

October 11, 2022



CITY COUNCIL AGENDA

City Council Meeting - 7:30 p.m.

Council Chamber | City Hall, 900 Church Street, Lynchburg, VA 24504

IV. Invocation

Vice Mayor Wright

V. Recognitions

- Domestic Violence Awareness Month
- Fire Prevention Week

VI. Public Hearing

- 7) Consideration of adopting Resolution #R-22-___ approving the Dearington Neighborhood Plan as part of the *Comprehensive Plan 2013-2030*.
- 8) Consideration of adopting Resolution #R-22-___ authorizing a Fuel Farm Lease Agreement between the City of Lynchburg and Freedom Aviation.
- 9) Consideration of adopting Resolution #R-22-___ authorizing a lease agreement between the City of Lynchburg and ARINC, Inc.

VII. Public Comment

**Public Comment Addendum will be posted separately after the citizen sign-up deadline of Friday at noon preceding the Council meeting.*

VIII. General Business

- 10) Consideration of adopting Ordinance #O-22-___ approving the proposed boundary adjustments to the James River Arts & Cultural District.
- 11) Consideration of a closed meeting to further discuss the evaluations of the City Manager, the City Attorney, and the Clerk of Council pursuant to Section 2.2-3711(A)(1) of Code of Virginia, 1950, as amended.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 11, 2022**

AGENDA ITEM #: **7**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Dearington Neighborhood Plan

RECOMMENDATION: Approval of the plan as part of the *Comprehensive Plan 2013-2030*.

SUMMARY: The Dearington Neighborhood Plan was developed by City staff and based on input received from the neighborhood at two public events, steering committee meetings, a neighborhood survey, and numerous conversations over the years. The plan effort was modified due to the COVID-19 pandemic and a concern over ensuring the meetings would be inclusive enough with varying comfort levels in gathering.

The draft plan recommendations have a focus on City-owned property, programming, and right-of-way, mainly from a recreation and parks perspective with the aim of transforming previously neglected spaces into valuable neighborhood assets that help the Dearington Neighborhood reach its full potential.

PRIOR ACTION(S):

September 14, 2022: The Planning Division recommended adoption of the Dearington Neighborhood Plan.

The Planning Commission recommended adoption (5-0, with 1 member absent, Light and 1 vacancy) of the Dearington Neighborhood Plan.

August 23, 2022: City Council held a work session for the Dearington Neighborhood Plan.

FISCAL IMPACT: None associated with adoption of the Neighborhood Plan. It is expected that implementation of the plan's recommendations would use a variety of neighborhood, non-profit, grant and public resources.

CONTACT(S): Rachel Frischeisen, Acting City Planner – 455-3900
Tom Martin, Acting Director Community Development – 455-3900

ATTACHMENT(S):

- Resolution
- [Dearington Neighborhood Plan Draft \(lynchburgva.gov\)](https://www.lynchburgva.gov)
Note: Due to file size, the Dearington Neighborhood Plan is included as a web link, rather than an attachment to this document
- Presentation Slides
- Planning Commission Minutes – September 14, 2022
- Planning Commission Packet – September 14, 2022
 - Memorandum
 - Resolution
 - Presentation slides
- Planning Commission Speaker Sign in Sheet – September 14, 2022

REVIEWED BY: MMB WCB

RESOLUTION:

A RESOLUTION ADOPTING THE DEARINGTON NEIGHBORHOOD PLAN AS PART OF THE CITY OF LYNCHBURG'S COMPREHENSIVE PLAN 2013-2030.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the Dearington Neighborhood Plan is hereby approved and adopted as part of the City's *Comprehensive Plan 2013-2030*.

Adopted:

Certified: _____
Clerk of Council



Dearington Neighborhood Plan City Council Public Hearing

October 11, 2022



OVERVIEW

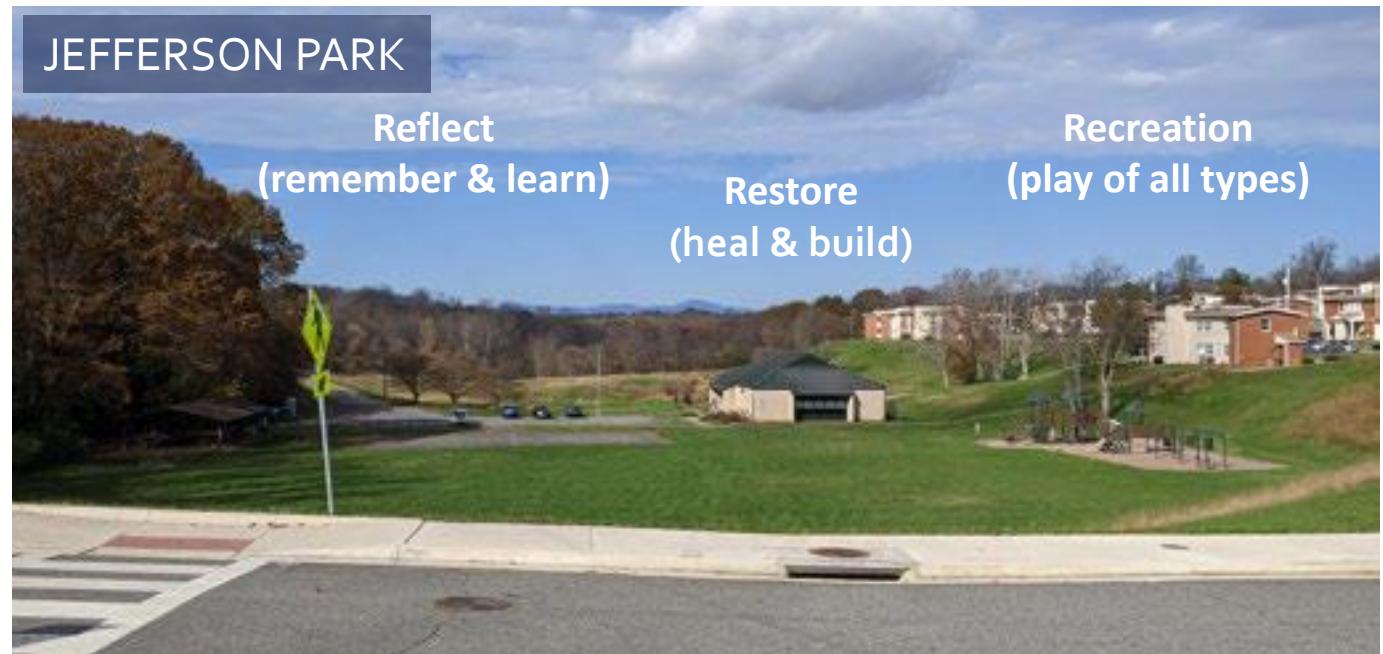


JEFFERSON PARK

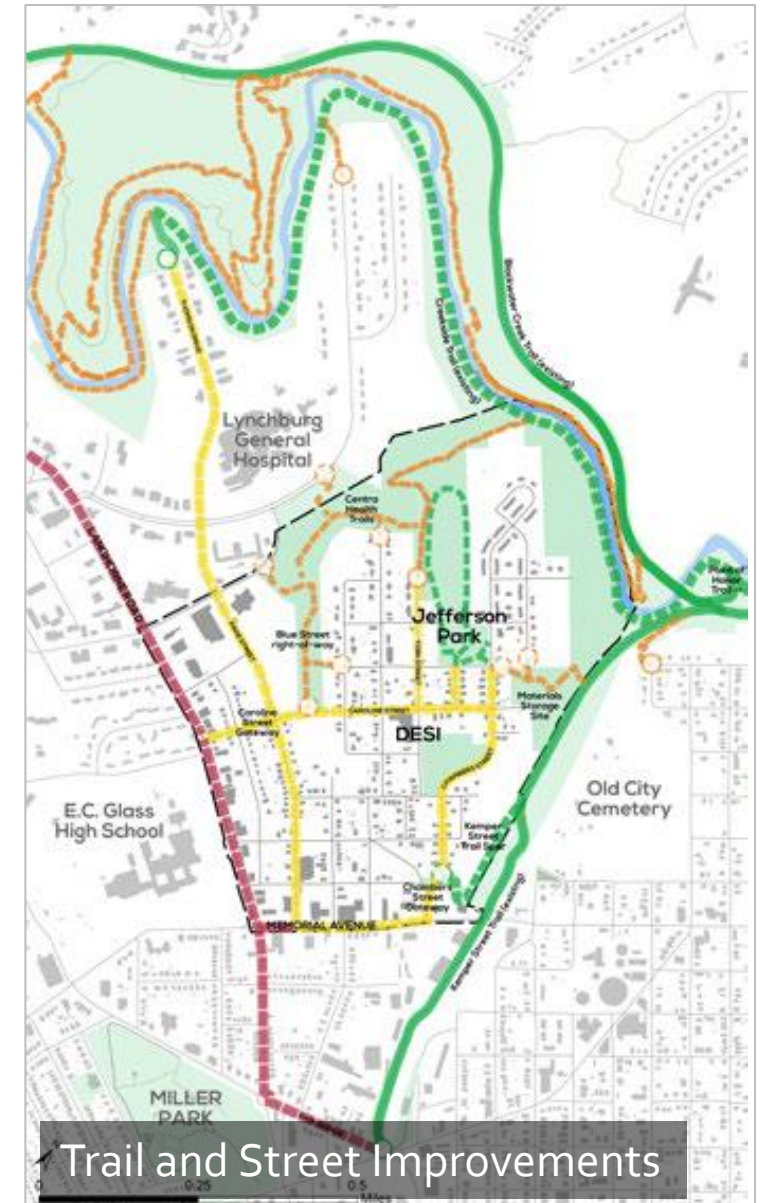
Reflect
(remember & learn)

Restore
(heal & build)

Recreation
(play of all types)

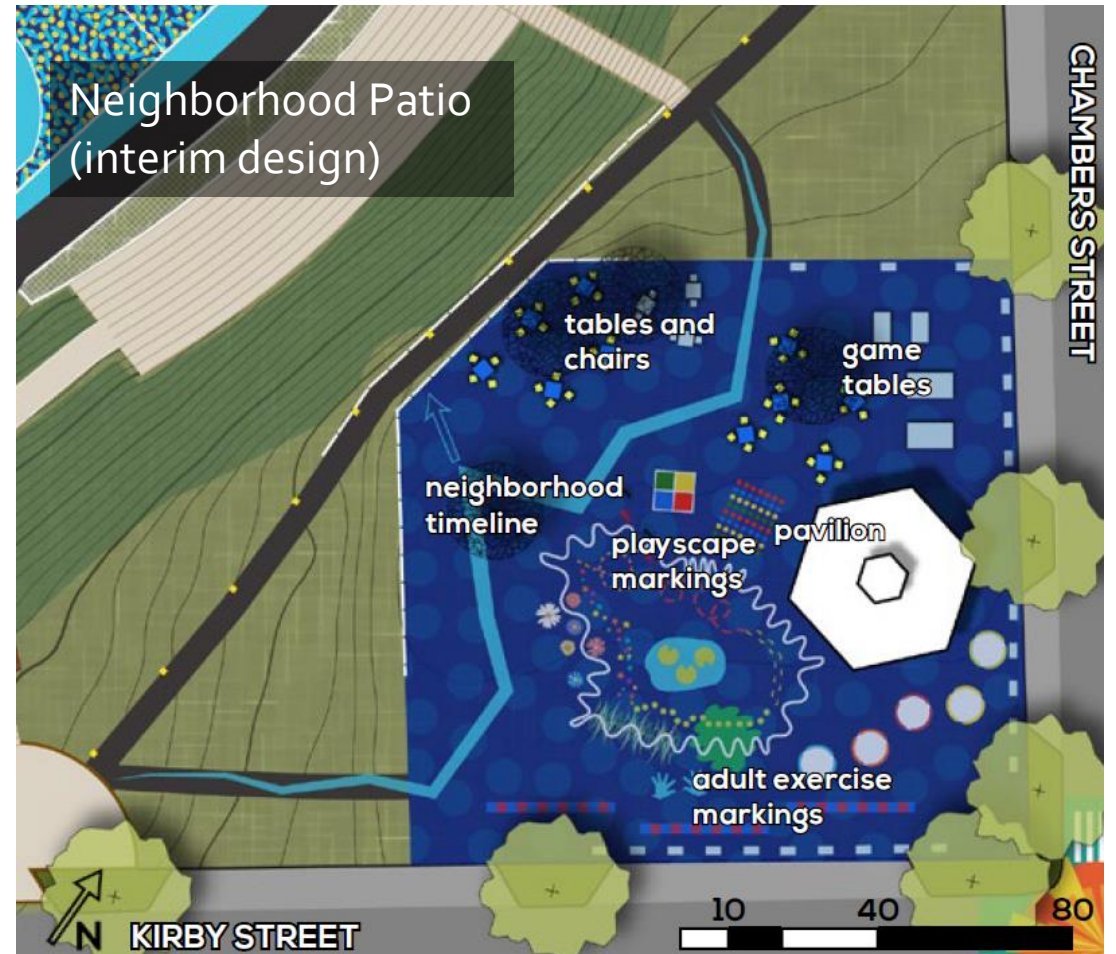


PLAN HIGHLIGHTS



NEXT STEPS

- Future CIP and Grant Funding
- CDBG Grant - Design & Construction Bidding
 - Interim Neighborhood Patio and permanent pavilion
 - Amphitheater Improvements
 - Small loop trail
 - Athletic lighting on basketball courts
 - Kirby Street ADA access (funding depending)
- Landfill Methane Monitoring
 - Recently completed on 9/8/22; readings were well below VDEQ regulatory limits
 - Future monitoring recommended if any excavation or penetration of the landfill cover material occurs, or if the site's use changes significantly



MINUTES OF THE SEPTEMBER 14, 2022 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

Consideration of adopting the Dearington Neighborhood Plan as part of the City's Comprehensive Plan 2013 -2030. The plan proposes significant investment in Jefferson Park, including a "neighborhood patio" with a pavilion and splashpad on the former tennis courts, a multi-use gymnasium, marking the Jefferson Park Pool site, numerous park trails and access improvements, and enhancements to many recreational facilities. Neighborhood recommendations include improving streets with pedestrian and bicycle infrastructure to improve active transportation and calm traffic, gateway improvements to Chambers Street and Caroline Street, and redeveloping the City storage site at 200 Pulaski Street. The Future Planning Efforts chapter includes recommendations for housing, sidewalks, and changes to the Future Land Use Map and Zoning Ordinance that will be proposed for adoption at a later date.

