unless the problem cited is cured, or reasonably commenced to be cured and diligently pursued thereafter, within seven (7) days of Contractor's receipt of such notice. If the Contractor fails to cure, or reasonably commence to cure, or after having commenced to cure fails to diligently pursue the cure, of such problem, then the School Board may give a second written notice to Contractor of its intent to terminate within an additional seven (7) day period. If Contractor, within such second seven (7) day period, fails to cure, or reasonably commence to cure, or after having commenced to cure fails to diligently pursue the cure, of such problem, then the School Board may declare the Contract terminated for default by providing written notice to Contractor of such declaration. The School Board may provide copies of any notices to the surety on the performance bond and, in the School Board's sole discretion, elect to pursue any remedies that may be available under the terms of the performance bond in lieu of proceeding with the termination.

- iv. Upon declaring the Contract terminated, the School Board may enter upon the premises and, to the extent the School Board has made payment, take possession, for the purpose of completing the Work, of all Contractor's (not subcontractor's) materials and other items for use in the Project, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns, and sets over to the School Board for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Contractor shall not be entitled to receive any further payments under the Contract Documents. If the School Board's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor shall be obligated to pay the difference to the School Board. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages (direct, indirect and special, and consequential), costs and expenses, including attorneys' fees and expenses, incurred by the School Board in connection with the re-procurement and defense of claims arising from the default. Nothing herein shall limit Owner's other available remedies at law or in equity, including without limitation the right to notify the Surety and pursue available remedies in conjunction with the Surety.
- v. If the School Board improperly terminates the Contract for cause, the termination for cause will be converted to a termination for convenience and the School Board will pay Contractor for such costs and expenses incurred in connection with the termination in accordance with Section 14.

c. Contractor's Right to Stop Work.

- i. Contractor may, in addition to any other rights afforded under the Contract Documents or by law, stop work upon the School Board's failure to pay for portions of the Work properly performed in accordance with the Contract Documents.
- ii. Upon the occurrence of a failure to pay as described in Section 13.c.i., Contractor has the right to provide the School Board with written notice that Contractor will stop work unless said failure to pay is cured within seven (7) days from the School Board's receipt of the notice. If the School Board does not cure the failure to pay within such seven (7) day period, Contractor may stop work. If the School Board later cures the failure to pay and the Parties agree to resume Work on the Project, then Contractor shall be entitled to an equitable adjustment to the Contract Price and Contract Time to the extent that Contractor has been adversely, materially, and

demonstrably impacted by such stoppage and if Contractor is not in default under the Contract and is otherwise prepared to proceed with the performance of the Work in accordance with the provisions of the Contract Documents.

Notwithstanding the foregoing, Contractor shall not stop Work because of any dispute with the School Board about all or any portion of any amount for which Contractor has submitted a Payment Application as long as the School Board pays for such portion of the same about which there is no dispute.

d. Contractor's Right to Terminate for Cause.

- i. Contractor, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Contract for cause for the following reasons specified in clauses ii. through iv. below:
- ii. The Work has been stopped for sixty (60) consecutive days, or more than one-hundred twenty (120) days during the duration of the Project, because of an order by a court or any government authority having jurisdiction over the Work, or orders by the School Board under Section 13.a. hereof, provided that such stoppages are not due to the acts or omissions of Contractor or anyone for whose acts Contractor may be responsible. This provision shall not apply and shall not be a basis for termination to the extent that any stoppage is related to or arises as a result of any delay by a governmental agency in issuing a permit or restrictions set forth in or applicable to a permit issued by a regulatory authority which is applicable to the Work.
- iii. The School Board's failure to provide Contractor with any information, permits or approvals that are the School Board's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than one-hundred twenty (120) days during the duration of the Project; provided, (i) Contractor diligently pursues such information, permits or approvals; (ii) the School Board has not ordered Contractor in writing to stop and suspend the Work under Section 13.a.; and (iii) the School Board's failure was not due in any part to the acts or omissions of Contractor or anyone for whose acts Contractor may be responsible.
- iv. The School Board's failure to cure the failure to pay that Contractor has specified in its written notice under Section 13.c.ii. after Contractor has stopped the Work.

- v. Upon the occurrence of an event set forth above, Contractor may provide written notice to the School Board that it intends to terminate the Contract unless the problem cited is cured, or reasonably commenced to be cured, within seven (7) days of the School Board's receipt of such notice. If the School Board fails to cure, or reasonably commence to cure, such problem, then Contractor may give a second written notice to the School Board of its intent to terminate within an additional seven (7) day period. If the School Board, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Contractor may declare the Contract terminated for default by providing written notice to the School Board of such declaration. In such case, Contractor shall be entitled to recover in the same manner as if the School Board had terminated the Contract for its convenience.

14. **Termination for Convenience.** Upon seven (7) days written notice to Contractor, the School Board may, for its convenience and without cause, elect to terminate the Contract. In such event, the School Board shall pay Contractor for the following:

- a. All Work properly performed through the date of termination inclusive of all materials, equipment, and fabricated items purchased by Contractor for the Project pursuant to the Contract (whether such materials, equipment, and fabricated items are stored on or off of the Site) and which Contractor cannot return (provided Contractor provides documentation supporting claim that such materials, equipment, and fabricated items cannot be returned and further provided Contractor delivers all such materials, equipment, and fabricated items to Owner);
- b. The reasonable costs and expenses attributable to such termination, including verifiable demobilization costs and amounts due in settlement of any terminated subcontracts; and
- c. Reasonable overhead and profit for all portions of the Work properly performed in accordance with the Contract Documents through the date of termination, in an amount not to exceed the percentage set forth in Section 7.

15. **Payment Bonds, Performance Bonds, and Other Security.**

- a. Contractor will procure and maintain performance and labor and materials payment bonds in the amount of the Contract Price for the term of the Contract and provide such bonds to the School Board. The bonds will be issued by a company licensed to issue surety bonds in the Commonwealth of Virginia with an A. M. Best rating of A- or better and meets the requirements of Section 2.2-4337 of the Code, and be in a form acceptable to the School Board's legal counsel, as shown on **Exhibit E**. The bonds

shall be provided to the School Board not later than the date on which the first building permit for the Project is obtained.

- b. Contractor shall also furnish any cash escrow, funds, cashier's checks, certified checks, or letters of credit required for the issuance of any earth-disturbing or other permit and any bonds or security required by any other governmental authority.

16. **Indemnification.**

- a. Except the extent prohibited by law, including Virginia Code §§ 11-4.1 or 11-4.4, Contractor will indemnify, defend, and hold harmless the School Board and its employees, officers, boards, board members, representatives, and agents from and against any and all liabilities, losses, damages, claims, causes of action, suits of any nature (including suits by the School Board against the firm), costs, and expenses, including reasonable attorney's fees and consultant's fees, resulting from or arising out of the Contractor's or its employees' agents', subcontractors', and/or materialmen's errors, acts, or omissions in the performance of Work under the Contract or any subcontract; any breaches of the Agreement or any subcontract; or any errors acts, or omissions, negligent or otherwise, while on the School Board's property. This indemnity provision shall cover and include, without limitation, fines and penalties for violations of federal, state or local laws or regulations; personal injury, wrongful death or property damage claims; breach of contract claims; indemnity claims; and other damages, losses and claims of any kind. This obligation shall survive the termination or expiration of this Agreement for a period of five (5) years from the date of Substantial Completion. Contractor's indemnification obligation under this Section will not apply to any claims or portions thereof caused by the negligence or willful misconduct of Owner or of any other person required to be indemnified under this Section.

17. **Insurance.**

- a. Contractor will maintain a general liability policy with \$2,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurer must list the School Board, its employees, officers, boards, board members, representatives, and agents as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.
- b. Contractor will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the

Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for Contractor to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. Contractor will also carry employers' liability insurance with a limit of at least \$500,000 bodily injury by accident/\$1,000,000 bodily injury by disease policy limit/\$500,000 bodily injury by disease each employee.

- c. Contractor will maintain automobile liability insurance with limits of at least \$1,000,000. The coverage is to be written with a symbol "1". The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better.
- d. Contractor will maintain professional liability insurance with a limit of at least \$2,000,000 covering all Work on the Project. This coverage shall cover any errors, acts or omissions by the Contractor's A/E.
- e. Contractor will maintain builders risk coverage on a replacement cost basis for the duration of the Contract. The required coverage will be the full replacement cost of the building and/or structures being built under this Contract, which the parties agree shall be the same as the Contract Price. The School Board will be listed as an insured under this policy to protect any property owned at the construction site. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.
- f. Cybersecurity and cyberterrorism coverage not required. Contractor will not have access to Owner's internet, Wi-Fi or any other computer or network services. Contractor will be required to obtain at their expense Wi-Fi or internet service if so desired.
- g. With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of required insurance coverages, including required additional insured endorsements. All wording limiting the insurer's responsibility to notify the School Board of any cancellation or non-renewal of the coverage must be removed.
 - i. Contractor shall be responsible for the filing and settling of claims and liaison with insurance adjusters.
 - ii. Contractor shall send proofs of coverage to the School Board, which shall be deemed to have approved of such policies unless, within thirty (30) days after receipt thereof, the School Board shall by notice in writing advise Contractor to the contrary.
- h. The School Board reserves the right, but not the obligation, to review and revise any insurance requirement, including but not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements

based upon any material adverse change in insurance market conditions after the date of this Agreement affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage, and the costs of any such change shall be an adjustment to the compensation payable to Contractor. Additionally, the School Board reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein and to reject any insurer providing coverage due to its poor financial condition or failure to operate legally, provided, however, that if the policy or insurer is rejected, then Contractor shall be entitled to request, and the School Board shall grant, an adjustment of the Contract Price if Contractor's costs are adversely impacted by such rejection and subsequent coverage with another policy or insurer.

- i. The required certificates of insurance shall be on a form reasonably acceptable to the School Board and shall contain substantially the following statement: "The insurance covered by this certificate shall not be canceled except after a thirty (30) day advance written notice has been received by the Owner."
- j. Contractor shall waive all rights of subrogation against the School Board.
- k. In addition to providing the School Board with copies of any and all certificates of insurance as described herein, Contractor also shall provide copies of all applicable additional insured endorsements.

18. **Representations and Warranties.**

- a. The School Board hereby represents and warrants to Contractor as follows:
 - i. The School Board is a political subdivision operating under the laws of the Commonwealth of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with, and subject to, the terms and conditions of this Agreement.
 - ii. Each person executing this Agreement on behalf of the School Board is duly authorized to execute each such document on behalf of the School Board.
 - iii. Neither the execution and delivery by the School Board of this Agreement and any other documents executed concurrently herewith to which the School Board is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with, or will result in a default under or violation of,

any other agreements or instruments to which it is a party or by which it is bound.

iv. There is no action, suit, proceeding, investigation or litigation pending and served on the School Board as of the date of this Agreement which challenges the School Board's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which the School Board is a party, or which challenges the authority of the School Board official executing this Agreement or the other related documents, and the School Board has disclosed to Contractor any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the School Board is aware.

b. Contractor hereby represents and warrants to the School Board as follows:

i. Contractor represents that it and all of its identified subcontractors, including without limitation the Contractor's A/E, are licensed to conduct business in Virginia, and in signing this Agreement has full power and authority to bind itself to the terms thereof.

ii. Contractor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement and the other related documents to which Contractor is a party.

iii. Each person executing this Agreement or any other related document on behalf of Contractor has been or will at such time be duly authorized to execute each such document on behalf of Contractor.

iv. Neither the execution and delivery by Contractor of this Agreement and the other related documents to which Contractor is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under, or a violation of, the governing instruments of Contractor or any other agreements or instruments to which it is a party or by which it is bound.

v. There is no action, suit, proceedings, investigation or litigation pending and served on Contractor which challenges Contractor's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which Contractor is a party, or which challenges the authority of the Contractor official executing this Agreement or the other

related documents; and Contractor has disclosed to the School Board any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contractor is aware.

- vi. Contractor is in material compliance with all laws, regulations and ordinances applicable to Contractor or its activities in connection with this Agreement and the other related documents.
- viii. Contractor is a financially viable and capable entity and fully able to perform its obligations under this Agreement.

19. **Warranties; Assignment.**

- a. **Warranty for Design Services.** Contractor and Contractor's A/E shall perform professional design services utilizing no less than the professional skill and care ordinarily used by design professionals for projects of similar size, complexity, and location. Contractor and the Contractor's A/E shall provide professional design services that meet the standards of professional skill and care that prevail in the professions of architecture and engineering in the Commonwealth of Virginia for similar projects at the time. Contractor and the Contractor's A/E shall perform design services as expeditiously as is consistent with such professional skill and care so as to complete the Construction Plans, Drawings and Specifications within ninety (90) days of the execution of this Agreement (unless an earlier deadline is stated in the Project Schedule), complete the Project within the Contract Time, and maintain the orderly progress of the Project throughout those periods. Contractor and Contractor's A/E shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, Plans, Drawings, Specifications, and other services furnished by Contractor under this Agreement. Design services not conforming to the foregoing standards shall be considered defective and corrected at no additional cost to the School Board. Nothing contained in this section shall be construed as limiting the School Board's available remedies or shortening any applicable statutes of limitations with respect to any obligations which Contractor or the Contractor's A/E has under the Contract Documents or applicable law. The guarantees in this section shall be in addition to any and all other warranties and guarantees contained in the Contract Documents. Additionally, Contractor represents and warrants that all design work on the Project under this Agreement will be supervised by licensed professionals in good standing with any applicable regulatory agency for the full duration of their work on the Project under this Agreement.
- b. **General Warranty of Work.** Contractor warrants that all of the Work furnished as part of the Project is in accordance with the requirements of the Contract Documents, free from defect or inferior materials or

equipment, and of such quality workmanship as shall be consistent with the standard of care, quality, judgment, and attention as is industry standard in the construction industry for the type of work performed, for a period of one (1) year after the date of Substantial Completion, and unless otherwise agreed in writing by the School Board, in the School Board's sole discretion, all materials and equipment furnished are new and in first-class condition. Contractor will, at Final Completion and acceptance, provide the School Board with a list of extended warranties that Contractor or the manufacturers of materials are assigning to the School Board, if applicable. All warranties provided or assigned to the School Board are to be construed as cumulative, so as to maximize the School Board's warranty protection.