Ms. Rachel Frischeisen, Acting City Planner, provided the following summary to the Commission. The Dearington Neighborhood Plan has been in development for approximately three (3) years. A majority of the work has been done by City staff, particularly Ms. Anne Nygaard, and other members of the Urban Design team. The plan development was guided by neighborhood input as well as a steering committee. Hill Studio also assisted by providing some illustrations to help with the visualization of the plan. University of Virginia Professor, Elgin Cleckley also assisted in leading the design thinking workshop. The neighborhood is located within the boundaries of Memorial Avenue and Langhorne Road. The major landmarks in this area are the Dearington Elementary School, the Dearington Apartments, and Jefferson Park. Jefferson Park was historically home to the only public pool open to African Americans during the period of segregation. When the City chose to close its pools rather than to desegregate, it was filled in and used as a landfill. This history ties into some of the plan recommendations.

The plan process was set up in a five-step process which was to organize, learn, create, finalize, and implement the plan. The neighborhood engagement consisted of working with a steering committee, an open house, a survey, a website, and a neighborhood meeting to review the plan. The vision of the plan was based on the feedback received during these events and edited after being reviewed by the steering committee. The main goals of the plan are to improve transportation options, transform vacant land, remember the history of the area, make the park a unifying feature for the neighborhood, make Jefferson Park a premier Lynchburg park, take advantage of the natural topography and views, and increase the park use by making it attractive and accessible for everyone.

The plan purpose is to focus park activity at the corner of Chambers and Kirby Streets. A gymnasium will be built into the park and set into the hillside on York Street. It will include fitness space as well as structured parking below. A neighborhood patio will be located on the corner of Chambers and Kirby Streets. The short-term plan for this area includes a pavilion with wifi and charging stations. The ten (10) year plan for this area will include a splash pad, which brings back the water aspect of the park. The former pool will be marked with brightly colored survey whiskers to make it visible to the public. Signage will also mark the area to describe the history and significance of the pool. A basketball court was completed earlier this year near the amphitheater to provide a community space that includes the revitalization of the amphitheater. The plan also proposes a paved trail connection at the Chambers Street gateway. It will also restore a trail that once connected to Tinbridge Hill, as well as connects to Lynchburg General Hospital. The plan will also create loops and connection to on-street trails. Page Street is a recommended-on street trail and is currently in need of bike and pedestrian improvements. The Chambers Street gateway is located off of 5th Street and is where the Kemper Street trail can be tied into the City Public Works site. The plan shows improvements here in dealing with stormwater runoff, removing the chain link fence, and installing landscaping. Future planning efforts will include public transportation, sidewalk priorities, traffic calming, land use, neighborhood housing, and Dearington Apartments. A housing study is currently underway looking at the feasibility of row-houses in R-3, Medium Density Residential districts. The next steps will be working towards including these projects in the future Capital Improvements Plan (CIP) and obtaining grant funding. Staff is currently working on current CDBG grants. Within the year the goal is to have constructed the temporary patio as well as the pavilion, a small loop trail around the basketball court, lighting around this area, amphitheater improvements and the design of the ADA access from Kirby Street.

Commissioner Perault asked for more specification on the gymnasium.

Ms. Frischeisen stated that there is a need for a gymnasium because there is no current dedicated gymnasium space in the City that is not a shared space with the schools or City Armory. She noted that the neighborhood feedback that was received indicated that this was an important asset to the community as well as the entirety of the City.

Commissioner Perault asked it will simply be an indoor basketball court or if it will have additional uses.

Ms. Frischeisen replied that the specific amenities that the gymnasium will depend on further conversations with the neighborhood. She noted that the parking is a necessity because staff anticipates this being a highly used facility.

Commissioner Perault asked if it will be available to anyone in the City.

Ms. Frischeisen replied this is correct.

Commissioner Perault stated that this will need more research because of the high cost it will be.

Ms. Frischeisen agreed and noted that it will be a City-wide asset rather than just a neighborhood asset.

Commissioner Bowden noted that the space in front of amphitheater may be used for soccer or baseball field. He asked if it is Parks and Recreation or the residents of the neighborhood requesting the gymnasium.

Ms. Frischeisen replied that it is both a resident and Parks and Recreation request. She stated that the plan notes it will be approximately two hundred (200) parking spaces, classrooms, the spaces fronting the park, a fitness center, and an indoor basketball court on the top floor.

Commissioner Marion asked what the field in front of the amphitheater will be used for.

Ms. Frischeisen replied that the basketball court has already been constructed in this location. She noted that there still much open space in the park.

Commissioner Bowden noted that multi-use space is a good asset.

Commissioner Marion asked if the splash pad location was previously a tennis court.

Ms. Frischeisen noted it is currently a tennis court and the neighborhood has requested a splash pad. The tennis court is a prime location for the neighborhood patio (which includes the splashpad), as it connects the neighborhood to the park. The plan notes that the City materials storage site could be developed into something like a tennis court if the neighborhood desires.

Commissioner Marion asked if the material storage site is currently off site.

Ms. Frischeisen replied that it is located off of Pulaski Street.

Chair Rogers asked if the on-street facility trail will be a separately paved bike path or a delineated lane.

Ms. Frischeisen replied it will most likely be a sidewalk but it is called an on-street trail because it is part of a bigger recreation loop.

Chair Rogers stated that City Code does not allow bikes on sidewalks.

Ms. Frischeisen stated that the final chapters speak to this and how they can utilize various sidewalks as separate bike lanes or a combination of uses.

Commissioner Marion asked if the private sector will be responsible in building the proposed row-houses.

Ms. Frischeisen replied that the housing study is currently looking at how the City could go about achieving this or if it is an option. The plan also makes a distinction between townhouses and row-houses. She stated the building of these would be the responsibility of the private sector. She noted that the City is currently looking at zoning requirements for this use.

Commissioner Johnson asked if the plan is still considered a concept once it is adopted. She also asked how it will be implemented.

Ms. Frischeisen replied the first step is to adopt the plan. The next step will be the implementation into the Capital Improvements Plan (CIP) and determining the priorities of the plan.

Mr. Martin stated that there is a CIP prioritization document that sets out a series of strategies as to how to rank projects. If this plan is adopted it will go onto the list of projects within the CIP. Prioritization will depend on factors such as environmental impact, transportation network improvements, alternative funding sources, and social equity.

Commissioner Johnson asked if there are many adopted plans that have not come to fruition.

Mr. Martin stated that there are some. He replied that the Campbell Avenue / Odd Fellows Plan. He stated that without the adoption of a plan there is no chance of improving an area. He stated that once a plan is adopted the City begins to work with the funding sources. He stated that Tinbridge Hill is a great example of finding a source to implement a plan.

Commissioner Bowden noted that there have been a number of these plans that have come through and the first step would be to make sure the updated Comprehensive Plan reflects the finding of these plans. He noted that given the CIP not everything will be done at the same time.

Mr. Martin replied that it is important to understand how the Comprehensive Plan and neighborhood plans work. He noted that the Comprehensive Plan is a wide look at the City while neighborhood plans are a very focused look on one area. The process of improving and implementing areas are through the Comprehensive Plan, the Zoning Ordinance, and the CIP. This plan takes the existing Comprehensive Plan and identifies any changes that may need to be worked on.

Commissioner Bowden noted that the row-houses seem to be a grey area in regards to zoning and they will want to consider this. He noted that he is very impressed with the work that has gone into this plan.

Commissioner Perault noted that he feels each plan that is presented to them continues to improve and is happy to see how much neighborhood participation has occurred. He asked how they can implement more connection to the Blackwater Creek Trail.

Tom Rogers replied that there are paved and earthen trails that connect to the Blackwater Creek Trail. He noted that connectivity to the hospital is important. He stated he would like to see the City make an effort to improve connections.

Commissioner Bowden made a motion to recommend the Dearington Neighborhood Plan to City Council for approval. The motion was seconded by Commissioner Marion, and approved by the following vote:

AYES:	Bowden, Johnson, Marion, Perault and Rogers	5
NOES:		0
ABSTENTIONS:		0
ABSENT:	Light	1



Memorandum

Planning Division • Community Development

900 Church Street
Lynchburg, Virginia 24504
P 434-455-3900

To: Planning Commission

From: Rachel Frischiesen, Planner II

CC: Mr. Wynter C. Benda, City Manager; Mr. Kent L. White, Acting Deputy City Manager; Mr. Matthew Freedman, City Attorney; Mr. Tom Martin, Acting Director of Community Development; Mr. J. Lee Newland, City Engineer; Ms. Cynthia Kozerow, Lynchburg Police Department; Battalion Chief Thomas Goode, Fire Marshal; Mr. Doug Saunders, Building Official; Mr. Kevin Henry, Zoning Administrator

Date: September 8, 2022

RE: Dearington Neighborhood Plan

The Dearington Neighborhood Plan is a product of the input received from neighborhood residents, citizen members of the project's Steering Committee, consultants, and City of Lynchburg staff working together to achieve a shared vision for growth in the neighborhood. The draft plan includes recommendations for significant investment in Jefferson Park, improvements to neighborhood streets and gateways, and the redevelopment of the City storage site.

The plan has been developed under the direction established by the City's Comprehensive Plan 2013 - 2030 to build strong neighborhoods; conserve the City's unique places and resources; conserve and interpret historic elements; enhance the attractiveness of gateways and travel corridors; and enhance mobility for all residents through safe and convenient access to transportation choices. To achieve this vision, the Dearington Neighborhood Plan is to be adopted as a supplement to the Comprehensive Plan 2013 - 2030; as such, it reinforces and extends its goals and policies.

At the September 14, 2022 Planning Commission meeting, city staff will present the plan findings/recommendations and answer questions from the Commission.

After discussion, it is the recommendation of the Planning Division that the plan be forwarded to Council for inclusion in the City's Comprehensive Plan 2013-2030.

If you have questions, please contact me at (434) 455-3900 or rachel.frischeisen@lynchburgva.gov.

Attachment: Resolution

RESOLUTION OF THE LYNCHBURG PLANNING COMMISSION

WHEREAS: The *Dearington Neighborhood Plan* has been developed under the direction established by the *Comprehensive Plan 2013 - 2030* to build strong neighborhoods; conserve the City's unique places and resources; conserve and interpret historic elements; enhance the attractiveness of gateways and travel corridors; and enhance mobility for all residents through safe and convenient access to transportation choices.

WHEREAS: The *Comprehensive Plan 2013-2030* recommends working with residents to develop community-based neighborhood plans that address neighborhood issues.

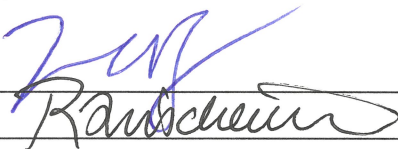
WHEREAS: The *Dearington Neighborhood Plan* has been prepared in collaboration with neighborhood residents and city departments.

WHEREAS: The *Dearington Neighborhood Plan* reflects the aspirations of the community, sets realistic goals and identifies specific recommendations to achieve those goals.

NOW THEREFORE BE IT RESOLVED by the Lynchburg Planning Commission that in order to promote the public necessity, convenience, general welfare and good zoning practice, the Planning Commission recommends to City Council, adoption of the *Dearington Neighborhood Plan* for inclusion in and as part of the *City's Comprehensive Plan 2013-2030*.

Adopted: _____

Certified: _____


Secretary, Lynchburg Planning Commission



Dearington Neighborhood Plan Planning Commission Public Hearing

September 14, 2022





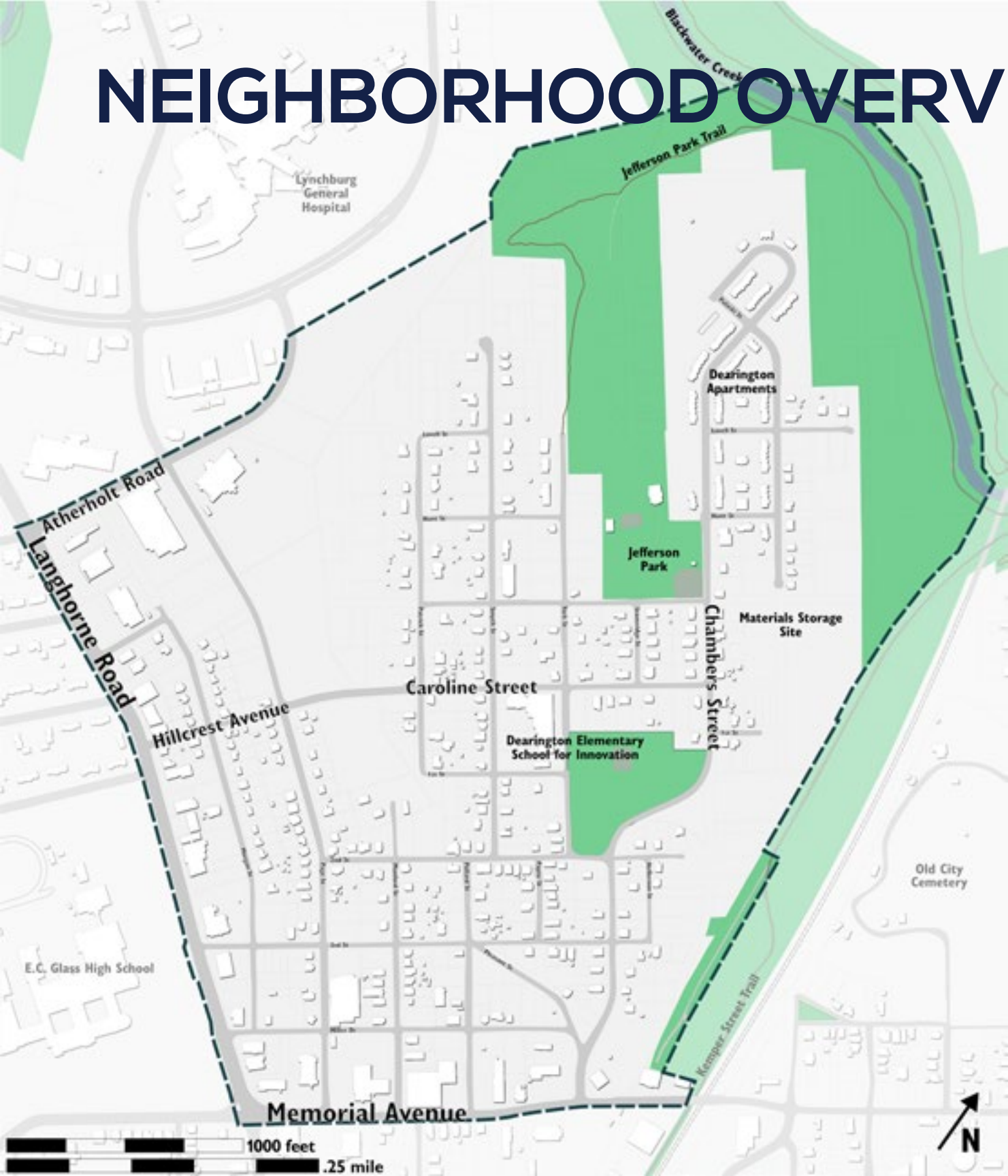
Includes the Jefferson Park Master Plan

AGENDA

- Neighborhood Overview
- Plan Process
- Plan Contents
 - Vision & Goals
 - Jefferson Park
 - Neighborhood Streets and Access
 - Neighborhood Land Use
- Next Steps and CDBG Program Work



NEIGHBORHOOD OVERVIEW

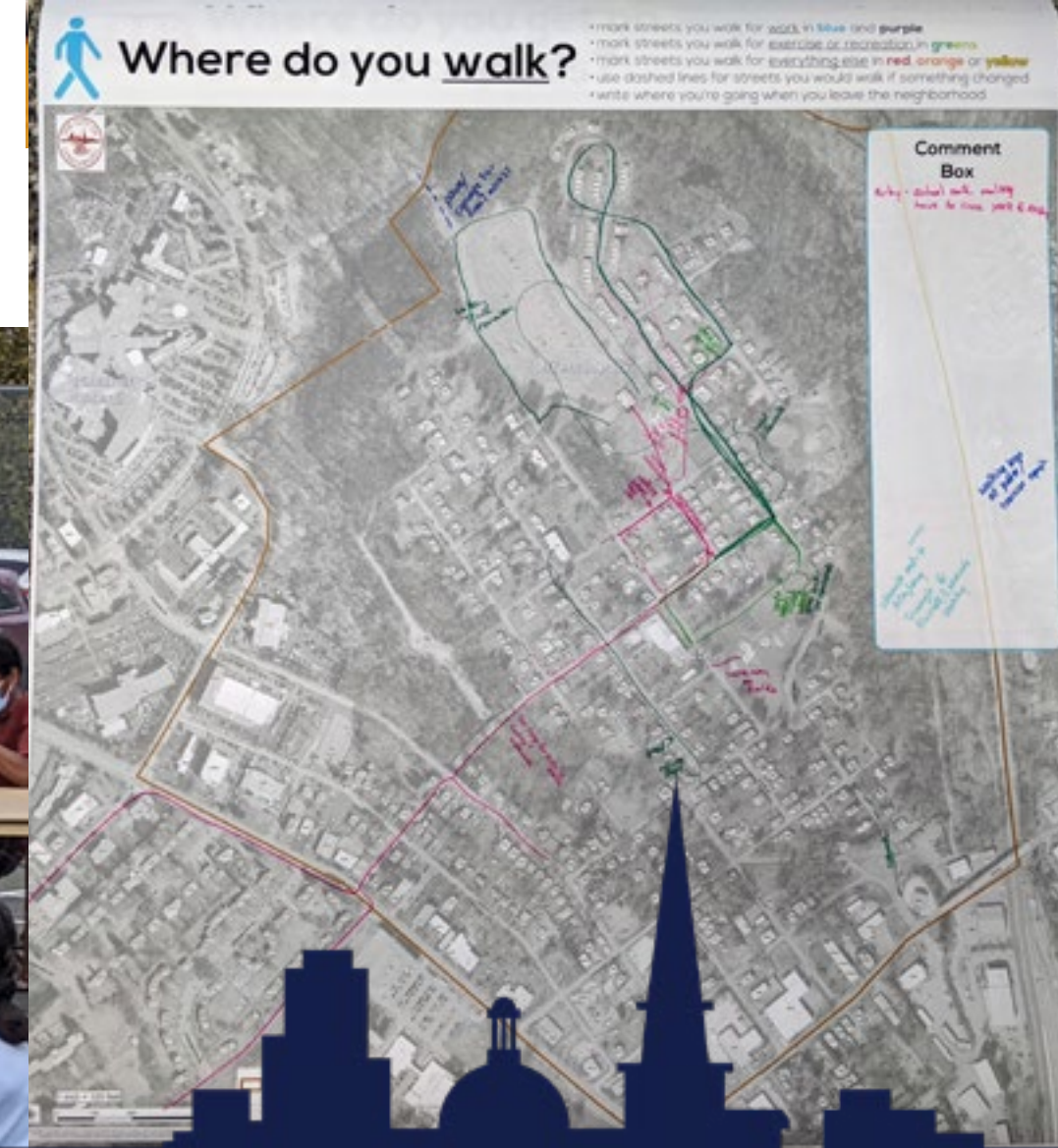


PLAN PROCESS



NEIGHBORHOOD ENGAGEMENT

- steering committee
- neighborhood open house
- neighborhood survey / Center reopening
- design thinking outdoor workshop
- HUB page
- neighborhood meeting to review plan



PLAN VISION

The Dearington Neighborhood will be home to safe, interconnected, well-designed park spaces that convey neighborhood history, invite neighbors and Lynchburg citizens to gather, and provide high-quality recreation spaces to neighborhood children of all ages. Remnants of past City transgressions will be turned on their head as renewed investment will transform previously neglected spaces into valuable assets. Jefferson Park specifically, the heart of the Dearington neighborhood, will provide opportunities to reflect (remember & learn), to restore (heal & build), and for recreation (play) of all types. This work will culminate in making the Dearington Neighborhood a stronger, healthier, and more meaningful place to live.

PLAN GOALS

- 1. Improve active transportation options (walking, biking, etc) by building trail connections on and off-street to nearby destinations, nearby trails, and well-traveled corridors.**
- 2. Transform vacant land in the neighborhood with limited development capabilities into recreational assets.**



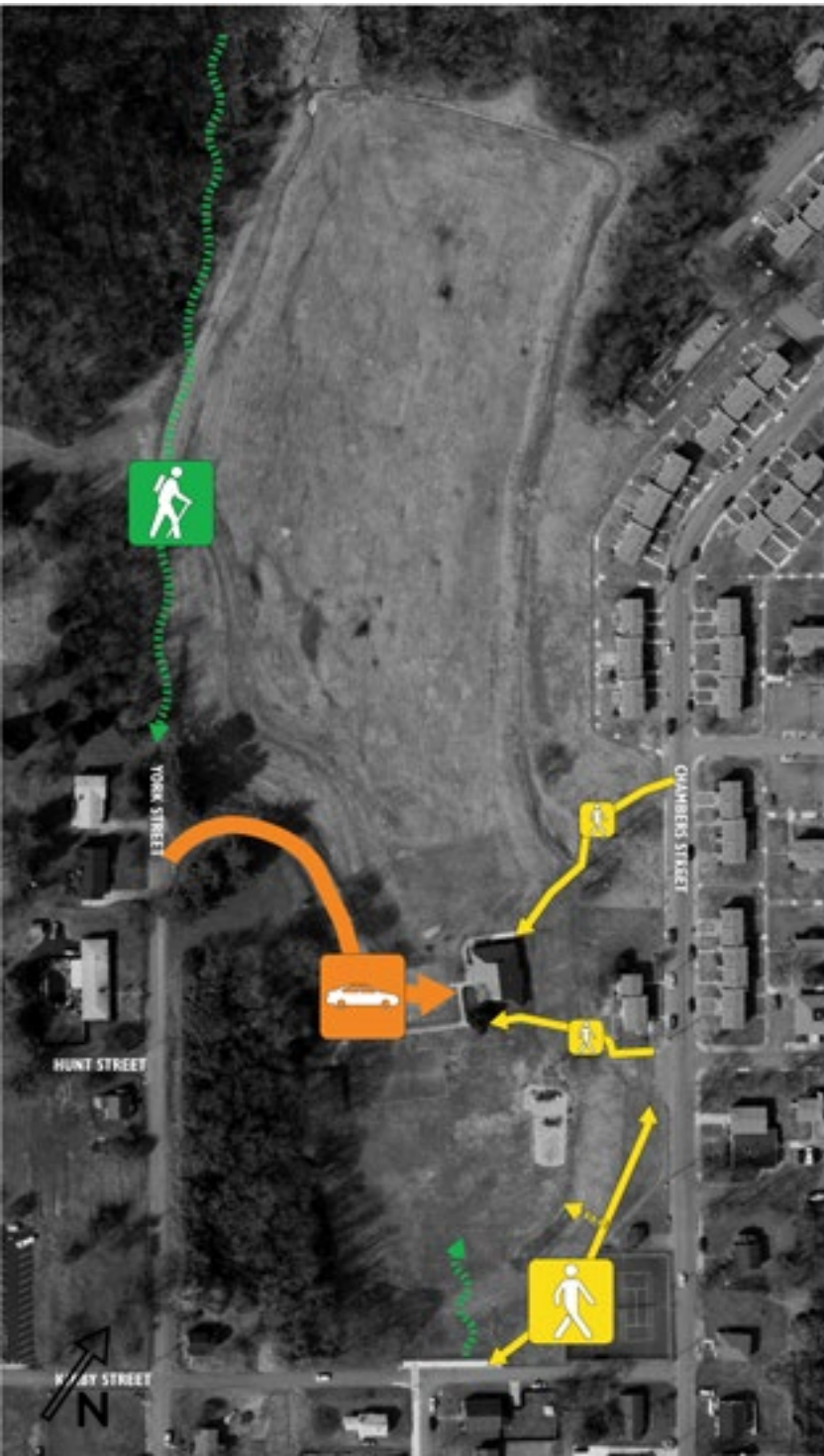
3. Remember the history of the place.
4. Make the park a unifying feature for the whole neighborhood, a gathering space for neighbors to come together.
5. Build upon already popular park uses both in Jefferson Park and elsewhere to create a premier Lynchburg Park.
6. Take advantage of natural topography and views.
7. Increase park use by making it attractive and accessible to everyone. This will require improving routes to the park, into the park, and within the park.