- c. **Repairs.** If, within the warranty period, the School Board finds that warranted Work must be repaired or changed because the materials, equipment, or workmanship were inferior, defective, or not in accordance with the Contract Documents and industry standard for the type of work performed, Contractor shall promptly, and without expense to the School Board:
 - i. Place all warranted Work in a condition consistent with the warranties, Contract Documents, and reasonably satisfactory to the School Board;
 - ii. Correct all damage to equipment, the site, the building, or its contents that is the result of such unsatisfactory work in a manner reasonably satisfactory to the School Board; and
 - iii. Correct any Work, materials, or equipment disturbed in fulfilling the warranty in accordance with industry standard and reasonably satisfactory to the School Board.

Should Contractor fail to proceed or begin to proceed, within five (5) days on life safety or critical items or fifteen (15) days on other items, with remedying the foregoing in accordance with all warranties, the School Board may have the Work performed by another and submit Contractor a bill therefor, which must be paid within thirty (30) days of receipt.

- d. **Transfer of Warranties.** Contractor shall obtain transferable guarantees or warranties for equipment, materials, or installation to the extent furnished by any manufacturer or installer in the normal course of business or trade. Contractor shall obtain and furnish to the School Board all of the information required to make such guarantee or warranty legal binding and effective for the School Board.

- e. **No Waiver.** The School Board’s acceptance of a warranty is not an election of remedies and does not waive any other right or remedy available to the School Board at law or in equity.
20. **Resolution of Disputes, Claims and Other Matters.** Disputes, claims and other matters in question between the Parties under the Contract shall be resolved as follows:
- a. Contractual claims, whether for money or for other relief, shall be submitted to the Project Manager, in writing, no later than sixty (60) days after Final Payment; however, written notice of Contractor’s intention to file such claim must be given within twenty-one (21) days after the time of the occurrence or beginning of the Work upon which the claim is based. Such notice shall state that it is a “notice of intent to file a claim” and include a written statement describing the act or omission of the School Board or its agents that allegedly caused or may cause damage to Contractor and the nature of the claimed damage. Failure to submit such notice of intent within the time and in the manner required shall be a conclusive waiver of the claim by Contractor. Contractor is not prevented from submitting claims during the pendency of the Work. Proposed or requested Change Orders, demands for money compensation or other relief, and correspondence and emails to the School Board or its representatives, which do not comply with the requirements of this Section, shall not be considered claims under this Section.
 - b. Whenever a Party disagrees with the other Party’s final decision on a claim or dispute arising under or related to this Contract, its sole right of appeal shall be by filing, within six (6) months of date of the other Party’s final decision, litigation in either the Circuit Court of the City of Danville, Virginia, or the United States District Court for the Western District of Virginia, Danville Division, and may pursue all available appeals from such courts. These two courts shall have exclusive and binding jurisdiction and venue over any and all claims arising under the Contract.
 - c. Prior to filing litigation, the Parties may first endeavor to resolve any disputes or claims between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being held in the City of Danville, Virginia. If the Parties agree to attempt mediation, then within thirty (30) days of receipt of the notice requesting mediation, the Parties shall attend a formal mediation conducted by a single, impartial mediator. The Parties shall share evenly the fees of the mediator and each shall bear its own costs involved in participating in the mediation. If they opt to mediate, the Parties shall participate in the mediation process in good faith. The process shall be concluded within forty-five (45) days of filing of the notice requesting mediation. Should the dispute or claim remain unresolved following mediation or should the time limit described herein occur during the

course of mediation, either Party may proceed in order to preserve its rights, but mediation shall not extend the time period set forth herein. If the claim or dispute is not resolved by mediation, failure to file an appeal of the other Party's final decision within six (6) months after such decision is issued in writing shall result in the other Party's final written decision becoming final and subject to no further appeal.

- d. Nothing herein shall prevent a Party from seeking temporary injunctive or other temporary equitable relief if circumstances so warrant.
 - e. In the event of any dispute, claim, or other matter in question arising, Contractor shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, Contractor shall be entitled to receive payments for non-disputed items.
21. **Notices.** All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier, or by United States certified mail, postage prepaid, return receipt requested, or hand-delivered, and addressed as follows:

To the School Board:

Dr. Wayne Lyle, Chief Operations Officer
Danville Public Schools
341 Main Street, Suite 100
Danville, VA 24541
Tel.: 434-799-6400 ext. 232
Email : wlyle@mail.dps.k12.va.us

To Contractor:

Berton Austin
Branch Builds
3635 Peters Creek Road
Roanoke, VA 24019
Tel: (540) 989-5215
Email: berton.austin@branchbuilds.com

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or hand-delivered, or five (5) days after sending if sent by certified mail, return receipt requested.

22. **Successors and Assigns.** Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. The Contract may not be assigned without the prior written consent of the Parties to this Agreement.

23. **Time of the Essence.** The time to complete the Project is of the essence. Contractor shall proceed diligently with adequate forces and perform all portions of the Work in accordance with the Project Schedule and shall achieve Substantial Completion of the Work within the Contract Time, and shall achieve Final Completion of the Work within sixty (60) days of Substantial Completion. The School Board will cooperate reasonably with Contractor's efforts to keep the Project on schedule.
24. **Independent Contractor.** It is expressly understood and agreed by the Parties hereto that Contractor in performing its obligations under the Contract, shall be deemed an independent contractor and not an agent, employee, partner, or co-venturer of the School Board.
25. **No Waiver.** The failure of either Party to insist upon the strict performance of any provisions of the Contract, the failure of either Party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by the School Board of any act by Contractor requiring the School Board's consent or approval shall not be construed to waive or render unnecessary the requirement for the School Board's consent or approval of any subsequent similar act by Contractor. No provision of the Contract shall be deemed to have been waived unless such waiver shall be in writing signed by the Party to be charged. Further, any approvals required by the School Board shall likewise be in writing.
26. **Cooperation.** The Parties agree to cooperate to achieve the objectives of the Contract and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each Party agrees to designate representatives with the authority to make decisions binding upon such Party (subject in the case of the School Board to those matters requiring an appropriate vote of its governing body) so as to not unduly delay the Project Schedule.
27. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.
28. **Entire Agreement; Amendment.** This Contract Documents set forth all the covenants, promises, agreements, conditions and understandings between the Parties concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to the Contract shall be binding upon the Parties unless reduced to writing in a formal amendment signed by each Party.

29. **Governing Law.** This Agreement and the Contract Documents shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. The provisions of this Agreement and the Contract Documents shall not be construed in favor of or against either Party but shall be construed according to their fair meaning as if both Parties jointly prepared this Agreement and the Contract Documents.
30. **Limitation on Liability.** NEITHER THE SCHOOL BOARD NOR CONTRACTOR WILL, IN ANY EVENT, BE LIABLE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF REVENUE, BUSINESS INTERRUPTION, COST OF REPAIR OR REPLACEMENT SERVICES (INCLUDING THE COST OF LABOR AND MATERIALS), OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES RESULTING FROM ANY CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY) RELATED TO OR ARISING OUT OF THIS CONTRACT, NO MATTER THE FORM OF THE CLAIM AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. These remedies will survive termination or breach of the Contract.
31. **No Crimes Against Children.**
- a. Contractor acknowledges that the provision of Work under the Agreement may require Contractor, its employees or other persons that will provide services under this Agreement to have direct contact with Danville Public Schools students. Therefore, Contractor hereby certifies that neither Contractor, its employees nor any person that will provide Work on its behalf under this Agreement who will have direct contact with students on school property during regular school hours or during school-sponsored activities have been convicted of: (i) any violent felony set forth in the definition of barrier crime in Va. Code § 19.2-392.02(A); (ii) any offense involving the sexual molestation or physical or sexual abuse or rape of a child; or (iii) any crime of moral turpitude.
- b. Contractor understands that, pursuant to Va. Code §22.1-296.1, making a materially false statement regarding offenses referenced in Section (A) above is a Class I misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. The School Board shall not be liable for materially false statements regarding the certifications required under the Agreement.
32. **Correction of Defective Work.** Contractor shall promptly replace or correct any Work or materials which the School Board rejects as failing to conform to the requirements of the Contract Documents. If Contractor does not do so within a reasonable time, the School Board shall have the right to replace or correct the defective work or materials and Contractor shall be liable to the School Board for the cost thereof. If, in the opinion of the School Board, it is not expedient to

correct or replace all or any part of rejected Work or materials, then the School Board, at its option, may deduct from the payment due, or to become due, to Contractor such amounts as, in the School Board's judgment, will represent the higher of: (i) the difference between the fair value of the rejected work and materials and the value thereof, if the work had complied with the Agreement; or (ii) the cost of correction. However, Contractor does not waive the right to dispute, or make a claim, as provided in the Contract Documents, including but not limited to, Section 20 of this Agreement.

33. **Assignment of Contract.** Neither this Agreement nor Contractor's obligations under this Agreement may be assigned, delegated or transferred without the School Board's prior written consent, which consent may be withheld in the School Board's discretion.
34. **Annual Appropriation; Filing With Auditor of Public Accounts.** The financial obligations of the School Board contained in the Contract are subject to annual appropriation. Within thirty (30) days after the date of this Agreement, the School Board shall submit a copy of the Agreement to the Auditor of Public Accounts, to the extent required by Section 56-575.9(F) or Section 56-575.18 of the Code.
35. **Conditions Precedent and Subsequent to Agreement's Effectiveness.** It shall be a condition precedent to this Agreement's effectiveness that it first be approved by the City Council of the City of Danville.
36. **Compliance with Laws.** Contractor, its officers, agents, employees, subcontractors, and any other persons over whom Contractor has control shall comply with all presently or subsequently adopted applicable federal, state and local laws, regulations, rules, ordinances, and codes.
37. **Covenant of Non-Discrimination.** Contractor will not discriminate against any subcontractor, materialman, employee, applicant for employment, or other applicable person, because of race, color, religion, sex, national origin, age, physical or mental disability, military status, status as a veteran, marital status, pregnancy, childbirth or related medical conditions (including lactation), sexual orientation, gender identity, or any other basis prohibited by federal or Virginia law. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this covenant. Further, Contractor, in all solicitations or advertisements for employees, will state that it is an equal employment opportunity employer. Notices, advertisements, and solicitations placed in accordance with Virginia law and federal law, rules, or regulations shall be sufficient to meet these requirements. Contractor shall ensure this provision is binding upon each subcontractor, materialman, or any other person who may be responsible to Contractor or the School Board pursuant to this Agreement.
38. **Drug-Free Workplace Policy.** During the Project, Contractor agrees to (i) provide a drug-free workplace for its employees consistent with all applicable

- state and federal regulations; (ii) post in conspicuous places, available to its employees and applicants for employment, a statement notifying its employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of controlled substances or marijuana is prohibited in the workplace and specifying the actions that will be taken for violations of such prohibition; (iii) state in all solicitations or advertisements for its employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace. Contractor shall ensure this provision is binding upon each subcontractor, materialman, or any other person who may be responsible to Contractor or the School Board pursuant to this Agreement. A “drug-free workplace” shall have its meaning under the Code.
39. **Employment of Illegal Aliens Prohibited.** Contractor covenants that it does not, and shall not, during the performance of the Project, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. Contractor shall ensure this provision is binding upon each subcontractor, materialman, or any other person who may be responsible to Contractor or the School Board pursuant to this Agreement.
40. **Small, Minority, Women-Owned and Service Disabled Veteran Businesses.** Pursuant to Virginia Code § 2.2-4310, it is the School Board’s policy to encourage and facilitate participation by small businesses, minority and women-owned businesses, and service disabled veteran businesses in all aspects of its contracting activities. The School Board encourages Contractor to utilize small businesses, minority and women-owned businesses, and service disabled veteran businesses in the Work on the Project. Contractor will use reasonable efforts to advance the School Board’s policy to increase opportunities for small, minority-owned, women-owned, and service disabled veteran businesses in subcontracts for Work on this Project.
41. **Evidence of Authority to Transact Business in Virginia.** Upon request, Contractor shall provide documentation acceptable to the School Board establishing that it is authorized to transact business in Virginia as a Virginia stock corporation under the Code. Contractor shall not allow its existence or its certificate of authority or registration to transact business in Virginia to lapse or to be revoked or cancelled at any time during the Project. Contractor shall ensure this provision is binding upon each subcontractor, materialman, or any other person who may be responsible to Contractor or the School Board pursuant to this Agreement.
42. **Severability.** Any provision, term, covenant, or part of this Agreement held by a court of competent jurisdiction to be void or otherwise deemed unenforceable under any applicable law shall be deemed stricken and all remaining provisions, terms, covenants, or parts of this Agreement shall continue to be binding and remain in full force and effect. Upon such provision, term, covenant, or part of the

Contract being stricken, this Agreement shall be treated in a manner by the Parties that comes as close as possible to expressing the original intent.