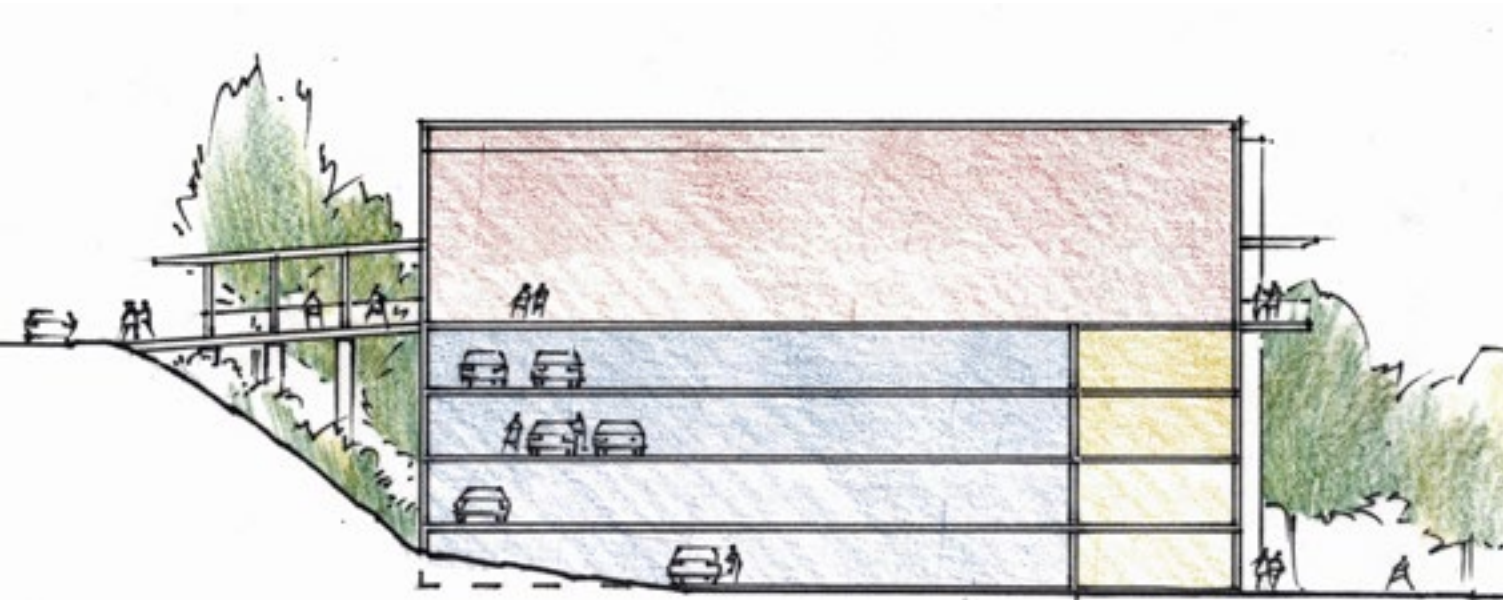
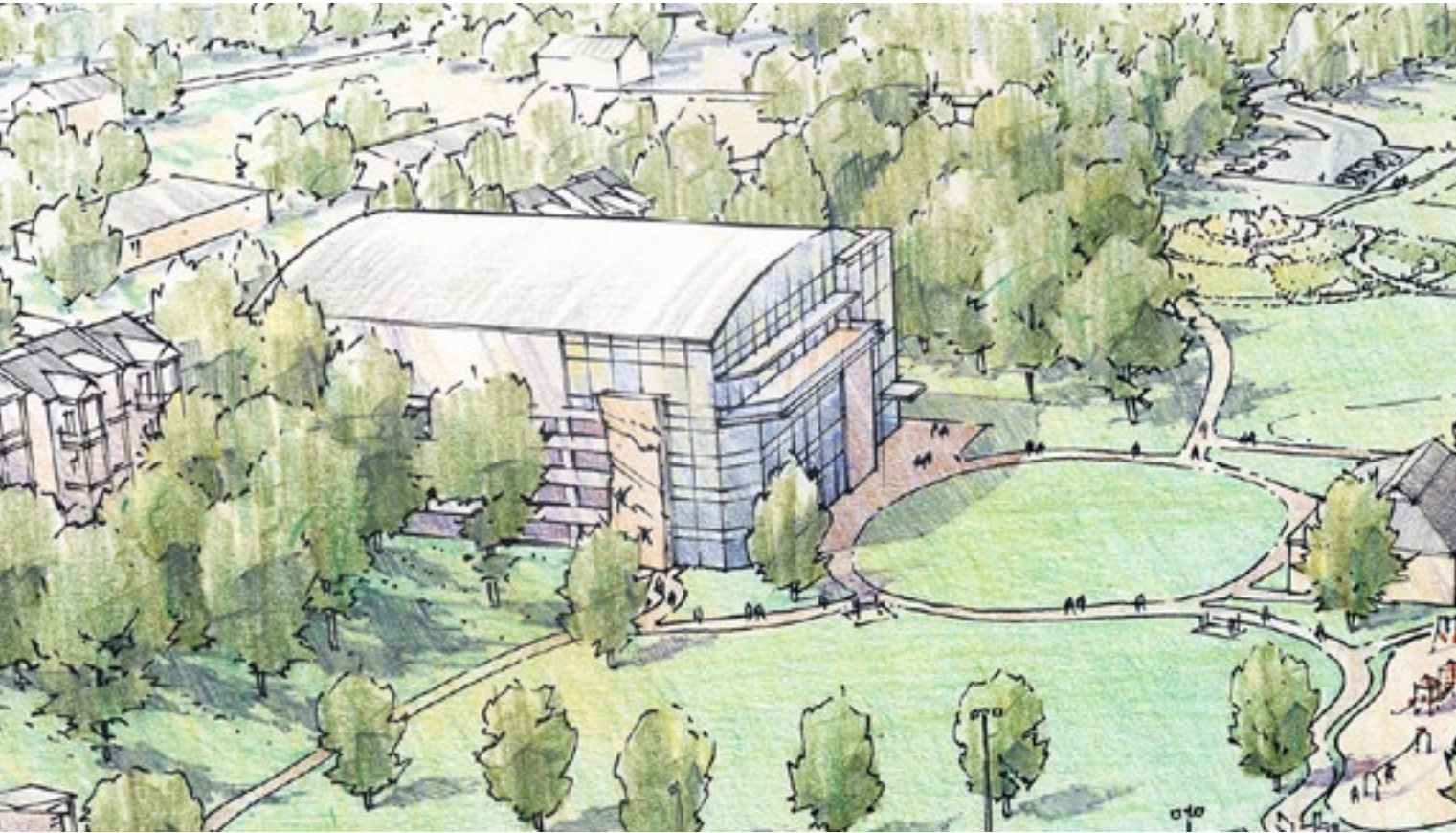
JEFFERSON PARK



PARK CIRCULATION



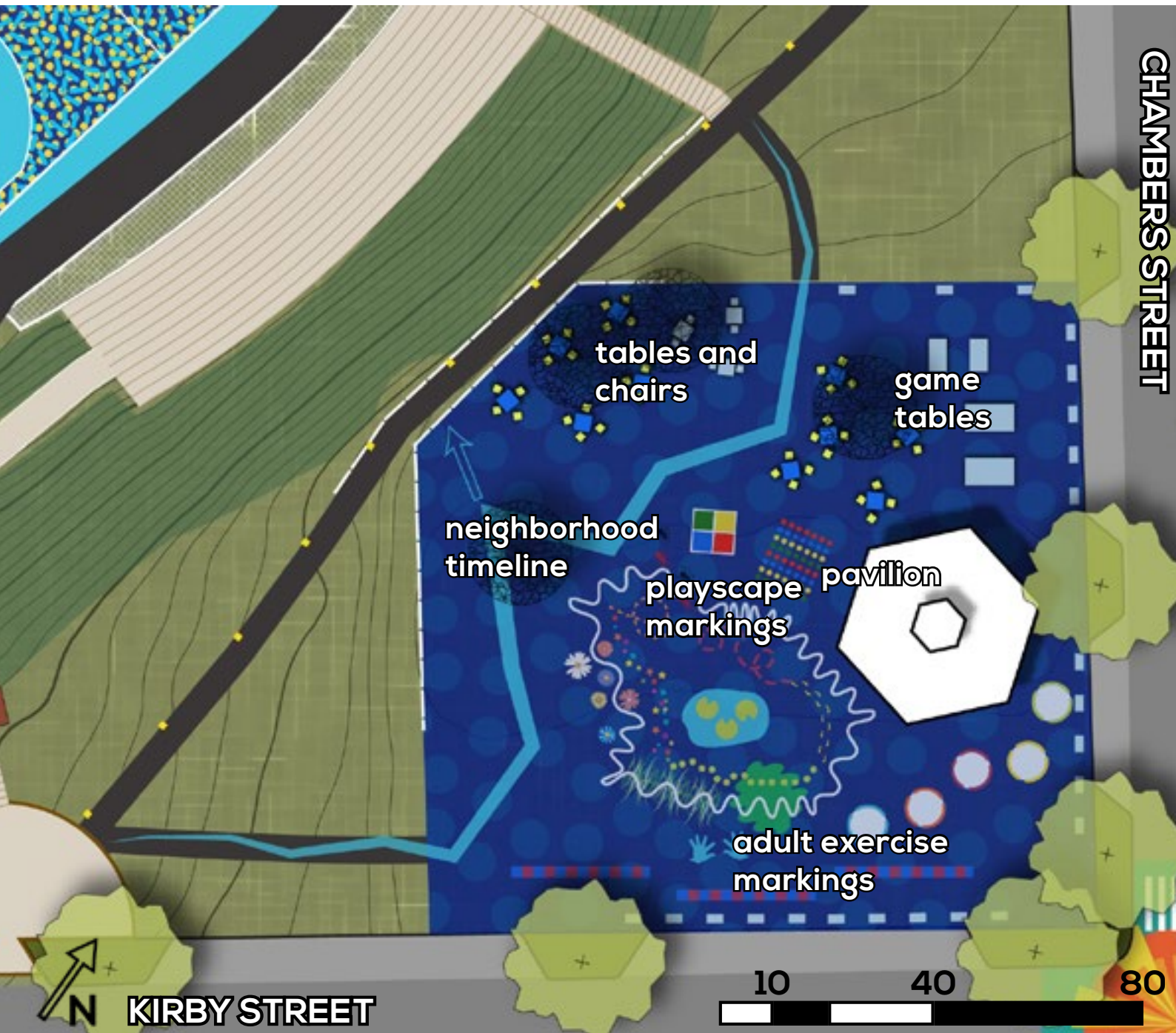
GYMNASIUM



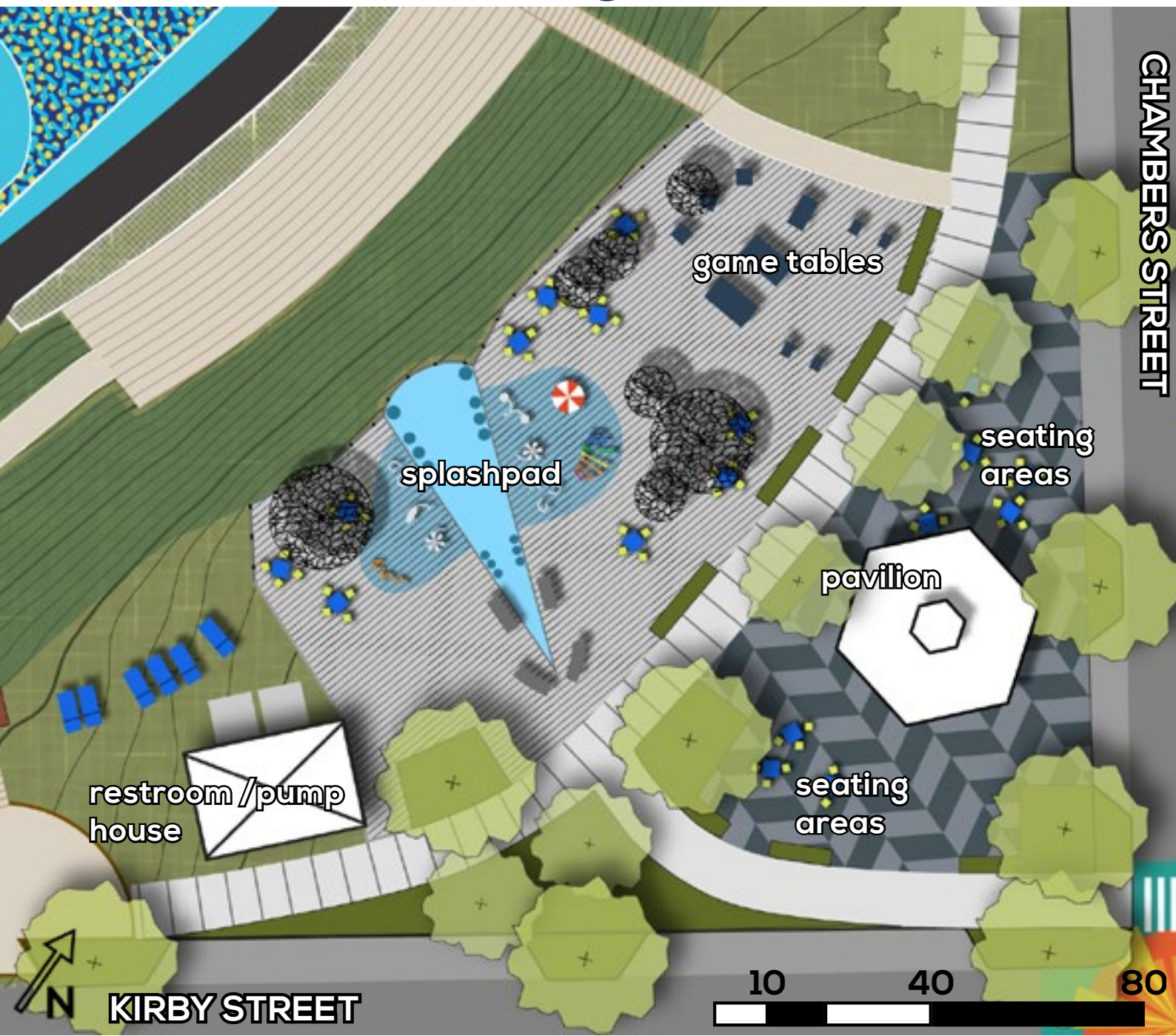
NEIGHBORHOOD PATIO



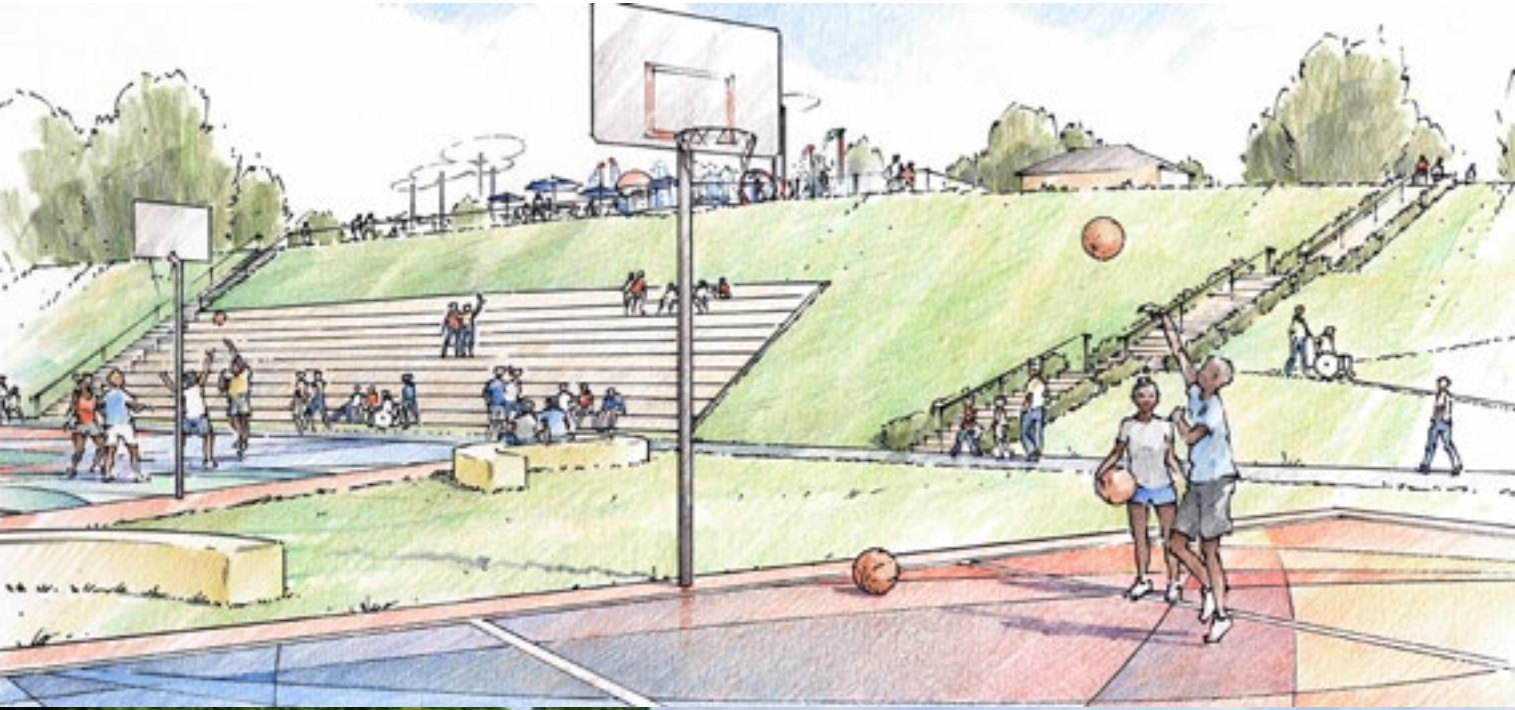
NEIGHBORHOOD PATIO (interim design)



NEIGHBORHOOD PATIO (10-year design)



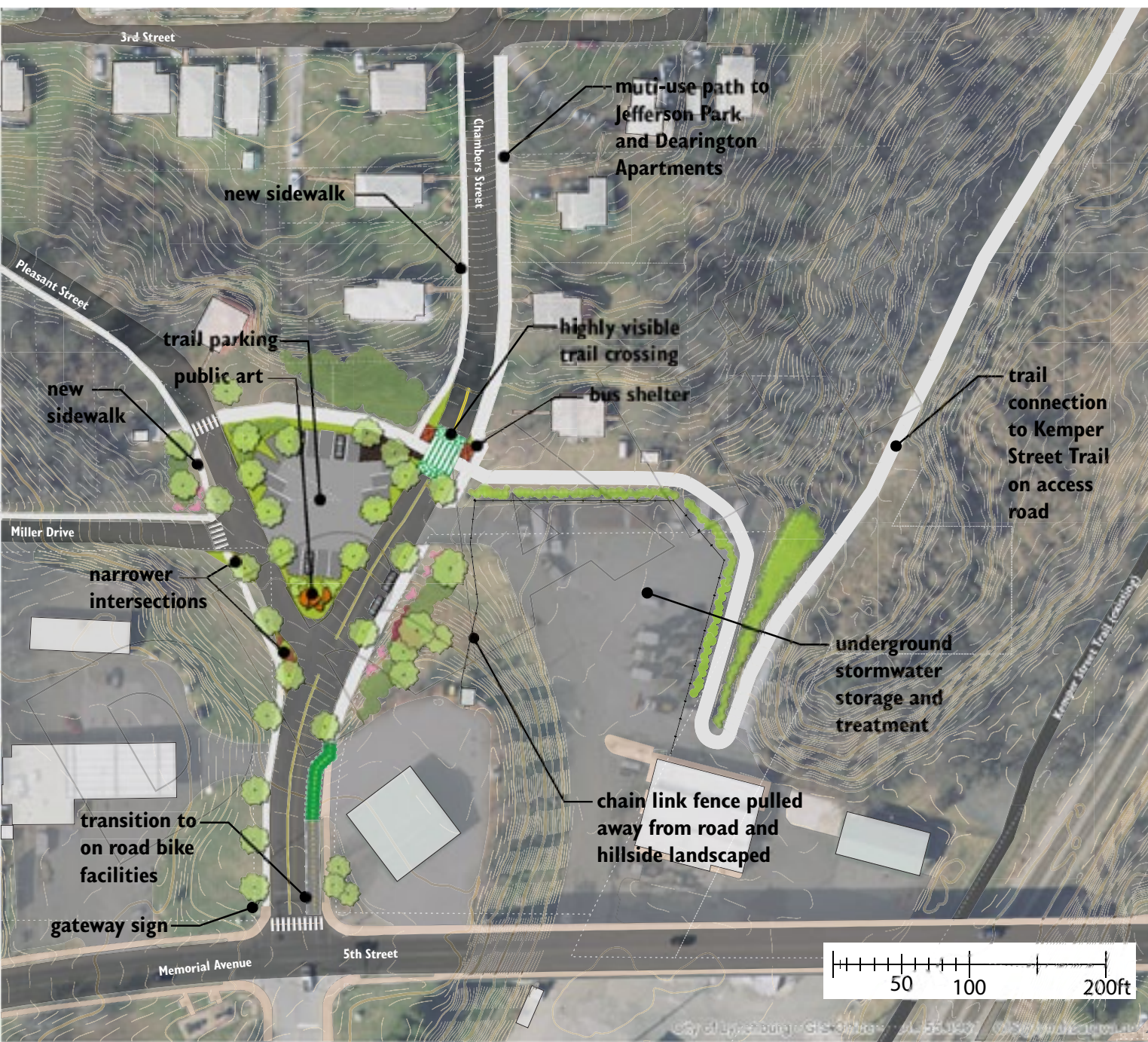
BASKETBALL COURT & AMPHITHEATER



TRAIL AND STREET IMPROVEMENTS

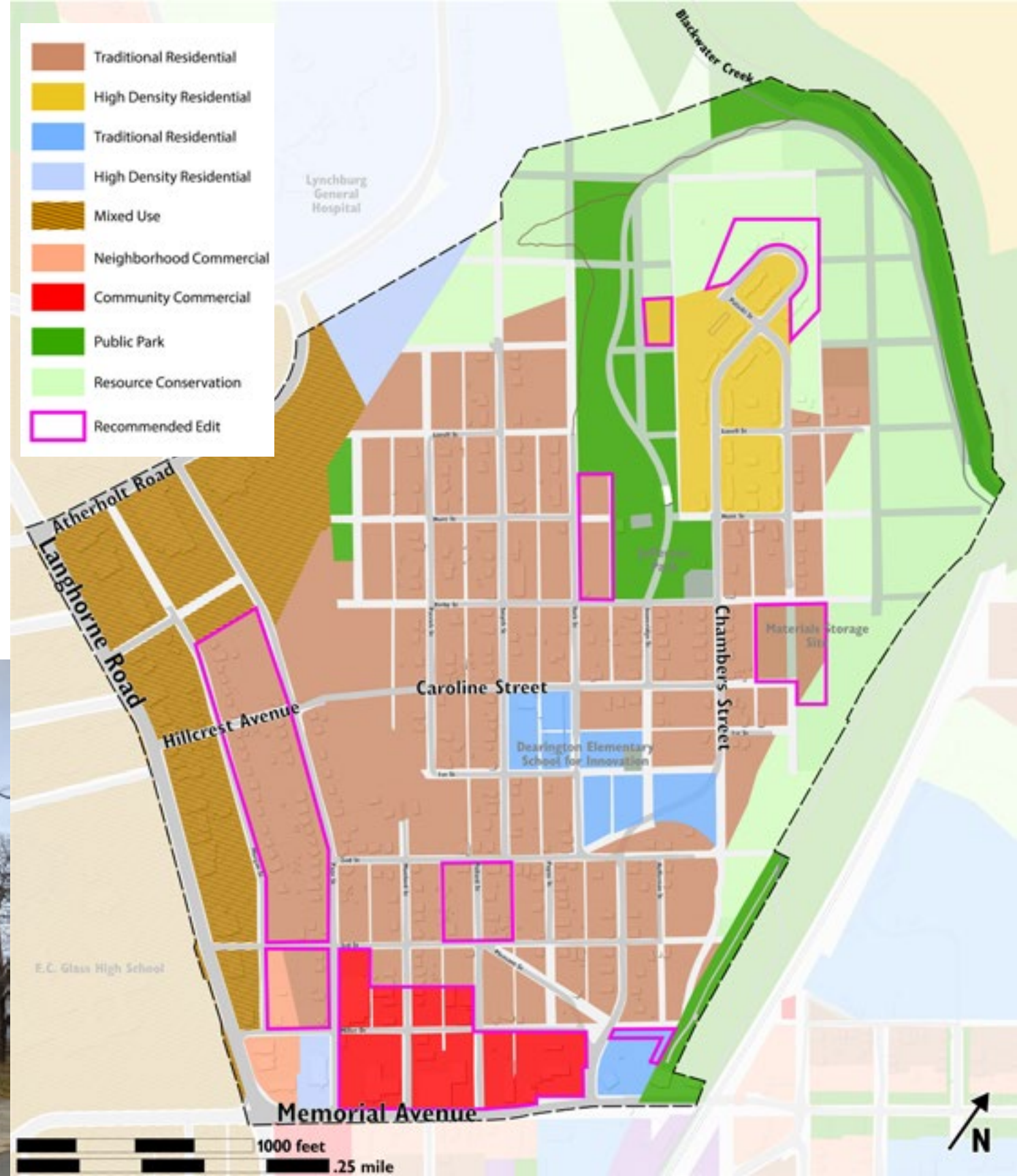


CHAMBERS STREET GATEWAY



FUTURE PLANNING EFFORTS

- Public Transportation
- Sidewalk Priorities
- Traffic Calming
- Land Use
- Neighborhood Housing
- Dearington Apartments



NEXT STEPS

IMPLEMENTATION

- Future CIP and Grant Funding
- CDBG Grant - Design & Construction Bidding
 - Interim Neighborhood Patio and permanent pavilion
 - Amphitheater Improvements
 - Small loop trail
 - Athletic lighting on basketball courts
 - Kirby Street ADA access (funding depending)



Dearington Neighborhood Plan
September 14, 2022
(There were no speakers at the Public Hearing)

PLEASE PRINT CLEARLY

[illegible]

RESOLUTION:

#R-22-061

A RESOLUTION ADOPTING THE DEARINGTON NEIGHBORHOOD PLAN AS PART OF THE CITY OF LYNCHBURG'S COMPREHENSIVE PLAN 2013-2030.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the Dearington Neighborhood Plan is hereby approved and adopted as part of the City's *Comprehensive Plan 2013-2030*.

Adopted: October 11, 2022

Certified: Alicia L. Finney
Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 11, 2022**

AGENDA ITEM #: **8**

REGULAR: **X**
ACTION: **X**

WORK SESSION:
INFORMATION:

CLOSED SESSION (Confidential):

ITEM TITLE: Freedom Aviation Fuel Farm Agreement

RECOMMENDATION: This item will appear for City Council vote on the October 11, 2022 Public Hearing agenda. Adopt a Resolution that would authorize a Fuel Farm Lease Agreement between the City of Lynchburg and Freedom Aviation and authorize the City Manager to execute the same.

SUMMARY: The City of Lynchburg owns three (3) aviation fuel storage tanks and related pumping equipment located in the fuel tank farm at Lynchburg Regional Airport. This agreement would be between the City of Lynchburg and Freedom Aviation for the lease and use of the airport's fuel farm facility. Our current Freedom Aviation Fuel Farm Agreement is due to expire on June 30, 2023. Freedom Aviation has approached airport administration to renew this agreement in order to keep the dates closer to their Fixed Based Operator agreement that was approved by City Council earlier this year.

The proposed agreement would be for five years with a five-year option to renew at the end of the initial term. The business terms of the agreement will remain as the previous agreement with some required Federal Aviation Administration standard language updates

There is a statutory requirement for a public hearing prior to leasing City property.

PRIOR ACTION(S): Business Item Briefing (BIB) held at September 27, 2022.

FISCAL IMPACT: In the first year of the lease the city will receive a fee of 14.4 cents per gallon of fuel pumped, amounting to estimated annual revenue to the airport of \$158,800. The lease contains an annual escalation of 35 hundredths of a cent per year effective July 1 each year.

CONTACT(S): Andrew La Gala, Airport Director; (434) 455-6089

ATTACHMENT(S):

- Resolution
- Lease Agreement w/Exhibits

REVIEWED BY: GAP

A RESOLUTION TO AUTHORIZE THE LEASE OF CITY-OWNED REAL ESTATE, LOCATED AT 350 TERMINAL DRIVE, LYNCHBURG, VIRGINIA 24502, AT THE LYNCHBURG REGIONAL AIRPORT, IN CAMPBELL COUNTY, VIRGINIA; SAID LEASE BEING FOR THE PURPOSE OF ALLOWING THE USE OF THE FUEL TANK FARM AT THE LYNCHBURG REGIONAL AIRPORT

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the following described real estate, including any, if any, improvements thereon, may be let by the City of Lynchburg, a Virginia municipal corporation, for the purpose of providing aeronautical fuel services at the Lynchburg Regional Airport as a Fixed Base Operator (FBO).

The real estate to be let is briefly described herein as follows: Three (3) 15,000-gallon fuel storage tanks and related pumping equipment located in the fuel tank farm at the address of 350 Terminal Drive, Lynchburg, VA 24502 (Campbell County, Virginia) at the Lynchburg Regional Airport.

2. That the City Manager is hereby authorized to take any and all actions necessary to effectuate the lease of the previously described real estate. The Lease connected to this matter, between the City of Lynchburg and Freedom Aviation, Inc., to take effect on November 1, 2022, is hereby approved and incorporated into this Resolution by reference.
3. That any and all documents which may have been signed before the adoption of this Resolution, which are connected to the substance of this Resolution, are ratified.
4. That this Resolution shall become effective upon its adoption.

Adopted:

Certified: _____
Clerk of Council

LEASE OF PROPERTY

LYNCHBURG REGIONAL AIRPORT FUEL STORAGE TANKS AND RELATED EQUIPMENT



Freedom Aviation, Inc.