43. **Workplace Safety.** Contractor, at its sole expense, shall be responsible for ensuring its workplace, employees, agents, representatives, and any other persons performing Work under this Agreement conform to all federal and Virginia laws, regulations, and guidelines concerning workplace safety, including but not limited to, controlling the spread of COVID-19. Further, Contractor shall defend, hold harmless, and indemnify the School Board, its employees, officers, boards, board members, representatives, and agents for any and all fines, penalties, costs, attorney's fees, judgments, and the like which may arise against the same as a result of a noncompliant workplace operated by Contractor. The indemnification obligation hereunder shall survive the termination or expiration of this Agreement for a period of seven (7) years.
44. **Third-Party Rights.** The Parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the School Board or Contractor; (iii) no other individual or entity shall obtain any right to make any claim against the School Board or Contractor under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.
45. **Subcontractors and Materialmen.** Upon the School Board's request, Contractor shall provide a listing of all subcontractors and materialmen for the Project, performing Work or providing materials for the Project, including their (i) name; (ii) contact information; (iii) address; (iv) phone number; (v) Work to be performed/Materials to be provided; (vi) subcontract amount; (vii) amount actually paid; and (viii) any other information requested. Contractor shall ensure all subcontractors and materialmen used for the Project are subject to the indemnification and insurance obligations of this Agreement. Contractor shall be fully responsible to the School Board for all acts and omissions of all succeeding tiers of subcontractors and materialmen performing Work or providing materials under the Agreement just as Contractor is responsible to the School Board for its own acts and omissions.
46. **Right to Inspect.** The School Board shall have access to any books, documents, and records of Contractor pertinent to the Work, Work Product, or provided for the Projects for the purpose of making audits, examinations, excerpts, or transcriptions. All such records shall be maintained by Contractor for at least five (5) years after the School Board has made final payment thereto. The School Board will reimburse Contractor for the reasonable out-of-pocket expenses incurred by Contractor for any such inspection.

IN WITNESS WHEREOF, the Parties have executed this Comprehensive Agreement as of the day, month, and year first above written.

**SCHOOL BOARD OF THE CITY OF
DANVILLE, VIRGINIA**

By: _____
Name: _____
Title: _____

(SEAL)

Attest:

_____, School Board Clerk

BRANCH BUILDS, INC.

By: _____
Name: _____
Title: _____

(SEAL)

Attest:

Name: _____
Title: _____

Approved as to Form:

School Board Attorney

EXHIBIT A

Definitions

Architect, Engineer, Architect/Engineer, or A/E: The term used to identify the duly Virginia licensed persons or entities designated by Contractor in its Proposal to perform and provide the Architectural and Engineering design and related services in connection with the Project. The Contractor's A/E in the Proposal is Dewberry Engineers, Inc.

Change Order: A document issued on or after the effective date of the Agreement which is agreed to by Contractor and approved by the School Board's Authorized Representative, and which authorizes an addition, deletion, or revision in the Work, including any adjustment in the Contract Price or Contract Time. A Change Order, once signed by all parties, is incorporated into and becomes a part of the Agreement.

Change Directive: A document issued on or after the Effective Date of the Agreement which authorizes an addition, deletion, or revision in the Work, including any increase in the Contract Price or extension of the Contract Time. A Change Directive may be issued by the Owner without the Contractor's consent. A Change Directive, once issued by the Owner, is incorporated into and becomes a part of the Agreement.

Commencement Date: The date indicated in the written Notice to Proceed, the receipt of the earliest Building Permit, or a date mutually agreed to between the School Board and Contractor in writing, whichever is the latest.

Construction: The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition, and all similar work upon buildings and ancillary facilities, including any draining, dredging, excavation, grading or similar work upon real property.

Contract Completion Date: The date by which the Project must be Substantially Complete, which is set forth in this Agreement.

Contract Documents: This Agreement between the School Board and Contractor, all Exhibits incorporated into the Agreement, any Modifications, Amendments, Change Orders, and Change Directives after the Effective Date, and all other documents identified in Section 2 of this Agreement.

Contract Price or Guaranteed Maximum Price (GMP): The total fixed compensation payable to Contractor for completing all the Work on the Project, subject to modification by Change Order or Change Directive.

Contract Time: The number of consecutive calendar days following the Commencement Date within which Contractor must Substantially Complete all Work for the Project as required by the Contract Documents, which date will be no later than July 31, 2025.

Day(s): Calendar day(s) unless otherwise noted.

Defective: An adjective which, when modifying the word Work or Project, refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents or does not meet the requirements of inspections, standards, tests or approvals required by the Contract Documents, does not conform to applicable laws or permits, or Work that has been damaged prior to the final payment (unless responsibility for the protection thereof has been assumed by the School Board at Substantial Completion).

Drawing: A page or sheet of the Plans that presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Project. The graphic representations include, but are not limited to, plan views, elevations, transverse, and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

Emergency: Any unforeseen situation, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

Final Completion: Completion and full performance of all Work in accordance with the terms and requirements of the Contract Documents, including the completion of all items identified on punch lists generated through substantial completion inspections, provision to the School Board of releases of all liens, and submission of all information, manuals, warranties, and documentation required by the Contract Documents. Unless otherwise agreed in writing, Contractor should achieve Final Completion not more than sixty (60) days after Substantial Completion.

Float: The excess time included in a construction schedule to accommodate such items as inclement weather and associated delays, equipment failures, and other such unscheduled events. It is the contingency time associated with a path or chain of activities and represents the amount of time by which the early finish date of an activity may be delayed without impacting the critical path and delaying the overall completion of the Project.

Notice: All written notices, including demands, instructions, claims, approvals and disapprovals, required or authorized under the Contract Documents. Any written notice by either party to the Agreement shall be sufficiently given by any one or combination of the following, whichever shall first occur: (1) delivered by hand to the last known business address of the person to whom the notice is due; (2) delivered by hand to the person's authorized agent, representative or officer wherever they may be found; (3) enclosed in a postage prepaid envelope addressed to such last known business address and delivered to a United States Postal Service official or mailbox; or (4) email. Notice is effective upon such delivery. All notices to the School Board must be directed to the Authorized Representative or other individual identified in accordance with Section 21 of this Agreement and a copy of each such notice must be provided to the Project Manager. All notices shall be titled as to their purpose in the subject line (i.e. "notice," "demand," "claim," "instruction," "approval," and "disapproval"). The notice must be dated and should clearly state whether the notice is one required under the Contract Documents.

Notice to Proceed: A written notice given by the School Board to Contractor fixing the date on which the date on which Construction will commence for Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed shall identify, or allow definite calculation of, a Contract Completion Date.

Person: This term includes any individual, corporation, firm, partnership, association, company, business, trust, joint venture, or other legal entity.

Plans: The term used to describe the group or set of Project-specific drawings prepared by Contractor's A/E and that describe the proposed Work in sufficient detail and provide sufficient information for the Building Official, and other permitting officials to determine code compliance and for Contractor to perform the Work. Plans include the 35% Design Development Drawings prepared for the Project under the interim agreement and, once approved in writing by the School Board, the Construction Drawings prepared under this Agreement. Plans, once approved in writing by the School Board, shall constitute a part of this Agreement.

Project: The term used instead of the specific or proper assigned title of the entire undertaking to design and construct a new Elementary School at the site of the former G.L.H. Johnson Elementary School, which includes, but is not limited to, the "Work" described by the Contract Documents, including any specific phases or subphases of such Work.

Project Manager: The Project Manager shall act as the School Board's technical representative during the Project. The Project Manager is the person through whom the School Board generally conveys written decisions and notices. All notices due the School Board and all information required to be conveyed to the School Board should be conveyed to the Project Manager (in addition to the Authorized Representative under Section 21 of this Agreement). The scope of the Project Manager's authority is limited to that authorized by the School Board, which shall provide written information to Contractor at the Preconstruction meeting defining those limits. Unless otherwise stated in writing, the Project Manager shall decide questions that may arise as to quality and acceptability of materials furnished and Work performed. The Project Manager shall interpret the intent of the Contract Documents in a fair and unbiased manner. The Project Manager will make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents. The Project Manager shall make recommendations to the Owner concerning proposed Change Orders and Change Directives, proposed changes to the Contract Time and/or Contract Price, and any requests by the Contractor for progress payments, though only the School Board's Authorized Representative can make final binding determinations on those issues. Contractor is on notice that it cannot rely on any decisions of the Project Manager outside the scope of his authority. Nothing herein shall be construed to prevent the School Board, through duly authorized officials, from issuing any notice directly to Contractor. The School Board may change the Project Manager from time to time and may, in the event that the Project Manager is absent, disabled or otherwise temporarily unable to fulfill his duties, appoint an interim Project Manager.

Proposal: Contractor's competing proposal for a newly constructed G.L.H. Johnson Elementary School, dated June 13, 2022, as amended by the parties' interim agreement.

Provide: Shall mean furnish and install ready for its intended use.

Punch List: A list of defective Work, provided following inspection by the School Board at Substantial Completion, that must be satisfactorily corrected for the Project or any part thereof to be accepted for Final Completion.

Schedule of Values: The schedule prepared by Contractor and acceptable to the School Board which indicates the value of that portion of the Contract Price to be paid for each trade or major component of the Work.

Site: Shall mean the location at which the Work is performed or is to be performed.

Specifications: That part of the Contract Documents prepared by Contractor's A/E and acceptable to the School Board which contain the written design parameters and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the City's Building Official, Virginia Department of Health, City Soil Erosion and Sediment Control Officials, and other City and School Board personnel to determine code compliance and for Contractor to perform the Work.

Subcontractor: A person having a direct contract with Contractor or with any other Subcontractor for the performance of the Work. Subcontractor includes any person who provides on-site labor but does not include any person who only furnishes or supplies materials for the Project.

Submittals: In addition to the Initial Submittals under Section 3 of the Agreement, all shop, fabrications, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents which are specifically prepared by or for Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by Contractor to illustrate material or equipment conformance of some portion of the Work with the requirements of the Contract Documents.

Substantial Completion or Substantially Complete: The condition when the Work or designated portion thereof is: (i) sufficiently complete and usable in accordance with the Contract Documents so that the School Board can occupy or utilize the Work for its intended use, except and only for minor items that may be completed without disruption or interference to the ability to use the Work; (ii) all required approvals and permits for occupancy, use and completion of the Work (including a temporary or permanent certificate of occupancy) shall have been issued by appropriate governmental authorities; (iii) the Project Manager has certified that the Work is complete as required by subsection (i) above; and (iv) all operational systems and elements that are part of the Work, including mechanical, electrical and support systems, are functioning as required by the Contract Documents.

Supplier or Materialman: A manufacturer, fabricator, distributor, materialman or vendor who provides material for the Project but does not provide on-site labor.

Work: The design and construction services required by the Contract Documents including, but not limited to, furnishing design services, furnishing labor for construction, and furnishing and incorporating materials and equipment into the construction. The Work includes the entire completed construction of the Project, or the various separately identifiable parts thereof, in strict accordance with the Contract Documents. The Work includes all labor, materials, equipment, and services reasonably inferable from the Contract Documents as necessary to fulfill the Contractor's obligations under the Contract Document to complete the Project, and all other labor, services, materials or other items required to produce fully connected, complete, code-compliant, operational and functional systems and finishes. The Work may constitute the whole or a part of the Project.

EXHIBIT B

Site Plan, Design Narrative, Plans, Drawings and Specifications

EXHIBIT C
Contractor's Proposal

EXHIBIT D

Owner's Terms and Conditions

EXHIBIT E

Bond Forms

Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS: That _____, the Contractor (“Principal”) whose principal place of business is located at _____, and _____, as surety (the “Surety”), whose address for delivery of Notices is _____, are well and firmly held and bound unto the School Board of the City of Danville, Virginia, a political subdivision of the Commonwealth of Virginia, the Owner (“Obligee”), in the amount of _____ dollars (\$_____), for the payment whereof the Principal and the Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents.

WHEREAS, the Principal has entered that certain contract dated _____, 20____, to design and construct a new Elementary School (the “Contract”), which Contract is expressly made a part hereof by reference.

NOW THEREFORE, the conditions of this obligation are such that, if the Principal promptly and faithfully performs the Contract in strict conformity with the plans, specifications, and conditions of the Contract, then this obligation will be null and void; otherwise, it will remain in full force and effect.

Provided, however, that any alterations that may be made in the terms of the Contract, or in the Work to be done under it, or the giving of the Obligee of any extension of time for the performance of the Contract, or any other alterations, extensions, or forbearance on the part of either or both of the Obligee or the Principal to the other, will not in any way release the Principal and the Surety, either or both, their heirs, executors, administrators, successors, or assigns, from their liability hereunder; Notice to the Surety of any such alterations, extensions, or forbearance being hereby expressly waived.

No action may be brought on this bond unless brought within five years after completion of the Contract. Completion of the Contract occurs when the final payment is made to the Contractor pursuant to the terms of the Contract. However, if a final certificate of occupancy or written final acceptance of the Project is issued prior to final payment, the five-year period to bring an action will commence no later than 12 months from the date of the certificate of occupancy or written final acceptance of the Project.

The Surety furthermore represents unto the Principal and unto the Obligee that it is a good and solvent surety company authorized to do business in the Commonwealth of Virginia.

Signed and Sealed this _____ day of _____, 20____.

Contractor/Principal

Witness: _____

By: _____

Name: _____

Title: _____

Continued on next page.

Surety

Witness: _____

By: _____

Name: _____

Title: _____

Affidavit of Attorney-in-Fact

COMMONWEALTH/STATE OF _____)

CITY/COUNTY OF _____) to wit:

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing performance bond which names the School Board of the City of Danville, Virginia, a political subdivision of the Commonwealth of Virginia, as Obligee, personally appeared before me today in the above-named jurisdiction and made oath that he or she is the lawful and true attorney-in-fact of _____, a _____, which is the Surety in the foregoing bond, that he or she is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the Surety, he or she acknowledged the foregoing bond before me as the above Surety's act and deed.

He or she has further certified that his or her Power of Attorney has not been revoked.

If recorded, the Power of Attorney is of record in the Clerk's Office for _____, as Deed Book ____, page ____, or Instrument No. _____.

My commission expires: _____

Notary registration number: _____

Notary Public

Approved as to legal form:

Legal Counsel

Continued on Next Page.

Terms and Conditions of the Performance Bond

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the prompt and faithful performance of the Contract, which is incorporated herein by reference.

2. If the Contractor promptly and faithfully performs the Contract in strict conformity with the plans, specifications, and conditions of the Contract, the Surety and the Contractor will have no obligations under this Bond.

3. In the event of the Contractor's Default, and subsequent notification to the Surety pursuant to the Contract, the Surety must, within fourteen (14) days after receipt of such notice, contact the Owner in writing, and arrange a meeting with the Owner to discuss methods of completing the Contract. See paragraph 4, below, for the options to be discussed. If the Surety fails to arrange a meeting or fails to attend such meeting, the Surety is in default on this Bond and the Owner may, at its sole discretion, take what measures it deems necessary to protect the Owner's interests, without further notice to the Surety, and the Owner is entitled to enforce any remedy available to the Owner under the Contract or under Virginia law.

4. Within thirty (30) days after such meeting, during which time the Surety may investigate and otherwise analyze the project, and which period does not toll any Contract time periods nor operate as a waiver of any of the Owner's rights, the Surety must, at its own expense, notify the Owner in writing that it is taking one of the following actions, which may be acceptable to the Owner, at the Owner's sole discretion:

- a. By written takeover agreement with the Owner, the Surety itself may undertake to perform and complete the Contract, which it may do through its licensed agents or through licensed independent contractors. If the Owner, at its sole discretion, consents, the Contractor may serve as the Surety's independent contractor (however, due to conflicts with the Virginia Public Procurement Act, the Owner may not directly contract with an otherwise qualified independent contractor produced by the Surety); or
- b. The Surety may, if acceptable to the Owner and at the Owner's sole discretion, waive its right to perform and complete the Contract, and with reasonable promptness under the circumstances:
 - i. Pay to the Owner all amounts for which it may be liable to the Owner as surety on this Performance Bond, including the damages described in paragraph 6 below; or
 - ii. Deny liability, in whole or in part, and provide written notice thereof to the Owner, citing reasons therefor.

5. If, after the meeting described in paragraph 4, above, the Surety does not proceed with reasonable promptness with one of the options provided in subparagraphs 4.a or 4.b (including its subparts), above, the Owner may send additional written notice to the Surety demanding that the Surety perform its obligations under the Bond. If the Surety does not proceed to perform its obligations under the Bond within fifteen (15) days after receipt of said notice, the

Surety is in default on this Bond. Thereafter, the Owner may enforce any remedy available to the Owner under the Bond, the Contract, or Virginia law. If the Surety proceeds as provided in Subparagraph 4.b, and the Surety and the Owner are unable to agree as to the amount for which the Surety may be liable to the Owner, or if the Surety has denied liability, in whole or in part, the Owner, without further notice, may enforce any remedy available to the Owner under the Bond, the Contract, or Virginia law. In such event, the Owner may immediately proceed to complete the work in any manner authorized by law.

6. After the Owner has terminated the Contractor's right to complete the Contract, and if the Surety elects to act under Subparagraph 4.a or 4.b.i, above, then the responsibilities of the Surety to the Owner will not be greater or less than those of the Contractor under the Contract, and the responsibilities of the Owner to the Surety will not be greater than or less than those of the Owner under the Contract. To the limit of the amount of this Bond, plus the increased cost of any change orders under the Contract, provided the Owner commits the balance of the Contract Price to the prompt and faithful completion of the Contract, the Surety is obligated without duplication for:

- a. The responsibilities of the Contractor for correction of defective work and completion of the Contract;
- b. Additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
- c. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Contractor.

The Owner, at its sole discretion, may waive its claim to delay costs and/or liquidated damages.

7. The Surety is not liable to the Owner for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner, its officers, agencies, administrators, successors, or assigns.

8. The Surety hereby waives notice of any changes, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations. The Surety understands and agrees that the penal amount of the Bond must be increased or decreased by any changes to time and amount incorporated into any Change Orders.

9. Any proceeding by the Owner, legal or equitable, under this Bond may be instituted in any Virginia state court of competent jurisdiction, as permitted under the Contract and Virginia Code § 2.2-4337 and 2.2-4340, or by the Contractor or Surety, as permitted under the Contract or under Virginia law.

10. Notice to the Surety must be mailed or delivered to the address shown on the top of the first page of this Performance Bond where the Surety and its address are identified.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement is construed to be deleted herefrom and provisions conforming to such statutory or other legal requirement are construed to be incorporated herein. The intent is that this Bond is to be construed as a statutory bond and not as a common law bond when furnished to comply with statutory requirements.

12. Definitions:

- a. *Balance of the Contract Price* means the total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
- b. *Contract* means the Agreement between the Owner and the Contractor identified on the first page of this Performance Bond, including all Contract Documents and duly executed modifications and change orders.
- c. *Contractor Default* means a failure of the Contractor, as defined under the Contract, that has neither been remedied, as determined in the Owner's sole discretion, nor expressly waived by the Owner, to perform or otherwise comply with the terms of the Contract.

13. Nothing in these Performance Bond Terms and Conditions prevents a surety from becoming involved in the Contract prior to termination, upon notice from the Owner of the Contractor's failure to promptly and faithfully perform the Contract in strict conformity with the plans, specifications, and conditions of the Contract.

* * * End of Performance Bond * * *

Labor and Materials Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS: That _____, the Contractor ("Principal") whose principal place of business is located at _____, and _____, as surety (the "Surety"), whose address for delivery of Notices is _____, are well and firmly held and bound unto the School Board of the City of Danville, Virginia, a political subdivision of the Commonwealth of Virginia, the Owner ("Obligee"), in the amount of _____ dollars (\$_____), for the payment whereof the Principal and the Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents.

WHEREAS, the Principal has entered that certain contract dated _____, 20____, to design and construct a new Elementary School (the "Contract"), which Contract is expressly made a part hereof by reference.

NOW THEREFORE, the conditions of this obligation are such that, if the Principal promptly and faithfully makes payments to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the Work provided for in the Contract, then this obligation will be void; otherwise it will remain in full force and effect, subject, however, to the following conditions.

The Principal and the Surety, jointly and severally, hereby agree as follows:

1. A claimant is defined as a person having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the Work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). "Labor" and "material" include, but are not limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.

2. Any claimant who has a direct contractual relationship with the Principal and who has performed labor or furnished material in accordance with the Contract documents in furtherance of the Work provided in the Contract, who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and is not liable for the payment of any costs, fees, or expenses of any such suit.

3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed

and the name of the person for whom the Work was performed or to whom the material was furnished. Notice to the Principal must be served by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished are not subject to the time limitations stated in this paragraph 3.

4. No suit or action hereunder may be commenced hereunder by any claimant:
 - a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond will construed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof, is situated.

5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

The Surety furthermore represents unto the Principal and unto the Oblige that it is a good and solvent surety company authorized to do business in the Commonwealth of Virginia.

Signed and Sealed this _____ day of _____, 20____.

Contractor/Principal

Witness: _____

By: _____
Name: _____
Title: _____

Continued on next page.

Surety

Witness: _____

By: _____

Name: _____

Title: _____

Affidavit of Attorney-in-Fact

COMMONWEALTH/STATE OF _____)

CITY/COUNTY OF _____) to wit:

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing performance bond which names the School Board of the City of Danville, Virginia, a political subdivision of the Commonwealth of Virginia, as Obligee, personally appeared before me today in the above-named jurisdiction and made oath that he or she is the lawful and true attorney-in-fact of _____, a _____, which is the Surety in the foregoing bond, that he or she is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the Surety, he or she acknowledged the foregoing bond before me as the above Surety's act and deed.

He or she has further certified that his or her Power of Attorney has not been revoked.

If recorded, the Power of Attorney is of record in the Clerk's Office for _____, as Deed Book ____, page ____, or Instrument No. _____.

My commission expires: _____

Notary registration number: _____

Notary Public

Approved as to legal form:

Legal Counsel

* * * End of Labor and Materials Payment Bond * * *

Exhibit F
Construction Schedules and Reports

Exhibit G
Allowances

**Design and Construction of a New Elementary School
Owner's Terms and Conditions**

These Owner's Terms and Conditions are incorporated into the Comprehensive Agreement between the School Board of the City of Danville, Virginia and Branch Builds, Inc. for the Design and Construction of a new Elementary School at the site of the former G.L.H. Johnson Elementary School.

1. CONDITION OF PREMISES

1.1 Owner makes no warranty whatsoever with respect to the land and structures which comprise the Site or the tangible personal property located at the Site (collectively, the "Property"), all of which is furnished "as is."

1.2 Contractor has inspected the Property and evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed including, without limitation (1) the location, condition, layout and physical conditions of the Project site and surrounding area, (2) generally prevailing climatic conditions, (3) availability and cost of materials, tools and equipment, (4) geotechnical data, soil and subsurface conditions as reflected in geotechnical reports available to Contractor, (5) parking, traffic and logistics, and (6) other similar issues. Contractor shall not be entitled to any adjustment in the Contract Time or Contract Price in connection with its failure to comply with the requirements of, or on account of the conditions of, this Subsection.

1.3 Subject to Subsection 1.1 above, Contractor may use the existing ballfields on the Site for a lay down area. Contractor will take reasonable steps to avoid damaging to playground equipment located at or near the ballfields.

1.4 Contractor may repair any Property made available to Contractor "as is." Repair will be at Contractor's expense except as otherwise provided in this clause. Such Property may be modified at Contractor's expense, but only with the written permission of the Owner's Authorized Representative. Any repair or modification of Property furnished "as is" does not affect Owner's title.

2. INDEMNITY PROVISIONS

2.1 While on the Owner's property and in its performance of this Contract, Contractor shall not store, transport, use, dispose of or release any hazardous substance, material or waste, except as necessary in performance of its Work under this Contract. Contractor shall comply with all federal, state and local laws, rules, regulations and ordinances controlling air, water, noise, solid wastes and other pollution, and relating to the storage, transport, use, release or disposal of hazardous materials, substances or waste.

2.2 Regardless of acquiescence by Owner, the Contractor shall indemnify, defend, and hold the Owner and its employees, officers, board members, agents, and representatives ("Owner Parties") harmless from all costs, liabilities, fines or penalties, including attorney's fees, resulting from the Contractor's violation of Section 2.1 and reimburse the Owner for all costs and expenses incurred by the Owner in eliminating or remedying such violations. The Contractor also agrees to indemnify and hold harmless the Owner Parties from any and all costs, expenses, attorney's fees and all penalties or civil judgments obtained against any of the Owner Parties as a result of the Contractor's storage, transport, use,

release or disposal of any hazardous substance or waste onto the ground, or into the water or air from or upon the Owner's property.

2.3 Nothing herein shall limit Contractor's other indemnification obligations as stated in the other Contract Documents.

3. PERMITS, LICENSES, AND REGULATIONS

3.1 Contractor shall fully comply with all local, state and federal building and fire codes, ordinances, laws and regulations, including without limitation all applicable sections of the Occupational Safety and Health Act (OSHA), the Virginia Uniform Statewide Building Code and Chapter 11 of Title 54.1 of the Code of Virginia (1950), and obtain all required licenses and permits and pay all charges and expenses connected therewith. Contractor will be responsible for obtaining all necessary licenses, permits and approvals from the City of Danville, Virginia and all other federal, state or local government bodies in connection with the Project.

3.2 Contractor shall be responsible for arranging all inspections by federal, state and local authorities for compliance with all statutory requirements, ordinances and regulations.

3.3 If necessary for the Work on the Project, Contractor shall pay all fees and charges for temporary connections to outside services and for use of property outside the Site. The Owner will directly pay for permanent utility connection fees for the facility.

4. AUTHORIZED REPRESENTATIVES; PROJECT MANAGER

4.1 Owner's Authorized Representative is Dr. Wayne Lyle, Chief Operations Officer. The Authorized Representative has the sole responsibility and authority for negotiating, placing, and when necessary modifying each and every Amendment, Modification, Change Order, or Change Directive with respect to this Project. Any contracts or contract modifications contrary to this provision shall be void and Owner shall not be bound thereby. The Authorized Representative shall be the only agent of Owner with the authority to extend the Contract Time or increase the Contract Price; provided, that any such changes will only be effective if made by a written amendment to this Contract. The Authorized Representative shall be the only agent of Owner with the authority to approve Change Orders or issue Change Directives. Owner's Authorized Representatives may be changed at any time upon written notice to Contractor.

4.2 Owner's Project Manager for the Project is McDonough Bolyard Peck, Inc., acting by and through Michael Burriss. Owner's Project Managers may be changed at any time upon written notice to Contractor.

4.3 Contractor's authorized representative is Berton Austin, Vice-President. Contractor's Authorized Representatives may be changed at any time upon written notice to Owner.

4.4 Owner's Authorized Representative and Project Manager, or their designees, will make periodic inspections of the Work. Any discrepancies noted will be recorded in writing along with the time and date of the inspection. If there were any deficiencies noted, the Authorized Representative or Project Manager, or their designees, will provide a copy of the report to the Contractor. Any failure by the Authorized

Representative and Project Manager, or their designees, to conduct inspections or to identify discrepancies during inspections shall not, under any circumstances, alleviate the Contractor from responsibility for performing the Work in strict conformity with the Contract Documents.

4.5 The Authorized Representative and Project Manager, or their designees, will meet periodically with Contractor, or Contractor's Authorized Representative, to discuss quality of performance and the Contractor's attainment of the adequate standards of service. The frequency of these scheduled meetings shall be mutually agreed upon.

4.6 All written communications on the Project shall be directed to and include the Owner's Authorized Representative and all significant issues with respect to the Work and/or this Contract shall be communicated by Contractor directly to Owner's Authorized Representative in writing. Contractor shall copy the Owner's Project Manager on all such communications.