Term: November 1, 2022 to October 31, 2027

LYNCHBURG REGIONAL AIRPORT FUEL STORAGE TANKS AND RELATED EQUIPMENT

THIS AGREEMENT, made and entered into on the _____ day of _____, 2022, by and between the **CITY OF LYNCHBURG**, a municipal corporation of the Commonwealth of Virginia, (the "City"); and **FREEDOM AVIATION, INC.**, a Virginia corporation, (the "Lessee");

WHEREAS, the City owns and operates LYNCHBURG REGIONAL AIRPORT, hereinafter referred to as the "Airport," located at 350 Terminal Drive, Campbell County, Virginia; *and*

WHEREAS, the Lessee is engaged in the business of providing aeronautical services at the Airport as a Fixed Base Operator (FBO); *and*

WHEREAS, the City and the Lessee wish to enter into a lease for the use of the three (3) aviation fuel storage tanks and related pumping equipment ("the Property") located in the fuel tank farm at the Airport for a term of five (5) years, with the option of renewing the same for an additional five (5) years, upon such conditions as are mutually acceptable and agreed upon by the City and the Lessee in writing; *and*

WHEREAS, nothing in this Agreement shall be construed as granting any exclusive rights for aeronautical activity or the Property at the Airport to the Lessee, nor prevent the City from creating, modifying, and enforcing any "minimum standards" which would be applicable to all firms or individuals providing goods, services or engaging in commercial or non-commercial activity at the Airport, including the Lessee.

NOW THEREFORE, WITNESSETH: that for and in consideration of the fees, covenants, and mutual promises set forth herein, the City and the Lessee do hereby agree to all of the following:

ARTICLE I – TERM

- A. **Term.** The term of this Agreement shall be for a period of five (5) years, beginning on the 1st day of November, 2022, and ending on the 31th day of October, 2027.
- B. **Extension of Agreement.** At the end of the initial five (5) year term, the parties will have the option of extending the Agreement for an additional five (5) year term, upon such terms and conditions as are mutually acceptable and agreed upon by the City and the Lessee in writing. Such option must be exercised within ninety (90) days of this Agreement's expiration date of October 31, 2027.

ARTICLE II - PROPERTY TO BE LET

- A. **The Property.** In order that the Lessee may meet the required level of aviation fuel storage as an FBO under the Airport's *Airport Minimum Standards for Aeronautical Services or Activities* dated August 10, 2004 as updated by the Lynchburg Regional Airport Commission on November 20, 2017, and approved by the City Manager on December 6, 2017, or the most current version as amended, hereafter referred to as the "minimum standards", the City does hereby let unto the Lessee, without any warranty whatsoever, in an 'as is' 'where is' condition, the following components of the Airport's fuel farm facility, all of which are shown on Exhibit 1, attached hereto and incorporated herein this Agreement by reference:

1. Three 15,000 gallon above ground fuel storage tanks and related pumping and support equipment, all of which are identified on Exhibit 1:
 - a. **Tank #1:** Model# MH 5086-1
 - b. **Tank #2:** Model# MH 5086-1
 - c. **Tank #3:** Model# MH 5086-1

2. All existing piping, pumping, and related equipment associated with the fuel storage tanks described above.

All of which are collectively identified herein as “the Property”.

- B. **Non-Exclusive Agreement.** In the event another qualified FBO is approved to operate as an FBO at the Airport, the Lessee understands that this Agreement is not exclusive and shall in no way prohibit such FBO from utilizing the Property on the same terms and conditions as the Lessee. Further, the Property is to be utilized on a shared basis among all approved FBOs (the “FBO Parties”), with the structure of the shared use being governed through a separate agreement between the Parties.
- C. **FBO Disputes & Termination of Agreement.** In the event a dispute between the FBO Parties results in one of the FBO Parties being unable or unwilling to utilize the Property in a mutually agreeable manner, this Agreement shall automatically terminate upon written notice being provided from the City to the FBO Parties unable or unwilling to utilize the Property in a mutually agreeable manner. Control of the Property shall automatically and immediately revert to the City without any further action being required, and all rights of the Lessee under this Lease shall cease.
- D. **FBO Mutual Agreements & Continuation of Agreement.** In the event one of the FBO Parties terminates the sharing arrangement on a mutually agreeable basis with the other FBO Parties, the City will allow the remaining FBO Parties to continue to operate under this Agreement for the duration of its term. In the event the City grants another qualified FBO permission to operate at the Airport, such FBO shall be permitted to replace the departing FBO Party. If the remaining FBO Parties fail to enter into an agreement with such FBO for the use of the Property in a mutually agreeable manner, then this Agreement shall automatically terminate upon written notice from the City to such FBO Parties. Control of the Property shall automatically and immediately revert to the City without any further action being required, and all rights of the Lessee under this Lease shall cease.
- E. **Additional Uses Authorized.** This Agreement gives the Lessee the right to use the Property. The Property consists solely of the tanks and related equipment listed above, and does not include the adjoining tank farm infrastructure, empty tank pads, the fuel delivery pad or related roadway. The Lessee does not have the authority to use any other Airport premises or facilities without the City’s prior written approval.

ARTICLE III - FINANCIAL PROVISIONS

The Lessee agrees to pay for the letting of the Property by the City as follows:

- A. **Through-Put Fee.** The Lessee shall pay the City a per gallon Through-Put Fee on the gross amount of all fuel pumped from the Property, inclusive of all grades and to all classes of users, according to the schedule listed below. The Lessee shall pay the City the fee for the gross amount of all fuel pumped during the month within the first fifteen (15) days of the following month. Upon a negotiated renewal of the additional five (5) year lease term, the City and the Lessee will renegotiate the Through-Put Fees for Years 6-10.
- | | |
|----------|-------------------|
| • Year 1 | 14.40¢ per gallon |
| • Year 2 | 14.75¢ per gallon |
| • Year 3 | 15.10¢ per gallon |
| • Year 4 | 15.45¢ per gallon |
| • Year 5 | 15.80¢ per gallon |
- B. **Late Payments.** If any of the fees due under this Agreement are not paid within ten (10) days of their due date, the Lessee shall pay the City a five percent (5%) late fee on the amount of such delinquent payment due, which fee shall immediately become due and payable. In addition, the Lessee shall pay the City interest for the total amount(s) due at a rate equal to the prime lending rate as quoted in the Wall Street Journal on the due date for such delinquent payment. Such interest shall begin to accrue on the day following the due date for such delinquent payment and late fee, and all interest shall be calculated on a 365-day year. In the event it becomes necessary for the City to institute legal proceedings to collect any of the fees, interest, or other amounts payable to the City under this Agreement, the Lessee agrees to pay all reasonable and necessary expenses incurred by the City in such legal proceedings, including reasonable attorney's fees and litigation costs.

- C. **Facility Use Fees.** Lessee shall be permitted to charge an “FBO Facility Use Fee” as it determines suitable for aircraft that park on the public ramp areas and utilize the Lessee’s’ designated FBO facilities and services but do not purchase aviation gasoline or jet fuel.

ARTICLE IV — USE AND MAINTENANCE OF FUEL STORAGE TANKS

- A. **General.** The Lessee may use the Property in connection with the delivery, storage and dispensing of aviation fuel into mobile fuel trucks fuel for retail sale as an authorized FBO at the Airport in accordance with the following:
1. Can we add a heading here? The Lessee may not use the Property for non-aeronautical purposes without the prior written consent of the Airport’s Director or his designee and the Federal Aviation Administration (FAA). Such consent shall not be given if the FAA determines that such non-aeronautical use does not conform with the FAA approved Airport Layout Plan (ALP) and FAA's revenue use provisions.
 2. The Lessee shall not introduce into or onto any part of the Airport’s premises any equipment, materials and/or activity which would be unsafe, detrimental to the public, or which would detrimentally affect the ability of others to utilize the Airport’s facilities or the Property. In addition, the Lessee shall give immediate notice to the City if a fire or accident occurs in or about the fuel farm area, on the Airport’s premises, on the Property, or if any damage and/or injury occurring to any person, property and/or equipment at the Airport.
 3. The Lessee shall keep the Property in a neat condition and in good order.
 4. The Lessee shall conduct its operations in an orderly fashion and in a proper manner at the Airport so that it will not unreasonably annoy, disturb, or interfere with others conducting business or other operations on or near the Airport. The Lessee shall also take all reasonable measures to keep the sound level of its operations as low as reasonably possible, particularly during hours of darkness or as otherwise directed by the Airport Director.
- B. **Fuel Storage Tanks and Related Equipment.** The Lessee shall utilize and operate the Property in accordance with all requirements in the minimum standards, as well as the following:
1. The Lessee shall maintain the Property in accordance with industry standards of care and quality and in accordance with all rules, regulations, orders and/or standards promulgated by the Environmental Protection Agency (EPA) and the Virginia Department of Environmental Quality (DEQ) at its sole expense. The Lessee shall train all its line technicians in receiving loads of fuel, and shall provide at least one-line technician trained in fuel farm preventative maintenance.
 2. The Lessee shall be responsible for complying with fuel quality control, safety and record-keeping requirements of the Federal Department of Transportation (DOT) and the FAA Federal Aviation Regulations, Part 139 at its sole expense.
 3. Upon request of the airlines using the facilities of the Airport, the City and the Lessee shall use their best efforts to provide adequate fueling services to meet the fueling needs of the airlines.
- C. **Additions and Alterations.** The Lessee shall have the right, within the term of this Agreement, to make alterations, attach fixtures and erect additions and structures in or upon the Property upon advance written approval by the City and in accordance with all applicable rules, regulations, and laws. Such alterations, fixtures and additions will become the property of the City. While it shall be the right of the City to enlarge or improve the Property hereunder, there shall be no duty or obligation upon the City to do so under the terms of this Agreement.
- D. **Illumination.** The City shall be responsible for all fuel farm and roadway lighting, as applicable.
- E. **Utilities.** The Lessee shall arrange for all electricity and/or other utility services which may arise from the Lessee’s use of the Property and shall purchase utilities directly from the respective supplier, and if required by the City or utility agencies as a condition of said services, the Lessee shall install standard metering devices for the measuring of such services. In the event it shall become necessary to make changes to the Property or fuel farm area, or within the structures covered by this Agreement, such as wiring or similar installations as a condition of the continuance of

utility services, and the Lessee desires to continue such services, the Lessee shall promptly make such changes in installations, as directed and required by the utility organizations and the City. It is agreed that the City shall have the right, without cost or compensation to the Lessee to install and maintain in, on or across the Property, sewer, water, gas, electric, telephone lines, electric substations, street widenings or other installations necessary to the operation of the Airport, or to service the other tenants of the City.

- F. **Signs.** Prior to the erection, construction or placing of any identifying signs on the Property, the Lessee shall submit to the Airport Director, for approval in writing, such drawings, sketches, design dimensions and type, number and character of the sign(s) and proposed means of attachment, as is necessary to obtain such approval.
- G. **General Privileges.** The City hereby grants to the Lessee the following non-exclusive general privileges, in common with others, subject to the terms, conditions and covenants set forth herein:
1. **Common Areas.** The Lessee will be permitted the non-exclusive right to use in common with others, now or hereafter duly authorized, any and all air navigation facilities which now or have been or may hereafter be provided by the City, the Federal, or the Commonwealth of Virginia, for the generality thereof, the landing field, the runways, aprons, taxiways, floodlights, landing lights, signals, beacons, aids to navigation and other conveniences for the flying, landings and takeoffs of the Lessee's aircraft at the Airport.
 2. **Ingress/Egress.** The Lessee shall have reasonable rights of ingress and egress over Airport roadways, including common use roadways, subject to the Airport's Security Program (ASP). The rights of ingress and egress granted herein are granted to the Lessee's employees, suppliers and other individuals authorized by the Lessee. If requested to do so by the FAA, or for the purpose of construction or any aeronautical purpose, the City shall have the right to establish and/or limit hours in which the Lessee may exercise its rights of ingress and egress described hereunder, by providing the Lessee with prior written notice of the proposed changes.
- H. **The Lessee's Property.** All property and equipment belonging to the Lessee, located on Airport property shall be there at the sole risk of the Lessee. The City shall not be obligated hereunder to carry any insurance on any property or equipment belonging to the Lessee, nor liable for any loss, damage or expense with respect thereto, unless such damage occurs as a result of the negligence or misconduct of the City, its employees, or its agents. The City shall not be liable for the theft, misappropriation, or loss thereof, or for any damage or injury thereto, of any property of the Lessee unless the same occurs as a result of the negligence or misconduct of the City.
- I. **Maintenance of Leased Property.** The Lessee accepts the Property, the Airport, and all of the City's facilities and property at the Airport in its current condition and shall cause to be removed all trash and garbage, and shall not deposit the same on any part of the Airport except temporarily in conjunction with the collection or removal thereof. The Lessee shall not store large quantities of aviation oils, deicer or similar substances in the fuel farm area. During the term of the Agreement, the Lessee shall keep and maintain the Property in substantially the same order and repair as at the inception of this Agreement, reasonable wear and tear excepted. The Lessee shall be responsible for all maintenance and repair of the Property with the exception of the replacement of major, long-life components that have reached the end of their useful life spans.

The Lessee shall repair, at its sole expense and to the satisfaction of the City, all damages caused by its agents and employees to the Property or any other property located at the Airport. The City reserves the right to enter the fuel farm area during all reasonable business hours for inspection to insure the maintenance and upkeep requirements of this Agreement are being upheld. Should the Lessee fail to keep the Property or any other property located at the Airport in good order and repair as is reasonably required in order to preserve the general appearance and value of the Property, and if such maintenance and repair is not undertaken within ten (10) days after written notification by the City, the City shall have the right to enter the fuel farm and perform the necessary maintenance or repairs to the Property, and the Lessee shall be financially responsible for the cost of such work.