4.7 The Project Manager shall act as Owner's representative during the Project. The Architect shall decide questions, which may arise as to quality and acceptability of materials furnished and Work performed. The Project Manager shall interpret the intent of the Contract Documents in a fair and unbiased manner. The Project Manager will make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents. The Project Manager shall make recommendations to the Owner concerning proposed Change Orders and Change Directives, proposed changes to the Contract Time and/or Contract Price, and any requests by the Contractor for progress payments.

4.8 Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship and execution of the Work.

4.9 The Project Manager will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety. Nothing in the Contract Documents shall alter the contractual relationship between the Project Manager and the Owner.

5. PATENTS

5.1 Contractor shall protect, indemnify, and hold harmless the Owner Parties from any and all demands for fees, claims, suits, actions or judgments based on the alleged infringement or violation of any patent, invention, article, arrangement or other apparatus that may be used in the performance of the Contract.

6. CONTRACT DOCUMENTS AND DRAWINGS

6.1 The general character and scope of the Work are illustrated by the Plans, Drawings and Specifications. Contractor shall verify that all Drawings and Plans accurately reflect actual conditions. If Contractor deems additional detail or information to be needed, it will be responsible for obtaining such detail or information. Contractor shall carry out the Work in accordance with the Plans, Drawings and Specifications approved in writing by Owner and any additional detail drawings and instructions issued by Owner; provided, however, Contractor may evaluate any such additional detail drawings and instructions and

Contractor may, in the event of a Material Change (as defined below), request an extension of the Contract Time or change in the Contract Price.

6.2 Contractor acknowledges that it is responsible for preparing the Plans, Drawings and Specifications, either under the interim agreement or under this Contract. Contractor shall not be entitled to any increase in the Contract Price or extension of the Contract Time if the Work is of a materially different nature, character, scope or quality (other than refinement), than that set forth in and or reasonably inferable from the Plans, Drawings and Specifications prepared by Contractor. Contractor will only be entitled to an increase in the Contract Price or an extension of the Contract Time for (i) a later description of the Work which involves Work expressly excluded from or materially different from Work required by the Contract Documents as of the Effective Date and (ii) additional work that is required because of a change in applicable laws, codes or regulations enacted after the Effective Date (except those scheduled to go into effect subsequent to the Effective Date about which the Contractor has actual or constructive knowledge) (each a “Material Change”). Contractor shall promptly notify Owner of any perceived Material Change and the requested amount of the increase in the Contract Price and/or extension of the Contract Time that the Contractor claims is needed as a result of the alleged Material Change and shall meet with and assist the Owner in evaluating the situation.

6.3 The apparent silence of the Plans, Drawings or Specifications as to any detail or the omission from the Plans, Drawings or Specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices of the trade are to prevail and correct type, size and design are to be used. All interpretations of the Plans, Drawings and Specifications shall be made on the basis of this statement.

6.4 Contractor may develop or may be furnished additional instructions and detail drawings as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus developed or supplied will become a part of the Contract Documents. Contractor shall carry out the Work in accordance with the additional detail drawings and instructions. Contractor may evaluate any such additional detail drawings and instructions and Contractor may, in the event of a Material Change, request an extension of the Contract Time or change in the Contract Price.

6.5 Where the technical provisions permit Contractor to propose substitute materials, items, systems, or equipment, the selection of such options is subject to the following conditions:

- a. Once a substitute has been selected and approved by the Owner’s Authorized Representative, it must be used for the entire Project unless Contractor has proposed, and Owner’s Authorized Representative has approved, the substitute for a limited application;
- b. Contractor must coordinate its selection with the Plans, Drawings and Specifications and the A/E; and
- c. Substitutions proposed by Contractor shall be at no increase to the Contract Price unless otherwise agreed in advance, in writing by Owner’s Authorized Representative.

6.6 The Contract Documents shall be interpreted and construed to call for finished code-compliant Work, tested and ready for operation or use by Owner and its employees, agents, invitees, and licensees.

6.7 The entire Work provided for in the Specifications and other Contract Documents is to be accomplished even though every item and minor detail for the proper installation and successful operation

of the entire Project may not be mentioned in the Specifications or shown on the other Contract Documents. All work not specifically described in the Contract Documents, yet required to produce a fully functional and properly operating Project, shall be provided by Contractor even though every item or minor detail for the proper installation or successful operation of the entire Work is not mentioned in the Contract Documents.

7. PERSONNEL

7.1 Contractor shall assign to the Work and the Project a Superintendent or other similar supervisor who shall be subject to the reasonable approval of the Owner. Once appointed and approved, no such key personnel shall be replaced on the Project or Work without the prior consent of the Owner's Authorized Representative. The Contractor shall notify the Owner, in writing, of any proposed changes in the staffing for the Project or Work, including the reason(s) for proposing such change.

7.2 Only reliable workers shall be employed as laborers. Should any person employed on the Project by the Contractor appear to the Owner to be incompetent or disorderly, such person shall be removed from the Project immediately upon proper notice to the Contractor from the Owner. Such person shall not again be employed for this Contract.

7.3 Contractor shall be responsible for the errors, acts, and omissions of its employees and agents, and the employees and agents of any Subcontractors, while on Owner's property or performing any Work associated with the Contract. Contractor's personnel will be required to comply with all rules and regulations governing the access to and use of Owner's property. Contractor shall provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of the Work to be performed under the Contract. It shall be Contractor's responsibility to see that its employees use any equipment, materials and supplies in a safe and orderly manner and in accordance with the manufacturer's instructions and guidelines and within all local, state and federal regulations. It shall be Contractor's responsibility to ensure its employees and its Subcontractor's employees know and obey all OSHA, VOSA, EPA and other regulatory requirements. Compliance with all regulatory requirements is the sole responsibility of Contractor and/or Subcontractors. The safety of Contractor's and Subcontractor's employees is the exclusive responsibility of Contractor and Subcontractors. Owner reserves the right to request the removal of any of Contractor's employees or agents or any of subcontractor's employees or agents from the construction site at any time for reasonable cause. Contractor or the Subcontractor shall have such employee leave the premises upon receipt of such request.

8. PERFORMANCE

8.1 Contractor shall be responsible for directing the Work with a high level of competence and efficiency. Contractor is solely responsible to the Owner for ensuring that the finished Work complies with the Contract Documents. Contractor shall be solely responsible for health and safety precautions and programs for workers, patrons, pedestrians and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Owner, Project Manager, or any other person or entity whatsoever shall relieve the Contractor from its sole responsibility for compliance with the requirements of the Contract or responsibility for health and safety programs and precautions for workers and others authorized by Contractor to be on the Site; provided Contractor has taken all required steps to secure the Site from unauthorized entry.

8.2 The intent of the Plans, Drawings and Specifications is that the Contractor shall furnish all labor, materials, tools, equipment, and services necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the Owner. In case of conflict between Plans, Drawings and Specifications, the most stringent shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Any discrepancies found between the Plans, Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Plans, Drawings or Specifications shall be immediately reported to the Project Manager, in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies, or ambiguities shall be done at the Contractor's risk.

8.3 It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

8.4 All materials and equipment used in the construction of the Project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.

8.5 Contractor shall arrange for any third-party testing and inspection services required by the Contract Documents; provided, however, Owner will be responsible for the cost of such third-party testing and inspection.

8.6 If the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than Contractor, Contractor will give the Project Manager timely notice of readiness.

8.7 Inspections, tests, or approvals by third-parties shall not relieve the Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents.

8.8 If any Work is covered contrary to the written instructions of the Project Manager, it must, if requested by the Project Manager, be uncovered for observation and replaced at the Contractor's expense.

8.9 If the Project Manager considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Project Manager's request, will uncover, expose, or otherwise make available for observation, inspection, or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction and an appropriate Change Order shall be issued.

8.10 Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor will take all necessary precautions for the safety of, and will protect the persons who may be affected thereby, protect all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and protect other property at the site adjacent thereto, including buildings, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

8.11 Contractor shall remove and transport any construction waste or debris to a Contractor-provided dumpsite upon removal. No construction waste or debris shall be stock piled on Owner's property.

8.12 After the completion of the Project, all property damaged by the Contractor's actions shall be restored to the same condition or better at the time of the Notice to Proceed. Prior to any construction activities, it is the Contractor's responsibility to document any existing damage or substandard conditions.

8.13 Contractor shall provide adequate protection for all structures at the site. Any damage to Owner's property by Contractor shall be repaired or replaced at Contractor's expense and to Owner's complete satisfaction.

8.14 Contractor shall clean the premises daily, including disposal of all waste. Contractor shall maintain the parking lots and sidewalks around the Project site in a reasonably clean condition and shall comply with all erosion control, stormwater runoff and dust control ordinances and regulations. Contractor shall remove all spillage arising from performance of the Work from such areas and shall establish a regular maintenance program to minimize accumulation of dirt and dust upon such areas.

8.15 On completion of the Work covered by any of the sections of this Project, the Contractor for said section shall clean up the entire premises occupied by his operations, and this area shall be left neat and clean of trash, debris, piles of earth, waste materials or equipment. All surplus materials and equipment, trash, debris, and other foreign matter shall be disposed of as directed by the Project Manager or Owner. The entire Project or sections thereof shall be made ready for the Owner's use, and the Contractor shall assist as may be necessary in placing any equipment furnished under the contract in proper operating condition.

8.16 Materials removed from the site shall be legally disposed of by the Contractor.

8.17 Additional Performance Standards

- i. Contractor shall coordinate with the Owner for proper placement of all materials and equipment, parking, and staging areas.
- ii. If Contractor foresees any delay regarding deliveries of materials or equipment, it shall notify Owner within five (5) calendar days, providing full particulars.
- iii. Removal and alteration of existing work, if required, shall include work necessary to provide final conditions as shown on Drawings. Contractor shall complete such work carefully to minimize disturbance of adjacent areas. If work is not as anticipated or involves structural consideration, notify Owner prior to proceeding.
- iv. Contractor shall be responsible for restoring any areas disturbed during construction to

- their original condition, including painting, patching, paving, plantings, grass, seeding, drywall, backfill, etc. to the satisfaction of the Owner. Removal of any improvements or obstructions that interfere with installation of construction, unless minor, shall be coordinated with Owner. Notwithstanding the foregoing, provided Contractor takes reasonable steps to avoid damaging to playground equipment located at or near the ballfields, Contractor will not have to restore or remove any such playground equipment.
- v. Contractor shall provide his own telephone and sanitary facilities.
 - vi. Contractor will cooperate fully with the Owner in scheduling Work to minimize conflict and to facilitate the Owners and their guests' usage of the existing building and premises.
 - vii. Contractor shall keep all driveways, entrances, and passages open and free from obstructions at all times and provide ample protection of existing equipment and apparatus, as well as the Owner, guests, pedestrians, and public against the elements and possible harm or injury from any operations of Contractor during the entire period of construction.
 - viii. Contractor shall provide adequate protection of work, materials, and existing and new facilities against damage by elements, rain, snow, wind, storms or heat. At end of each day's work, Contractor will protect new work and all areas of facility liable to damage with temporary covering.
 - ix. Contractor shall schedule deliveries to minimize space and time requirements for storage of materials and equipment on site.
 - x. Operations which require the use of machines which produce excessive noise, which will be in or near occupied areas as well as machines which will produce structural vibrations, shall be coordinated with the Owner prior to execution.
 - xi. It is NOT the intent of the Contract Documents to identify each existing utility, but the responsibility of Contractor to identify, maintain, repair, or restore all utilities. Owner makes no representation as to the locations of existing utilities. The Contractor shall be responsible for the cost of any damages to existing utilities caused by the construction.
 - xii. Existing utilities affected by the construction shall be located, protected, and rerouted as necessary. All utilities affected shall be replaced in a workmanlike manner.
 - xiii. Contractor must field verify measurements and dimensions before starting each installation. Notify owner of any discrepancies.
 - xiv. Phases of the construction which involve the temporary interruption of essential services shall be scheduled in consultation with the Owner and shall not be of longer duration than essential to accomplish the purpose of such interruption.
 - xv. Owner must approve all signs and any allowed signs must meet local codes.

8.18 Contractor shall use only new materials for the Work of this Project. Reuse of existing materials or the use of other salvaged materials is acceptable only where specifically noted in the Construction Documents or approved by the Project Manager.

8.19 Contractor shall provide all special trims, moldings, and special shaped materials which are required for the satisfactory completion of the Work. Contractor shall provide all necessary fasteners, bracing, and supports required for the stable and secure installation of the Work.

8.20 Contractor shall leave the completed Work in conditions for occupancy by the Owner such that no cleaning, waxing, polishing, or other janitorial operations are required. The Contractor shall provide an

onsite waste receptacle or receptacles of sufficient size and capacity to dispose of waste materials and rubbish that accumulate on the site. These receptacles shall be emptied on a regular basis, as needed. The Contractor shall dispose of all waste materials and rubbish at approved site for waste disposal.

8.21 If the Work involves demolition and/or remediation or disposal of hazardous materials, then Contractor shall ensure that all required approvals, permits, licenses and surveys have been obtained prior to commencing with the applicable Work and shall handle, transport, remove and dispose of all such items in accordance with all applicable EPA, OSHA and other local, municipal, state or federal requirements (using properly licensed and certified personnel as necessary) and shall maintain (and provide to Owner upon request) all documents, manifests and other information reflecting the use, handling and disposal of such materials in accordance with such laws and requirements. Contractor shall be responsible for, and shall indemnify and hold Owner harmless from, all costs, fines, penalties or damages arising from Contractor's failure to comply with the provisions of this Section.

8.22 Subsequent to Substantial Completion of the Work and during Owner's initial occupancy and use of the Project, Contractor shall schedule and conduct with Owner and Project Manager a complete review, demonstration, start-up and operational shakedown of all equipment and mechanical and electrical systems installed by Contractor or its Subcontractors on the Project and shall also review the operation and maintenance of such systems with Owner's maintenance contractors. Subsequent to this review, the Contractor, with reasonable promptness and at no cost to Owner, shall make all adjustments or corrections and shall balance all systems in order to make all equipment and systems perform as required by the Contract Documents based on the actual use and occupancy of the Project by the Owner. If necessary, or requested by the Project Manager or Owner, Contractor shall require the Subcontractor, supplier or materialmen responsible for any such equipment or system to participate in the review and/or to perform the adjustments, corrections or balancing required.

8.23 Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities, and directing necessary plankings, bridges, shoring, bracing, lights and warning signs necessary for the protection of roadways, adjacent property and the public. Contractor shall provide and maintain all cranes, hoists and other apparatus used in connection with the Work in strict conformance with the guidelines and regulations of all governing authorities as well as applicable OSHA requirements.

8.24 Contractor acknowledges that the nature of the Work requires appropriate protection and procedures to avoid the intrusion of water in the area where the Work is performed. In this regard, Contractor shall develop and implement appropriate moisture intrusion prevention procedures in connection with the Work, which shall remain in effect until Final Completion. These moisture intrusion procedures shall include measures to prevent and manage the intrusion of water and vapor caused by Contractor's performance of the Work so that such conditions do not cause mold or other damage to the Work and shall include procedures for responding and remediating actual water intrusion or mold conditions caused by Contractor's performance of the Work. The moisture intrusion procedures shall require that all window openings be boarded up or otherwise properly closed as appropriate. Contractor shall also employ reasonable methods to discover the presence of leaks caused by performance of the Work. If Contractor discovers water intrusion or mold during construction of the Work, Contractor shall notify Owner in writing of such condition within forty-eight (48) hours of its discovery, shall provide

Owner all inspection reports, testing data, photographs, samples or other materials associated with the investigation and remediation of the water intrusion incident or mold condition. Any such conditions encountered shall be remedied

9. CHANGES IN THE WORK

9.1 A Change Order shall be based upon agreement among the Owner and Contractor; a Change Directive may be issued by the Owner and may or may not be agreed to by Contractor; an order for a minor change in the Work may be issued by the Project Manager alone.

9.2 Requests for Change Orders shall be evaluated by the Project Manager; provided, however, the Owner shall make the final determination on all Change Orders and Change Directives. Contractor shall comply with any Change Directives issued by the Owner.

9.3 The Owner may at any time, as the need arises, order changes within the scope of the Work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, an equitable adjustment shall be authorized by Change Order.

9.4 No Change Order, Change Directive, or other Modification to any of the Contract Documents shall waive, modify, release or invalidate any condition or provision of the Contract or obligation of Contractor unless such waiver, modification, release or invalidation is expressly stated in the written Change Order, Change Directive, Modification, or other document modifying the Contract Documents.

9.5 No change increasing the Contract Price or extending the Contract Time will be made without the prior, written approval of the Owner's Authorized Representative.

9.6 If changes in the work provide for an adjustment in the Contract Price, the adjustment (increase or decrease) shall be based on the following, unless otherwise noted:

- a. Material quantities and unit prices (separated into trades; include sales tax).
- b. Labor costs (employees hourly pay rate not billing rate).
- c. Labor burden, applied to labor only, including but not limited to, worker's compensation insurance, applicable payroll taxes, and fringe benefits required by agreement or custom. Contractor shall be required to substantiate the labor burden percentage applied to any change in contract amount. Labor burden percentage shall not exceed 42 percent of Labor costs in any case.
- d. Construction equipment cost.
- e. Overhead and profit (on claims for net increase only) as provided in Section 7 of the Agreement.
- f. Cost of Premiums/Bonds directly related to the change (for General Contractor only). Evidence of additional premium/bond costs shall be submitted with claim.

10. PAYMENT PROVISIONS

10.1. This is a fixed price Contract. No increase in the Contract Price shall be made except by a written amendment executed by Owner's Authorized Representative and Contractor. The limitation on increases for fixed price contracts contained in Virginia Code § 2.2-4309 applies to this Contract.

10.2 To insure proper performance of the Contract, Owner shall retain five percent (5%) of each progress payment until final acceptance of all Work covered by the Contract. The Contractor may request that this retainage be paid into an escrow account pursuant to Section 2.2-4334 of the Code of Virginia (1950), as amended.

10.3 Each Payment Application shall be based on the most recent Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Price among the various portions of the Work. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Project Manager or Owner may require. This schedule, unless objected to by the Project Manager or Owner, shall be used as a basis for reviewing the Contractor's Payment Applications and may not be revised without the prior written approval of the Owner and Project Manager. Payment Applications also shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Payment Application.

10.4 In taking action on the Contractor's Payment Applications, the Project Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Project Manager has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data; that the Project Manager has made exhaustive or continuous on-site inspections; or that the Project Manager has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contractor.

10.5 Final Completion shall require final payment and payment of any remaining retained percentage only if: (1) the proper and full completion of all of the Work, including but not limited to satisfactory operation of all equipment and systems and completion or correction of all punch list items, (2) delivery of all maintenance and operations manuals, the as-built drawings, and all warranties and guarantees (and assignments thereof), all as required by the Contract Documents; (3) delivery of all documentation confirming and conveying any warranties, such as manufacturer's warranties or specific Subcontractor warranties; (4) issuance of all final and unconditional approvals and certificates required from any authorities with jurisdiction over the Work; (5) removal of all rubbish, tools, scaffolding and surplus materials on the site and correction of all property damage that is the responsibility of Contractor pursuant to the Contract Documents; (6) delivery of final as-built survey of the Work as situated on the site; (7) delivery of executed releases (effective upon receipt of final payment) signed by all Subcontractors who may be entitled to a claim against Owner or the Project; (8) delivery of an executed release signed by Contractor discharging and waiving all claims, damages, causes of action, and/or suits which Contractor may have against Owner or Owner's property relating to the Project or the Work effective upon receipt of the final payment; (9) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (10) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (11) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (12) consent of surety, if any, to final payment; and (13), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security

interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If requested by Owner, Contractor will, prior to final payment, furnish a certification that there are no current or, to Contractor's knowledge, pending claims or liens against the Project.

11. GUARANTEES AND WARRANTIES OF WORK

11.1 Contractor warrants that, unless otherwise specified, all material and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in strict accordance with the Contract Documents. Contractor further warrants that all workmanship shall be of the highest quality found in the construction trade or industry and in strict accordance with the Contract Documents and shall be performed by persons highly qualified at their respective trades.

11.2 Contractor shall review all materials and methods of construction specified or indicated in the Contract Documents, including those recommended by manufacturers, and shall advise the Owner (1) if the specified or indicated material or method deviates from good construction practice, (2) if employing such material or method will violate any warranties, or (3) if Contractor has any other objection to such material or method. In such event, Contractor shall propose alternative materials or methods for those which violate the warranties or to which the Contractor takes objection, submitting the names of substitute products and relevant data on which he can issue the specified warranty. Should the Contractor fail to notify the Owner of its objections prior to the execution of the Contract, it will be deemed to have agreed to warrant all work specified or shown.

11.3 Work not conforming to these warranties shall be considered defective.

11.4 These warranties and guarantees of material and workmanship are separate and independent from and in addition to any of Contractor's other guarantees or obligations that arise out of this Contract or any applicable law. In addition to the foregoing warranties and stipulations, Contractor shall comply with all other warranties and guarantees noted in any portion of the Contract Documents, the more stringent requirement governing.

11.5 If, within any warranty or guarantee period, defects are noticed by the Owner, which require repairs or changes in connection with the guaranteed Work, those repairs or changes being in the opinion of the Owner rendered necessary as the result of the use of material, equipment, or workmanship which is defective, inferior, or not in accordance with the terms of the Contract, Contractor shall, promptly upon receipt of notice from the Owner, (such notice being given not more than four (4) weeks after the expiration of any such guarantee period), and without any expense to the Owner:

- a. Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein; and
- b. Make good all damage to the structure, contents of the structure, site and equipment which in the opinion of the Owner is the result of the use of material, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and
- c. Make good any work or material or the equipment and contents of structures or the site disturbed in fulfilling any such guarantee.

11.6 In any case where in fulfilling the requirements of the Contract or any guarantee embraced in or required thereby, Contractor disturbs any Work guaranteed under the Contract, it shall restore such Work to a condition satisfactory to the Owner and guarantee such restored Work to the same extent as it was guaranteed under such other Contract.

11.7 If Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected by the Owner or other contractor and Contractor shall be liable for all costs and expenses incurred in doing so.

11.8 Nothing contained in this Section 11 shall be construed to shorten any applicable statutes of limitation with respect to any obligations which Contractor has under the Contract Documents or the law of Virginia, including liability for defective Work.

11.9 All guarantees or warranties of equipment, systems or materials furnished to Contractor or Subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of Owner and are (and shall be) assigned to Owner. These warranties are in addition to, not in lieu of, all other warranties and guarantees contained in or required by the Contract Documents.

12. ACCEPTANCE OF FINAL PAYMENT AS RELEASE BY CONTRACTOR

12.1 The acceptance by Contractor of final payment shall be and shall operate as a release to the Owner of all claims and liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this Work and for any act or neglect of the Owner and others relating to or arising out of this Work. Any payment, however, final or otherwise shall not release the Contractor or its sureties from any obligations under the Contract Documents or the Performance Bond and Labor and Material Payment Bond.

13. OTHER CONDITIONS

(1) ANTI-DISCRIMINATION: During the performance of this Contract the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees, notices setting forth the provisions of this nondiscrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

d. The Contractor will include the provisions of the above a, b and c in every subcontractor or purchase order over \$10,000 in connection with this Contract so that the provisions will be binding upon each subcontractor or vendor.

(2) **DRUG-FREE WORKPLACE:** During the performance of this Contract, the Contractor shall (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 in connection with this Contract, so that the provisions will be binding upon each subcontractor or vendor.

(3) **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Contractor represents and warrants it does not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986 or any other federal law regarding the employment of illegal aliens or undocumented workers.

(4) **APPLICABLE LAWS AND COURTS:** This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation between the parties arising under this Contract shall be brought in a court of competent jurisdiction in the City of Danville, Virginia. The Contractor shall comply with all applicable federal, state and local laws, codes, rules and regulations, including without limitation the Virginia Public Procurement Act, Virginia Code §§ 2.2-4300 through 2.2-4377.

(5) **ETHICS IN PUBLIC CONTRACTING:** Contractor represents and warrants the following: (i) neither it nor any of its employees or agents enters this Contract as a result of any collusion or fraud; (ii) neither it nor any of its employees or agents has been offered or received any kickbacks or inducements in connection with this Contract; and (iii) neither it nor any of its employees or agents has conferred on any person having official responsibility for this transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. Contractor shall not offer or give a gratuity of any type to any Owner employee or agent.

(6) **DEBARMENT STATUS:** Contractor represents and warrants that it is not currently debarred by the Commonwealth of Virginia or any political subdivision of the Commonwealth of Virginia from entering into contracts with public bodies for the type of construction and/or services covered by this Contract, nor is it an agent of any person or entity that is currently so debarred.

(7) **LICENSE REQUIREMENT; LEGAL COMPLIANCE:** The Contractor shall procure at its own expense all necessary licenses or permits to furnish the goods and services required under this Contract and shall conform to all laws, codes, regulations and ordinances applicable to the performance of the Contract, and will pay all applicable federal and state taxes and comply with any law or ordinance.

(8) **WORKSITE DAMAGES:** Any damage to the Owner property, including any buildings, equipment or any other property thereon, resulting from the performance of this Contract by the Contractor shall be repaired to the Owner's satisfaction at the Contractor's expense.

(9) SOVEREIGN IMMUNITY; PUBLIC POLICY: Nothing contained in the Contract Documents is intended to waive, or shall be construed as a waiver of, the Owner's sovereign immunity.

(10) NON-EXCLUSIVENESS OF REMEDIES: Any right or remedy on behalf of Owner provided for in any part of the contract, including but not limited to, any remedy for Contractor's nonperformance or breach, shall be in addition to and not a limitation of any right or remedy otherwise available by law, equity, or statute.

(11) ANTI-KICKBACK PROVISION: Consultant represents and warrants that this contract has been awarded without collusion or fraud and it has not offered or received any kickbacks or inducements from any other offeror, supplier, or subcontractor in connection with its proposal, and that it has not conferred on any Owner employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

(12) HEADINGS: The Section titles are inserted herein only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Contract nor in any way affect this Contract.

(13) ENTIRE AGREEMENT: The Contract Documents contain the entire understanding of the parties and supersede all prior and contemporaneous negotiations, correspondence, understandings and agreements of the parties relating to the subject matter hereof. No waiver or modification of this Contract or of any covenant, condition or limitation herein shall be valid against Owner unless in writing and signed by its Authorized Representative. This Contract may not be amended without the specific written consent of both parties. The parties agree that the provisions of this Section may not be waived except as herein provided.

EXHIBIT F - CONSTRUCTION SCHEDULES AND REPORTS

These Terms and Conditions are incorporated into the Comprehensive Agreement between the School Board of the City of Danville, Virginia and Branch Builds, Inc. for the Design and Construction of a New Elementary School at the site of the former G.L.H. Johnson Elementary School.