ARTICLE V — RULES, REGULATIONS AND OTHER REQUIREMENTS

- A. **The City's Rules.** The Lessee shall observe all rules and regulations currently in force, or from time to time promulgated by the City, which in the City's sole judgment and discretion are needed for the general well-being and safety of the Property and the Airport; provided, however, that any such rules and regulations shall be of general application to other similarly situated Airport tenants and users. The rules and regulations may, at the discretion of the City, be modified from time to time.
- B. **The Airport's Minimum Standards.** The Lessee and all other persons over whom the Lessee has authority, direction, control, or responsibility including, without limitation, employees, agents, contractors, or persons it invites or permits to be on the premises of the Airport, shall be subject to and shall comply with all provisions of the Airport's minimum standards, and any amendments thereto, and any other resolutions, regulations, or directives issued by the Lynchburg City Council and/or the City's Airport Director. The minimum standards are incorporated into this Agreement by reference as if fully set forth herein and are attached hereto as Exhibit 2. In the event of a conflict between the Airport's minimum standards and the standards set forth in this Agreement, the terms of this Agreement shall be controlling. In the event of any conflict with other agreements regarding the required scope of services to provide fuel storage, however, the minimum standards shall control in all respects.
- C. **Compliance with Airport Assurances.** The Lessee shall conduct its operations and activities under this Agreement in accordance with the obligations of the City to the United States of America as well as to the Commonwealth of Virginia under any existing or future grant agreements. The Lessee shall comply with all requirements of the FAA Airport Sponsor Assurances as applicable including, but not limited to:
1. That the Lessee shall furnish all services and facilities on a fair, reasonable, and not unlawfully discriminatory basis to all users thereof; and
 2. That the Lessee shall charge fair, reasonable, and not unlawfully discriminatory prices for each unit or service, provided that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- D. **Licenses and Other Authorizations.** The Lessee shall procure from all governmental authorities having jurisdiction over its activities and/or its operations at the Airport, and shall maintain, while this Agreement is in effect, all governmental or other licenses, certificates, permits, or other authorizations which are or may be required and/or necessary for the conduct of its operations or any activities at the Airport. The Lessee shall provide proof of the existence of such authorization(s) upon request by the City.
- E. **Rules and Regulations of Others.** In exercising the rights and privileges granted to it herein, the Lessee shall observe, obey and comply with all applicable Federal, state and local laws, regulations, ordinances, orders, directives, and other requirements applicable to the Airport and/or the Lessee's operations at the Airport. This requirement shall include, without limitation, the obligation to comply with all applicable FAA, EPA and/or DEQ regulations, other environmental or hazardous waste laws or regulations, and other orders and directives. The Lessee shall obtain all necessary FAA, EPA and/or DEQ approvals required in connection with its operations and/or any activities in the use of the Property and/or the Airport. The Lessee shall promptly provide notice to the City of any notice of violation, warning, summons or legal process received by the Lessee in connection with the enforcement of any such laws, regulations, ordinances, orders, directives and other requirements.
- F. **Drug-Free Workplace.** The Lessee, its employees, and/or agents, while at the Airport, are prohibited from: (a) the unlawful manufacture, distribution, dispensing, possession, or use of alcohol or any controlled substance(s) and (b) any impairment or incapacitation from the use of alcohol or controlled substance(s). The use of drugs in connection with legitimate medical purposes may be permitted where authorized by Federal and Virginia law. The Lessee will comply with the Drug-Free Workplace Act (DFWA) in all relevant respects.

- G. **Discrimination.** The Lessee, for itself, its personal representatives, successors in interest, permitted assigns, employees, agents, and the like, as part of the consideration hereof, does hereby covenant that (a) no person on the grounds of race, color, religion, sex, national origin, or any other basis prohibited by Federal or Virginia law, shall be unlawfully excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Property or the property of the Airport, and (b) that the Lessee shall use the Property and the property of the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Federal Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended, added to, or changed. In addition, the Lessee shall not, on the grounds of race, color, national origin, sex, religion, or any other basis prohibited by applicable law, unlawfully discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 15 of the Federal Aviation regulations and Title VI of the Civil Rights Act of 1964. The City reserves the right to take such action as the Federal government or other governmental authority may direct to enforce this provision. Further, the Lessee shall not engage in any similarly discriminatory treatment of customers, subtenants, or members of the public, including requiring belief in a certain religion or church affiliation for the receipt of services at the Airport, use of facilities at the Airport, or use of the Property.
- H. **Taxes and/or Charges.** The Lessee shall pay all taxes, fees, and/or charges, if any, with respect to the Property, its use of the Airport's premises, and/or this Agreement.
- I. **Fines.** In the event the City and/or the Airport is fined by any local, state or Federal regulatory authority for the failure of the Lessee to abide by any or all applicable rules and regulations in its operations and activities at the Airport, and in particular, should the Lessee violate any rules or regulations pertaining to security, the Lessee shall be responsible for the payment of all penalties and fines.
- J. **Record Keeping.** The Lessee agrees to keep accurate records, books, and accounts. Upon request by the Airport Director, the Lessee shall provide any such information concerning their sale of aviation fuel, including names and addresses of any FAR Part 121 air carriers for billing purposes by the Airport. On or before the 15th day of each calendar month, the Lessee shall provide the City with a statement detailing the source and amount of the Lessee's gross gallonage pumped to all users, a breakdown of all fuel type (such as Avgas and jet) and by class of user (such as military, commercial airline, retail and inter-company) during the preceding calendar month. These statements shall be in a form acceptable to the City.
- Further, upon the written request of the Airport Director, the Lessee shall allow the City reasonable access to its books, records, files, accounts, other sources and repositories of information, and its facilities, as may be pertinent to its fueling operations at the Airport, in order to allow the City and/or the FAA to investigate and/or determine the Lessee's compliance with this Agreement and/or with any law, rule, order, or regulation pertaining to the Lessee's activities or operations at the Airport. In the event that any information sought by the City is within the exclusive possession of another who fails or refuses to furnish the information, the Lessee, at its sole expense, shall pursue all available efforts and means to obtain the information, and the Lessee shall provide the City with a written description of the efforts made by it to obtain the information. Additionally, at its option, the City may conduct a special audit of the Lessee's books and accounts of its fueling operations at the Airport. If conducted, the audit shall be performed by an Independent Certified Public Accountant retained by and at the expense of the City.
- K. **Employee Identification.** The Lessee shall require its line employees to wear uniforms, and shall require all employees who have City-authorized access to the Security Identification Display Area (AOA Area Number 1) and/or the FAA designated Aircraft Movement Area of the airfield to wear identification badges which conform to the ASP. Such uniforms and identification badges are subject to the prior and continuing approval of the City. All personnel of the Lessee who are required to hold FAA certificates and/or ratings shall maintain such certificates and ratings in a current status, and the Lessee shall maintain copies of such certificates and/or ratings in files located at the Airport and shall allow the City to inspect such documents upon request, written or oral.
- L. **Transporting of Aviation Fuel.** Except as authorized by the Airport Director, Lessee's FBO fuel trucks shall not be used to transport jet fuel or aviation gasoline from off-airport sites.

ARTICLE VI - INDEMNITY AND INSURANCE

A. **Indemnification.** The Lessee shall fully indemnify, hold harmless, and defend the City, its agents, officials, officers, and employees from any and all liabilities, damages, expenses, causes of action, suits, claims, and judgments, including all court costs, legal fees, and other related costs, hereafter "Liabilities", which may accrue against, be charged to, or be recovered from or sought to be recovered from the City, its agents, officials, officers, and employees, by reason of or on account of (i) damage to the Property or any property of the Airport caused by the Lessee, its employees, agents, contractors, officers, representatives, or the like; (ii) damage to the property of third-parties; (iii) injury to or death of any person(s) arising from the Lessee's use of the Airport's premises; (iv) injury to or death of any person(s) arising from the use of the fuel farm and Property; and/or (v) the performance (or nonperformance) of any services or actions by the Lessee, its employees, agents, contractors, officers, representatives, or the like on the Airport's premises. The Lessee shall afford the City a reasonable opportunity to investigate any claim against the City, its agents, officials, officers, and employees, or the Lessee, its employees, agents, contractors, officers, representatives, or the like. The Lessee shall not be required to indemnify, hold harmless, or provide a defense for the City in the event the Liabilities were caused by the negligent or willful acts or omissions of the City, its agents, officials, officers, and employees. **The indemnification, hold harmless, and defense obligations hereunder shall survive the expiration or termination of this Agreement for a period of five (5) calendar years.**

B. **Insurance**

1. **Requirement.** In addition to any other insurance coverage required by this Agreement (e.g., insurance to cover the damage or loss of property and/or equipment), the Lessee, at its sole expense, shall obtain and maintain, while the Agreement is in effect, the following insurance coverage:
 - a. \$3,000,000 Airport General Liability Insurance for bodily injury and property damage;
 - b. \$3,000,000 Products and Completed Operations Liability Insurance for aircraft refueling, maintenance, sales, and the sale of aircraft parts;
 - c. \$3,000,000 Automobile Liability combined single limit for AOA/SIDA vehicles that are not licensed for public roads; \$1,000,000 Automobile Liability combined single limit for all other AOA vehicles that are restricted to the General Aviation area only (licensed for operation on public roads);
 - d. Fuel Trucks, \$3,000,000 combined single limit for bodily injury and property damage;
 - e. Worker's Compensation Insurance as required by the Commonwealth of Virginia; *and*
 - f. All other insurance required by Federal or Virginia law.
2. **Required Provisions.** Except where prohibited by law or policy, all insurance coverages required hereunder shall be obtained with the following:
 - a. The City, the Airport, its agents, officials, officers, and employees shall be named as additional insureds under the terms and conditions of the policies covering liability for personal and/or physical injuries (including death) and property damage, and policies covering City-owned buildings, structures, or facilities leased hereunder. Certificates of Insurance illustrating the same shall be provided to the City's Risk Manager.
 - b. Any deductible or self-insured retention applicable to required coverages shall be paid by the Lessee and the City shall not be required to participate therewith.
 - c. Each of the insurance policies and certificates required herein, except for Workers' Compensation Insurance, shall bear the provision that the insurance company agrees that thirty (30) days prior to

cancellation of or reduction in the insurance afforded by the policy, written notice shall be provided to the City's Risk Manager.

- d. The insurance required of the Lessee herein shall be primary, and any insurance or self-insurance maintained by the City shall be in excess of the insurance required of the Lessee and shall not contribute therewith.
- e. The Lessee's failure to comply with any reporting provisions of the insurance policies shall not affect coverage provided to the City.
- f. The Lessee shall waive all rights of subrogation against the City, and such waiver shall be shown as an endorsement on all Certifications of Insurance applicable to this Agreement.
- g. All insurance will be obtained by the Lessee from insurance companies authorized by Virginia's State Corporation Commission to do business in Virginia.

3. **Certificates Required.** The Lessee shall provide the City with Certificates of Insurance confirming the required insurance, coverages, and the additional insured endorsement, signed by a person authorized by the insurance company to bind the company to the representations contained therein. Certificates of insurance shall be provided to the City's Risk Management Division by the Lessee upon execution of this Agreement, upon each anniversary date of such adoption, without demand, and at other times when requested in writing by the City.

4. **Subcontractors.** The subcontractors of the Lessee, who perform their services on Airport property, shall be subject to all of the insurance requirements contained within this Agreement.

5. **Payment of Insurance Premiums.** The failure of the Lessee to maintain all of the insurance coverage required by this article, or to pay all of the insurance premiums when due and payable, shall be grounds for the immediate termination of this Agreement, without any prior notice by the City.

6. **Liability to the City.** The Lessee's liability to the City under this article shall not be limited to the amounts of the insurance coverage provided herein.

7. **Modification of Insurance Requirements.** The City reserves the right to review and/or modify the insurance requirements herein prior to any renewal or extension of this Agreement.

C. **Responsibility for Damage/Destruction.** The Lessee is responsible for any damage or destruction of the Airport's premises and the Property caused by the negligent or willful acts of the Lessee, its employees, agents, customers, patrons, or any persons it permits to be upon the same.

D. **Other-Loss.** Absent the negligence or intentional misconduct of the City, the City shall not be liable for any damage or injury to the Lessee, to any persons, or to any property caused by: fire, explosion, water, gas, electricity, leaks from the roof or any other portion of the Airport's premises, bursting or leaking pipes, plumbing, electrical wiring, or equipment or fixtures of any kind. The Lessee shall obtain insurance covering injury or damage to persons and property resulting from such occurrences.

ARTICLE VII - AIRPORT SECURITY PROGRAM

The Lessee shall comply, at all times, with the ASP and its requirements. The ASP is set forth in writing and has been provided to the Lessee. The Lessee, its employees, agents, officers, etc. shall, in conducting its activities and operations in or about the Airport, be responsible for compliance with the ASP, and shall be liable for and shall pay any Transportation Security Administration (TSA) fine or fee imposed on the City as the result of or in connection with the failure to comply with the ASP. In accordance with the ASP required by TSA Regulations, the Lessee shall assume authority and responsibility for pedestrian and vehicular access in and around the Property, the premises of the Airport, and fully

comply with the ASP. Access to the FAA-designated Aircraft Movement Area shall be permitted only to those employees who have completed Airfield Driver Training.