1.01 GENERAL REQUIREMENTS

- A. The work under this contract shall be planned, scheduled, executed and reported using the Critical Path Method (hereinafter referred to as: CPM), pursuant to the provisions of the Comprehensive Agreement, including all Contract Documents, between Owner and Branch Builds Inc., (BRANCH), (hereinafter referred to as: Agreement).
- B. The primary objectives of the project scheduling program are to insure the adequate planning, scheduling and execution of the construction activities so they may be prosecuted in an orderly and expeditious manner, within the Contract Time and the milestones stipulated by the Contract, to provide optimum coordination between contractors, to establish the basis for measuring and monitoring individual contractor progress and overall project progress, to detect problems for the purpose of taking corrective action to maintain the scheduled program and to provide a mechanism or tool for determining and monitoring such corrective actions.
- C. Any schedules prepared for this project by the Owner are made available by the Owner solely as an aid to the BRANCH. The Owner's plan may not optimize, and it is not intended to optimize, BRANCH's costs or resources. It is intended that these schedules will reflect the milestones and completion dates established by the Owner. However, the services provided by the Owner, the existence of schedules, networks, or any other charts or services prepared or performed by the Owner shall in no way relieve BRANCH of the responsibility of complying with all of the requirements of the Agreement, including but not limited to the responsibility of completing the Work within the Contract Time and GMP and the responsibility of planning, scheduling and coordinating the work. BRANCH is required to comply with all control procedures specified herein and with any reasonable changes that may be necessary, in the opinion of the Owner during the contract duration.
- D. Any and all milestone or specific dates listed in these specifications, or elsewhere in the Agreement, represent only the major items of construction/erection work or interface dates. The milestone completion dates indicated are considered essential to the satisfactory performance of this Agreement and to the coordination of all work on the project.
 - 1. The milestone dates listed are not intended to be a complete listing of all work under this Agreement or of all interfaces between project contractors.
 - 2. The milestone dates listed represent the latest allowable completion dates. Earlier completion dates may be established by BRANCH and as agreed by the Owner.
- E. If BRANCH should desire or intend to complete the work earlier than any required Milestone or Completion date, the Owner shall not be liable to BRANCH for any costs or other damages should BRANCH be unable to complete the Work before such Milestone or Completion Dates. The duties, obligations and warranties of the Owner to BRANCH shall be consistent with and applicable only to the completion of the Work on the Milestone and completion dates required in the Agreement, unless the Owner and BRANCH otherwise agree in writing.

1.02 PRE-BID

In conjunction with the preparation of Construction Documents, BRANCH shall prepare a detailed milestone schedule which displays a construction plan to complete the Project in compliance with specific dates listed in the Agreement.

1.03 POST AWARD ACTIVITIES

- A. BRANCH and the Owner shall perform the following after receipt of the Notice to Proceed (NTP): The NTP will be issued under separate letterhead from the Owner after acceptance of the GMP, obtain building permit, and verification of financing (selling of Bonds), except the Owner reserves the right to issue NTP in two phases (Phase 1 – all work that can be performed prior to footing and foundations and any other work that does not require a building permit, and Phase 2 – all work requiring a building permit).

Immediately following the receipt of the Notice to Proceed, BRANCH shall commence the preparation of its Detailed Project Construction Schedule. BRANCH shall assemble, with the assistance and input from the Contractors, Subcontractors, and Suppliers, information regarding the project that includes but is not limited to:

1. A Detailed Project Construction Schedule that represents BRANCH's best judgment in how it shall prosecute and complete the work in compliance with the Milestone Dates and any Specific Dates stipulated in the Agreement.
 2. The identity and duration of all activities to be included in this construction plan. Activities shall meet the following criteria:
 - a. Activity descriptions shall be clear and concise. The beginning and end of each activity shall be readily verifiable.
 - b. Responsibility for each activity shall be identified with a single performing organization. (i.e., Prime contractor)
 - c. An activity must be no more than 21 calendar days in duration unless approved in advance by the Owner and Design Consultant.
 - d. Include relevant predecessors and successors for each activity as well as the type of relationships between, and any lag time required. All activities except the first activity (i.e., NTP) and last activity (i.e., Final Completion) shall have both predecessors and successors.
 - e. Listing of Project submittals, approvals, and material/equipment site deliveries dates.
 3. The identity of planned and reasonably anticipated Adverse Weather as defined in Section 9 of the Agreement.
 4. The identity of long lead items and delivery dates of all major pieces of equipment or materials.
- B. BRANCH shall, within thirty (30) calendar days following NTP, submit to the Owner and Design Consultant a Computerized 90-Day, Detailed Project Construction Schedule in precedence format for its construction/erection work scope utilizing mutually-agreeable scheduling software. Provide two (2) hard copies of the 90-Day Detailed Project Construction Schedule and one (1) electronic file copy utilizing the mutually agreeable scheduling software. This schedule shall provide complete details, as outlined in this section and related sections, of all activities included for the first 90 contractual days of work (from NTP), as well as, the proposed summary of work activities for the remaining contractual scope and divisions of work (utilizing summary activities) for the project beyond the first 90 days through final completion. The work beyond the first 90 days shall be broken down by subcontractor and division of work and shall show logic, sequencing, and responsibility. This initial schedule shall incorporate the work of all contractors, subcontractors, vendors, and outside agencies and contractors associated with the entire scope of work for this project.

The Detailed Project Construction Schedule shall show:

1. The order and interdependencies of the Contractors' activities and the major points of interface or interrelation with the activities of others, including specific dates for completion.

2. Conformance with and identification of the specified mandatory milestone dates specified in the Agreement.
 3. The description and quantity of work by activity.
 4. The time required for engineering, preparation and approval of shop drawings, manufacturing, and delivery of Contractor-furnished permanent materials.
 5. The time required for procurement, delivery, and erection of the Contractor's permanent materials.
 6. Delivery of Owner-furnished material and equipment.
 7. Shop fabrication and delivery.
 8. Clearly defined Critical Path (or Paths).
 9. Erection and installation.
 10. Testing of equipment and materials.
 11. Technology Data Systems Installation.
 12. Activity calendars, incorporating potential weather delays, or multi- work periods.
- C. The Detailed Project Construction Schedule shall indicate an early completion date for the project that is no later than the project's required completion date. All activity durations shall be given in calendar days. The Schedule shall also indicate each of the following:
1. Interfaces with the work of outside contractors, e.g., utilities, power, and with any separate contractor. (Delays caused by non-performance by owner's separate contractors that impact the critical path and substantial completion of the project will be an excusable and compensable delay to the Contractor.)
 2. Estimated duration time for each activity.
 3. Early start date for each activity.
 4. Late start date for each activity.
 5. Early finish date for each activity.
 6. Late finish date for each activity.
 7. Float available for each path of activities containing float.
 8. Identification of all critical path activities in the schedule analysis.
 9. The critical path for the project, with said path of activities being clearly and easily recognizable on the time-scaled network diagram. The relationship between all non-critical activities and activities on the critical path shall be clearly shown on the network diagram.
 10. The responsibility code for the Contractor or Subcontractor performing each activity or portion thereof.
 11. The area of work (i.e. Gymnasium, Media Center, etc.) and the floor (i.e. 1st floor, 2nd floor, etc.).
- D. The Owner will review BRANCH's Detailed Project Construction Schedule for compatibility with the Project Milestones, the Completion Schedule, and the requirements of the Agreement. If requested, a meeting will be held between the Owner and BRANCH to resolve any conflicts in BRANCH's schedule. BRANCH shall revise its schedule as required by the Owner to ensure completion of the Project in accordance with the Project's Milestone and Completion Dates and shall submit its revised schedule to the Owner within seven (7) calendar days of this meeting.

- E. If BRANCH thereafter desires to make changes in its method of operating and scheduling, he shall follow the procedures set out in Paragraph 2.03, Network Revisions, of this Section.
- F. Approval by the Owner of BRANCH's Detailed Project Construction Schedule is advisory only and shall not relieve the Contractors of the responsibility for accomplishing the Work within each and every Contract-required Milestone and Completion date. Omissions and errors in the approved Project Construction Schedule shall not excuse performance which is not in compliance with the contract. Approval by the Owner in no way makes the Owner an insurer of the Detailed Project Construction Schedule's success or liable for time or cost overruns flowing from its shortcomings. The Owner hereby disclaims any obligation or liability by reason of Owner approval of or acquiescence to the Detailed Project Construction Schedule
- G. BRANCH shall compile, organize, and present a fully integrated Computerized Detailed Project Construction Schedule to the Owner and Design Consultant within sixty (60) days of Notice to Proceed. This schedule shall include the 90-Day Construction Schedule as well as the detailed activities for that portion of the work beyond the first 90 days of the construction through final completion to create the complete project schedule. The details of this schedule shall follow the same requirements as those outlined above in this section for the 90-Day Schedule. The BRANCH shall provide two (2) hard copies of the Detailed Project Construction Schedule, and one electronic file copy utilizing Primavera P6 Software (compatible formats are not acceptable), the Schedule of Values and Computer Reports to the Owner for final review and approval. Approval shall be signified by BRANCH and Owner jointly signing the schedule agreement (Attachment at the end of this section). BRANCH shall use the approved Detailed Project Construction Schedule in planning, organizing, directing, coordinating, performing and executing the work (including all activities of Contractors, Subcontractors, equipment deliveries, vendors, and suppliers) and shall be the basis for evaluating the progress of the Work, subject to such revisions made in such schedule as provided for herein, in the Agreement, or in the Construction Documents.
- H. BRANCH will develop and maintain the overall Detailed Project Construction Schedule. This schedule will be in precedence format and will be computer generated and updated and will be the controlling schedule document utilized for managing overall project construction.

1.04 COMPUTER COST AND SCHEDULE REPORTS

- A. Every month, BRANCH will generate all monthly progress documents from the Detailed Project Construction Schedule, based on the Progress Reports received from the Contractors. These Reports will reflect the progress of the project.
- B. Report Content:
 - 1. The initial and subsequent computer-generated Schedule Reports shall include the following minimum information for each activity:
 - a. activity number,
 - b. activity description,
 - c. original and remaining duration in days,
 - d. early and late start dates,
 - e. early and late finish dates,
 - f. actual start dates for activities which have commenced,
 - g. actual finish dates for activities which have completed,
 - h. percentage of activity completed as of each report,
 - i. total float for each activity, and
 - j. responsibility for activity.

2. BRANCH will produce four (4) schedule reports each month. The reports are:

- a. All activities on the Project Construction Schedule sorted by early start and then by total float.
- b. All activities sorted by Contractor, and further sorted by activity number.
- c. All activities sorted by total float.
- d. All activities sorted by late start.

2.00 BRANCH'S ORGANIZATION

BRANCH shall maintain, as part of its organization, a staff/or consultant of sufficient knowledge in the use and application of CPM utilizing the mutually agreeable scheduling software and whose responsibility will be to prepare input information for the Detailed Project Construction Schedule, monitor progress, provide input for updating and revise logic diagrams when necessary.

2.01 RECOVERY SCHEDULE

Pursuant to paragraph 3.5.2.5 of the Agreement, should any conditions exist such that any of the mandatory specific or milestone dates or completion dates on BRANCH's approved Detailed Project Construction Schedule fall behind by 14 calendar days or more, BRANCH shall be required to, at no extra cost to the Owner, prepare and submit to the Owner, within 14 calendar days of notification, a supplementary Recovery Schedule, in a form and detail appropriate to the need, to explain and display how they intend to reschedule those activities to regain compliance with the Detailed Project Construction Schedule during the immediate subsequent pay period.

2.02 NETWORK REVISIONS

- A. Should BRANCH, after approval of the Detailed Project Construction Schedule, desire to change its plan of construction, BRANCH shall submit its requested revisions to the Owner along with a written statement of the revisions including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and Specific Dates and the reasons for the revisions. BRANCH shall revise its schedule to include the effect of Changes, acts of God, or other conditions or events which have affected the network. If the requested changes are acceptable to the Owner, and they do not adversely impact any Milestone or Completion Dates, they will be incorporated into a revised Approved Detailed Project Construction Schedule, to be compiled and produced by BRANCH in the next reporting period. The resultant cost, if any, to the Owner shall be paid for by BRANCH.
- B. When the Owner orders changes by Change Order which have the potential to impact the Construction milestones or Specific Dates stipulated in the Agreement, a Revised Network will be prepared by BRANCH and provided to the Owner for concurrence or revision. After the revised network has been mutually agreed upon, it will be incorporated into a revised Detailed Project Construction Schedule, to be compiled and produced by BRANCH. Change Order logic will affect only those activities and performance dates directly concerned. The revised network will reflect potential schedule impacts until actual impacts can be fully implemented into the network.
- C. Any change to the approved Detailed Project Construction Schedule must be approved in writing by the Owner and BRANCH.
- D. Neither the updating or revision of the approved Detailed Project Construction Schedule nor the submission, updating, change or revision of any report or schedule submitted to the Owner by BRANCH under this Section nor the Owner's review or non-objection of any such report or schedule shall have the effect of amending or modifying, in any way, the Contract Time, any Contract Completion Date, or Contract Milestone Dates or of modifying or limiting in any way BRANCH's obligations under this Contract.

2.03 FLOAT TIME

- A. Float or slack time is defined as the amount of time between the earliest start date and the latest start date or between the earliest finish date and the latest finish date of a chain of activities on the Detailed Construction Network. Float or slack time is not for the exclusive use or benefit of either BRANCH or the Owner. BRANCH's work shall proceed according to early start dates, and the Owner and Design Consultant shall have the right to reserve and apportion float time according to the needs of the project. BRANCH acknowledges and agrees that actual delays, affecting paths of activities containing float time, will not have any affect upon contract completion times, providing that the actual delay does not exceed the float time associated with those activities.
- B. Extensions of time for performance as described in the Agreement will be granted only to the extent that the time adjustment for the activity or activities affected by any condition or event which entitles BRANCH to a time extension exceeds the total float or slack along the path of activities affected at the time of the owner's authorization to proceed with the Change Order or the commencement of any delay or condition for which an adjustment is warranted under the Agreement. Impact to float will be finally determined at Owner's Authorization to Proceed and not before.

2.04 REQUESTED TIME ADJUSTMENT SCHEDULE:

- A. The updated approved Detailed Project Construction Schedule submitted by BRANCH shall not show a completion date later than the Agreement, subject to any time extensions approved by the Owner. If BRANCH believes it is entitled to an extension of the Contract Time under the Agreement, BRANCH shall submit to the Owner and Design Consultant, a separate schedule analysis (entitled "Requested Time Adjustment Schedule") indicating suggested adjustments in the Contract Time which should, in the opinion of BRANCH, be made in accordance with the Agreement by time extension, due to changes, delays or conditions occurring during the past month or previously, or which are expected or contemplated by BRANCH (whether such conditions are excusable under the Agreement or are alleged to be due to fault of BRANCH or Owner). This separate schedule, if submitted, shall be time-scaled utilizing a computer generated and computer-drawn network analysis schedule, unless otherwise approved by the Owner, and shall be accompanied or preceded by a formal time extension request as required by the Agreement and a detailed narrative justifying the time extension requested. All time extension requests must be submitted, in writing, to the Owner within twenty-one (21) days of the event causing the potential delay or extension in order to be accepted for review and consideration by the owner. Actual Delays in relation to the time extension requested will be submitted after the delay condition has been completed.
- B. The Owner shall have any obligation to consider any time extension request unless the requirements of the Agreement are complied with. The Owner shall not be responsible or liable to BRANCH for any constructive acceleration due to failure of the Owner to grant time extensions under the Agreement should BRANCH fail to comply with the submission requirements and the justification requirements of this Agreement for time extension requests. BRANCH's failure to perform in accordance with the approved Detailed Project Construction Schedule shall not be excused, nor be chargeable to the Owner, because BRANCH has submitted time extension requests or a "Requested Time Adjustment Schedule."

2.05 COORDINATION

- A. BRANCH shall coordinate its work and that of the Contractors and shall cooperate fully with the Owner in maintaining orderly progress toward completion of the work as scheduled. BRANCH's decisions regarding priority between the work of the contractors at the site shall be final. If BRANCH's critical path work is delayed by the Owner, BRANCH shall submit any required time extension requests to the Owner in accordance with the Agreement.
- B. The milestone dates referred to in the Agreement for delivery of Owner-furnished equipment and materials and interface activities of other Contractors on the site are based on dates set forth in separate contracts with the Owner.

- C. Failure of Owner-furnished equipment and materials to arrive as scheduled, or failure of other construction contractors to meet their schedule, shall not be justification for an extension of time, except where such failure causes, in the opinion of the Owner a delay in BRANCH's critical path work, in which case the provisions of the Agreement regarding extensions of time and extra work shall apply.
- D. BRANCH shall keep itself, and its contractors and subcontractors, advised at all times during the course of the Work regarding delivery status of Owner-furnished equipment and materials and of the progress of construction work being performed under separate contracts.
- E. The Owner will, upon written request by BRANCH, furnish delivery information which may be available to the Owner.

2.06 SCHEDULE OF OFF-SITE ACTIVITIES

- A. BRANCH shall include in its Detailed Project Construction Schedule all procurement related activities which lead to the delivery of materials to the site in a timely manner. Upon written approval by the Owner, these activities may be submitted as a separate Off-Site Activities Schedule, properly correlated to the Detailed Construction Project Schedule. The schedule of off-site activities shall include, but is not limited to, the following:
 - 1. Dates for submittals, ordering, manufacturing or fabricating, and delivery of equipment and materials. Long lead items requiring more than one month between ordering and delivery to site shall be clearly noted;
 - 2. All significant activities to be performed by or for BRANCH during the fabrication and erection/installation in a plant or on a job site, including materials/equipment purchasing, delivery; and
 - 3. Contractor's drawings and submittals to be prepared and submitted to the BRANCH's Design Consultant.
- B. BRANCH shall be solely responsible for expediting the delivery of all material to be furnished by BRANCH so that the construction progress shall be maintained according to the approved Detailed Project Construction Schedule for the Work as approved by the Owner.
- C. The Owner shall be advised in writing by BRANCH whenever it is anticipated by BRANCH that the delivery date of any material and/or equipment will be later than the delivery date shown on the schedule, subject to schedule updates.
- D. Submittals, equipment orders and similar items are to be treated as schedule activities.
- E. BRANCH, in developing its Off-Site and Procurement Schedules, will ensure that off-site activities do not control the critical path of on-site activities.

2.07 BRANCH COVENANTS AND GUARANTEES

- A. BRANCH covenants and guarantees that it will not:
 - 1. Misrepresent to the Owner its planning, scheduling, or execution of the Work;
 - 2. Utilize schedules materially different from those made available by BRANCH to the Owner or any Subcontractor or separate Contractors for the direction, execution and coordination of the Work, or which are not feasible or realistic.
 - 3. Prepare schedules, updates, revisions or reports for the work which do not accurately reflect the actual intent or reasonable and actual expectations of BRANCH and its Contractors and Subcontractors as to:
 - a. The sequences of activities,
 - b. The duration of activities,
 - c. The responsibility of activities,

- d. Resources availability,
- e. Labor availability or efficiency,
- f. Foreseeable weather conditions,
- g. The percentage complete of any activity,
- h. Completion of any item of work or activity,
- i. Project milestone completion,
- j. Delays, slippage's, or problems encountered or expected,
- k. Subcontractor requests for time extensions or delay claims of subcontractors,
- l. Float time

Council Letter

City of Danville, Virginia



CL - 28

NEW BUSINESS C.

City Council REGULAR MEETING

Meeting Date: March 7, 2023

Subject: Appropriation of Opioid Settlement Funds

From: Henrietta Weaver, Budget Director

COUNCIL ACTION

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance by Increasing Revenues from the National Opioids Settlement Trust and Opioid Abatement Authority in the Amount of \$1,087,500 and Appropriating the Same.

FIRST READING

SUMMARY

The City of Danville, as a participant in the settlement reached by the Commonwealth of Virginia against opioid manufacturers and distributors, has begun to receive its direct share of settlement funds from the National Opioids Settlement Fund Trust. An estimated \$745,715 will be received in direct payments from the Trust and additional amounts estimated at \$341,786 is anticipated from the Opioid Abatement Authority (OAA). Of the total amount expected from the OAA \$68,357 is in the form of incentive payments for spending all settlement funds in accordance with OAA requirements. An estimated total of \$1,087,500 is expected to be received in annual installments through Fiscal Year 2039.

BACKGROUND

The opioid epidemic that has cost thousands of human lives across the country, also impacts the City of Danville by adversely impacting the delivery of emergency medical, law enforcement, criminal justice, mental health and substance abuse services, and other services by the City's various departments and agencies.

In August 2021, the Commonwealth of Virginia reached a global settlement of claims against many of the opioid entities on behalf of itself and its participating localities, including Danville. In order to participate in the settlement and receive distributions of a portion of the settlement funds, Danville released its claims and entered into a Virginia Opioid Abatement Fund and Settlement Allocation Memorandum of Understanding with the Commonwealth and other localities (the "Settlement MOU"). City Council approved the Settlement MOU by Resolution 2021-12.06 adopted December 7, 2021.

RECOMMENDATION

It is recommended that City Council adopt the attached ordinance accepting settlement funds from the National Opioids Settlement Fund Trust and Opioid Abatement Authority and appropriating said funds to be used for purposes that meet the requirements of the memo of understanding.

Attachments

1. Ordinance

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2023 - _____._____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE BY INCREASING REVENUES FROM THE NATIONAL OPIOIDS SETTLEMENT TRUST AND OPIOID ABATEMENT AUTHORITY IN THE AMOUNT OF \$1,087,500 AND APPROPRIATING THE SAME.

WHEREAS, the City of Danville is the recipient of opioid settlement funds from the National Opioids Settlement Trust and Opioid Abatement Authority in the amount of \$1,087,500 to be received in annual installments through Fiscal Year 2039; and

WHEREAS the funding will be used for the purposes approved by the Virginia Opioid Fund and Settlement Allocation Memorandum of Understanding; and

WHEREAS, the funds will be posted to a project account in the Special Revenue Fund set up to hold funds which will be transferred to projects as determined.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia, that the Fiscal Year 2023 Budget Appropriation Ordinance be, and the same hereby is, amended, by increasing revenues to anticipate the receipt of funds in the amount of \$1,087,500, such revenue and appropriation to be as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Virginia Opioid Fund Recoveries and Rebates	61792000-43810	<u>\$1,087,500</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Virginia Opioid Fund	61792999-50	<u>\$1,087,500</u>

AND BE IT FURTHER ORDAINED, that this appropriation shall be a continuing appropriation and shall carry forward from year to year until expended for the purpose for which appropriated; and

BE IT FURTHER ORDAINED, that a flexible budget is hereby authorized whereby appropriations may be increased to the extent that actual revenues differ from the original budget amount; and

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

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:

City Attorney

Council Letter

City of Danville, Virginia



CL - 339

NEW BUSINESS D.

City Council REGULAR MEETING

Meeting Date: March 7, 2023

Subject: State Aviation Capital Grant funding

From: Marc Adelman, Director of Transportation Services

COUNCIL ACTION

An Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance to Provide for Additional State Aviation Funding in the Amount of \$260,409 with a Local Share in the Amount of \$129,774 for a Total Amount of \$390,183 and Appropriating Same.

FIRST READING

SUMMARY

The Virginia Department of Aviation administers an Airport Capital Grant program that provides funding for various projects. State funding participation is based on the project type. Last month, the state recommended funding for two different grant requests involving the replacement of the terminal building roof at the Danville Regional Airport and for design services related to the second phase of the South Ramp Rehabilitation project. The total cost for both projects is \$390,183. State matching funds have been approved in the amount of \$260,409 and the local match requirement is \$129,774 to complete both projects.

BACKGROUND

Two projects are currently underway at the Danville Regional Airport that involve renovations to the terminal building and rehabilitating the south ramp. Last summer, a number of roof leaks were detected inside the terminal building and the architect working on the terminal building renovation project recommended that the roof should be replaced. Twenty years ago, major repairs were completed to the terminal building roof that involved covering the roof with sealant material. Due to the age and condition of the roof, a grant request was submitted to the Virginia Department of Aviation to provide funding to replace the existing roof. The state approved providing funding that would cover 65% of the cost to replace the roof.

In addition to the terminal building renovation project, the airport's south ramp is also under construction. In August 2022, partial grant funding was approved by the Federal Aviation Administration and the Virginia Department of Aviation to rehabilitate the south ramp. Additional federal and state grant funding will be pursued this summer to complete Phase 2 of the south ramp project. The second phase of the project will involve paving the ramp and is expected to cost approximately \$3,000,000 to complete. The cost to complete Phase 1 of the project is approximately \$2,000,000. The Virginia Department of Aviation also recommended funding for an engineering firm to develop bid documents this spring related to bidding Phase 2 of the south ramp rehabilitation project,

which will cover 80% of the cost of the design services project.

RECOMMENDATION

It is recommended that City Council approve an Ordinance Amending the Fiscal Year 2023 Budget Appropriation Ordinance for State Aviation Capital grant funding and the local share and appropriating the same. The local share for this project will be provided through Fiscal Year 2023 Undesignated Capital Improvement funds.

Attachments

1. Ordinance
-

PRESENTED: _____

ADOPTED: _____

ORDINANCE NO. 2023 - _____._____

AN ORDINANCE AMENDING THE FISCAL YEAR 2023 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR ADDITIONAL STATE AVIATION FUNDING IN THE AMOUNT OF \$260,409 WITH A LOCAL SHARE IN THE AMOUNT OF \$129,774 FOR A TOTAL AMOUNT OF \$390,183 AND APPROPRIATING SAME.

WHEREAS, design services are required to complete bid documents related to Phase 2 of the South Ramp Rehabilitation project; and

WHEREAS, the existing condition of the terminal building roof requires replacement; and

WHEREAS, the design services project will be funded at eighty percent with state capital aid and the replacement of the terminal roof will be funded at sixty-five percent with state capital aid.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia that the Fiscal Year 2023 Budget Appropriation Ordinance be, and it is hereby, amended by increasing revenues for grants from the Virginia Department of Aviation in the amount of \$260,409 with a local match of \$129,774 for a total of \$390,183, such funds to be appropriated as follows:

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
South Ramp Phase II Design State Aviation Funds	61848000-45712	\$ 36,221
Local Share Recoveries and Rebates	61848000-43810	<u>\$ 9,056</u>
	Total	<u>\$ 45,277</u>

ANTICIPATED REVENUES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Airport Terminal Roof Replacement State Aviation Funds	61849000-45712	\$ 224,188
Local Share		
Recoveries and Rebates	61849000-43810	\$ 26,205
Transfer In from General Fund	61849000-6101	94,513
	Sub-total	\$ 120,718
	Total	<u>\$ 344,906</u>

ANTICIPATED EXPENDITURES

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
South Ramp Phase II Design	61848999-50	<u>\$ 45,277</u>
Airport Terminal Roof Replacement	61849999-50	<u>\$ 344,906</u>

AND BE IT FURTHER ORDAINED that a transfer from Undesignated Capital Project Fund revenue and appropriation is hereby authorized to cover the local share as follows:

TRANSFER FROM

<u>Description</u>	<u>Account No.</u>	<u>Amount</u>
Undesignated Capital Improvement Funds		
Recoveries and Rebates	60000000-43810	(\$ 35,261)
Transfer In from General Fund	60000000-6101	<u>(\$ 94,513)</u>
	Sub-total	<u>(\$ 129,774)</u>
Unallocated	60000000-6999	(\$ 129,774)

AND BE IT FURTHER ORDAINED that this appropriation shall be a continuing appropriation and shall carry forward from year to year until expended for the purpose for which appropriated; and

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

APPROVED:

Mayor

ATTEST:

Clerk

Approved as to
Form and Legal Sufficiency:

City Attorney