ARTICLE VIII - POTENTIALLY HAZARDOUS SUBSTANCES

- A. The Lessee shall keep the Property and the Airport free of all environmental, health, and safety hazards, and/or nuisances of any kind whatsoever. The Lessee will not make, or allow to be made, any change in usage, additions, or improvements in, on, or to the Property which will result in the presence or release of hazardous materials within or around the Airport's fuel farm area.
- B. The Lessee shall not install or allow to be installed any underground storage tanks at the Airport. The Property that includes above-ground storage tanks (ASTs) shall be maintained by the Lessee in compliance with Virginia's AST permit/operating/financial responsibility requirements. The Lessee shall keep all records pertaining to above-ground storage tanks on the Property, and shall provide the City with current copies of all permits obtained with respect to such above-ground storage tanks. On each anniversary of the commencement date of this Agreement, the Lessee shall provide the City with copies of all records maintained by the Lessee in connection with Virginia's AST program and requirements.
- C. In its activities at the Airport, the Lessee shall comply with all of the terms and conditions contained in the Stormwater Pollution Prevention Plan for the Airport, the terms and conditions of which are incorporated herein this Agreement by reference as if fully set forth herein. The Lessee will not be responsible for any capital improvements that may be required in order to comply with such Stormwater Pollution Prevention Plan. In addition, in order to prevent or reduce the discharge of pollutants to stormwater resulting from spills of petroleum products or other materials, the Lessee shall develop and implement a Spill Prevention Control and Countermeasure (SPCC) Plan, if required, in accordance with 40 CFR 112 and other applicable laws.
- D. The Lessee shall be required to obtain, maintain and comply with all permits, authorizations and registrations required by law for its operations in conjunction with the Property.
- E. The City reserves the right to enter the Property, at any time, to determine whether the Lessee is complying with the terms and conditions of this article.
- F. The Lessee shall furnish, within fourteen (14) days of a written request of the City, all report(s), assessment(s), or other document(s) satisfactory to the City showing, to the extent the Property is being used and/or have been used by it for any activities involving, directly or indirectly, the use, generation, treatment, storage, or disposal of any hazardous materials, and that the Lessee is in compliance with any applicable Federal, state, or local laws, regulations, or ordinances.
- G. The Lessee shall immediately furnish to the Airport Director written notice of any and all releases of hazardous materials or substances on the Property or at the Airport whenever such releases are required to be reported to any applicable Federal, state, or local authority. The Lessee shall pay for all clean up and removal costs. Such written notice shall identify the substance released, the amount released, the measures undertaken to clean up and remove the released material and any contaminated soil or water, and shall further certify that no contamination remains. The Lessee shall also provide the Airport Director with copies of any and all reports resulting from tests on the Airport's premises or made to any governmental agency, which relate to the requirements of this article and Airport.
- H. The Lessee shall be responsible, at its sole cost, for the prompt and proper collection and disposal of all toxic or hazardous materials, as well as for petroleum product wastes such as waste oil. The Lessee shall collect waste oil in containers, with suitable containment to collect leaks and/or spillage as the Airport Director shall permit, provided that, in no event, shall the Lessee collect waste oil in barrels located on unprotected earth or paved areas.
- I. The City shall have the right, but not the obligation, to enter onto the Property and to take such actions as is reasonably necessary or advisable to clean up, remove, resolve, or minimize the impact of, or otherwise deal with, any of the events previously described, which, if true, could result in an order, suit, or other action against the City affecting any part of the Property or the Airport by any governmental agency or otherwise which, in the sole

opinion of the City, could jeopardize the City. All costs and expenses incurred by the City in the exercise of any such right shall be payable by the Lessee upon demand.

- J. Regardless of the City's acquiescence, and in addition to indemnification, hold harmless, and defense provisions contained elsewhere in this Agreement, the Lessee shall defend, indemnify, and hold the City, its agents, officials, officers, and employees harmless from all Liabilities from or arising out of the Lessee's violation of this article. Further, the Lessee shall reimburse the City, its agents, officials, officers, and employees for any and all expenses incurred in eliminating or remedying such violations. The Lessee shall also reimburse the City, and hold the City, its agents, officials, officers, and employees harmless from any and all expenses, attorney's fees, and all penalties or civil judgments obtained against the City which result from the Lessee's use, release, leakage, spillage, discharge, or disposal of any petroleum product, hazardous materials, waste, or the like, onto the ground, and into the water, or air. The provisions of this subsection shall have no impact whatsoever on the Lessee's indemnification obligations to the City under any other agreement, franchise, or other document existing between the Lessee and the City.

ARTICLE IX - RIGHTS RESERVED BY THE CITY

The City, in addition to any other rights herein retained by it, specifically reserves the following privileges:

- A. The Airport Director, or his designee, is hereby designated as the official representative for the enforcement of all terms, provisions, and covenants of this Agreement with the full power to represent the City in its dealings with the Lessee granted hereby with the rights herein described.
- B. The City reserves the right to enter upon the Property or any other part of the Airport's premises at any reasonable time, as it may determine, without notice, for the purpose of making any inspection it may deem expedient to the proper enforcement of the covenants, terms, and provisions described in this Agreement.
- D. The City reserves the right to enter upon the Property or any other part of the Airport's premises at any time, without notice, in the case of an emergency.
- E. The City reserves the right to further develop or improve the Airport's property surrounding the Property for the benefit of the Airport as it sees fit, regardless of the desires or views of the Lessee.
- F. During time of war or national emergency, the City shall have the right to let or license any portion of the Airport to the United States of America or the Commonwealth of Virginia for military or national use if requested to do so. If any such lease or license is executed, the covenants, terms, and provisions of the Lessee granted by this Agreement, insofar as they are inconsistent with such lease with the United States of America or the Commonwealth of Virginia, shall be suspended, including the Lessee's obligation to pay rent, which will be suspended altogether or reduced proportionally, as appropriate.
- G. This Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America or the Commonwealth of Virginia, relative to the operation, maintenance or management of the Airport, the execution of which has been, or may be required, as a condition precedent to the expenditure of Federal or State funds for the development of the Airport or the continued operation of the Airport. Should the effect of such agreement with the United States of America or Commonwealth of Virginia be to take the Property under this Agreement or substantially destroy the commercial value of such property, either the City or the Lessee shall have the right to terminate this Agreement without further obligation hereto.
- H. The City reserves to itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Property. This public right of flight shall include the right to cause in said airspace any noise or vibration inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.
- I. The City reserves the right to take any action it considers necessary to protect the area of approaches of the Airport against obstruction, together with the right to prevent the Lessee from erecting, or permitting to be erected, any

structure in the fuel farm area that contains the Property, which, in the opinion of the City, would limit the usefulness of the Airport, or constitute a hazard to aircraft. This right includes:

1. Prohibiting the erection of structures or growth of natural objects that would constitute an obstruction to air navigation; *and*
 2. Prohibiting any activity on the land that would interfere with or be a hazard to the flight of aircraft over the land or to and from the Airport or interfere with air navigation and communication facilities serving the Airport.
- J. The City reserves the right to control all Airport operations. This right shall include, without necessarily being limited to, the following: the right to close any Airport facility(ies), without any liability to the Lessee for the consequences of any closing, when it deems such closing to be reasonably necessary for the maintenance, repair or development of any Airport property or facility(ies) and/or for the safety of the general public. This right shall also include the right to reserve adequate apron area for the landing, unloading and parking of aircraft at the Airport. The City reserves the right to make all Airport facilities developed with Federal aid, and all Airport facilities usable for the landing and taking-off of aircraft, available to the United States of America and the Commonwealth of Virginia at all times, without charge, for use by military aircraft; except that if use by military aircraft will be substantial, the City may charge the United States of America and the Commonwealth of Virginia a reasonable amount, proportionate to the use, to recover the costs of operating and maintaining the facilities to be used. The amount of use to be considered substantial, and the charges, if any, to be made therefor, shall be determined solely by and between the City and the United States of America and/or the Commonwealth of Virginia; however, the City shall consult with the Lessee and consider the Lessee's recommendations in that regard. The City's right to control Airport operations does not give the City the right to unilaterally modify the terms of this Agreement.
- K. All privileges and rights to the use of the Airport, other than those specifically authorized within this Agreement, are hereby reserved to the City.
- L. Except as otherwise provided in this Agreement, no exercise of any rights reserved to the City shall be construed as an eviction of the Lessee, nor such exercise be grounds for any abatement of any payment provided for by this Agreement, nor shall such exercise be grounds for any claim or demand for damages, of any nature whatsoever.

ARTICLE X - DEFAULT AND TERMINATION

- A. **Termination by City.** Except as otherwise provided for in this Agreement, the City may terminate the lease granted by this Agreement, without forfeiture, waiver, or release of the City's right to any sum of money due or to become due under the provisions of this Agreement, by giving the Lessee ninety (90) days advance written notice, except as provided for in subsection (9) below, to be served and hereinafter provided, upon or after the happening of any one of the following events:
1. The Lessee's filing of a voluntary petition in bankruptcy;
 2. The institution of bankruptcy proceedings against the Lessee and the adjudication of the Lessee as a bankrupt corporation pursuant to such proceedings, which is not dismissed within thirty (30) days from the commencement thereof;
 3. The taking by a court of competent jurisdiction of the Lessee and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization Act;
 4. The appointment of a Receiver of the Lessee's assets;
 5. The divestiture of the Lessee's estate herein by other operation of law;
 6. The voluntary abandonment of Lessee's business at the Airport for a period of ten (10) days;

7. The default in the performance or the nonperformance of any covenant or agreement herein required to be performed (other than the Lessee's payment of rentals, fees or other charges), or required not to be performed by the Lessee, and the failure of the Lessee to remedy such default for a period of thirty (30) days after receipt from the City of written notice to remedy the same; provided, however, that no notice of termination as above provided shall be of any force or effect if the Lessee shall have remedied the default prior to the receipt, in accordance with the provisions of this article;
8. Any assignment made for benefit of Lessee's creditors or any assignment by operation of law of the Lessee's interests in this Agreement;
9. In the event the Lessee fails to pay all or any part of the fees or other charges provided for in this Agreement when due and payable, the City shall give the Lessee written notice of such default. The failure of the Lessee to pay all of said rentals, fees, or other charges provided for in this Agreement in full, within thirty (30) days after receipt of such written notice, shall be grounds for the immediate termination of the Agreement. At the end of such thirty (30) day period, the City may immediately declare the Agreement terminated without further notice to the Lessee.
10. For financial or regulatory reasons as determined in good faith and in the reasonable discretion of the City that would make the continuation of the Agreement commercially or legally impractical and which would result in the discontinuation of use and operation by the City of the three (3) fuel storage tanks and related equipment which are the subject of this Agreement.

No waiver of default by the City of the terms, covenants, or provisions hereof to be performed, kept, and observed by the Lessee shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and provisions herein contained to be performed, kept, and observed by the Lessee. The acceptance of monthly fees or the performance of all or any part of this Agreement by the City for or during any period or periods after default of any of the terms, covenants, and provisions herein contained to be performed, kept, and observed by the Lessee, shall not be deemed a waiver of any right on the part of the City to terminate the lease granted by this Agreement for the subsequent failure to so perform, keep, or observe any of the terms, covenants, or provisions hereof to be performed, kept, and observed by the Lessee.

If this Agreement is terminated on grounds of a default, and the Lessee does not surrender the Property as required herein, the City may re-possess the Property and remove the Lessee therefrom. Under such circumstances, the Lessee shall be deemed to have waived any right to notice of the City's re-possession, the City shall not be liable to the Lessee in connection with any action taken by it to re-possess the Property, and the Lessee shall pay all expenses incurred by the City to re-possess the Property including, without limitation, reasonable attorneys' fees and litigation costs, putting the Property back in good and proper repair, protecting the Property, and any expenses incurred to obtain a new tenant, etc.

B. Termination by the Lessee. The Lessee may terminate this Agreement and terminate all of its obligations hereunder at any time that the Lessee is not in default in the payment of any fees or charges to the City hereunder by giving the City ninety (90) days advance written notice to be served as hereunder provided, upon or after the happening of any one of the following events:

1. The failure or refusal of the FAA at any time during the term of this Agreement to permit the Lessee to operate into or from the Airport with any type of aircraft licensed to operate into or from other airports of like size and character; provided, however, that such failure or refusal is not due to any fault of the Lessee;
2. The issuance by any court of competent jurisdiction of any injunction in any way preventing or restraining the use of the Airport or any part thereof so as to substantially affect the Lessee's use of the Property at the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days; provided, however, that the issuance of such injunction is not due to any fault of the Lessee.
3. The inability of the Lessee to use the Airport for a period in excess of sixty (60) days, because of the issuance of any order, rule or regulation by the FAA, or other competent governmental authorities, preventing the Lessee

from operating into and/or from the Airport; provided, however that such inability or such order, rule or regulation is not due to any fault of the Lessee.

4. The default by the City in the performance or nonperformance of any covenant and agreement herein required to be performed by the City and the failure of the City to remedy such default for a period of thirty (30) days after receipt of the Lessee or written notice to remedy the same, provided, however, that no notice of termination, as above provided, shall be of any force or effect if the City shall have remedied the default prior to receipt of the Lessee's notice of termination;
5. The assumption or taking by the United States of America, the Commonwealth of Virginia, or any agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in any manner as to substantially restrict the Lessee, for a period of at least ninety (90) days from operating an air transportation system; provided, however, that such assumption is not due to any fault of the Lessee.

The Lessee's waiver of default of the City's performance of all or any part of any terms, covenants and conditions herein contained to be performed, kept and observed by City, shall not be deemed a waiver of any right on the part of the Lessee to terminate this Agreement for a subsequent failure by City to so perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed.

ARTICLE XI - ASSIGNMENT OR TRANSFER OF AGREEMENT

The Lessee shall not at any time assign, sell, or transfer this Agreement or any part thereof without prior written City approval, which shall not be unreasonably withheld. Under no circumstances shall the Lessee be relieved of any of its obligations hereunder by any such transfer or assignment, and any attempt to perform such transfer or assignment shall permit the City to unilaterally terminate this Agreement with written notice to the Lessee.

The above provisions of this article are not intended to prohibit the Lessee from entering into a sublease to provide aeronautical services required under, or consistent with the requirements set forth in the Airport's minimum standards. Any such consent shall require that the assignee to be financially able, as determined under the Airport's minimum standards, to assume said agreement and provided the assignee shall use the said property for the purposes set forth in this Agreement only. No assignment or sublease shall in any way affect or diminish the Lessee's obligations to perform all of the terms, conditions and provisions contained in this Agreement unless released in writing by the City. All such agreements shall be approved in writing by the City. Any aeronautical service(s) offered to the public by a subtenant, whether that service is authorized in this Agreement or not, must follow the applicable procedures as contained in the Airport's minimum standards for approval by the Airport Director prior to engaging in business activities.

In the event of a dispute between any future parties to this Agreement during its term which results in one of the future parties being unable or unwilling to utilize the Property in a mutually agreeable shared manner, this Agreement shall automatically terminate upon written notice from the City, and control of the Property shall automatically revert to the City without any further action being required.

In the event the City and/or any of the surrounding localities establish an Airport Authority for the operation of the Lynchburg Regional Airport, the City shall have the unilateral right to transfer or assign any or all of this Agreement to such Airport Authority. Further, such authority shall have the right to assume all of the City's responsibilities thereunder.

ARTICLE XII - SURRENDER OF POSSESSION

Upon the expiration or termination of this Agreement, the Lessee's authority to use the Property and any rights described herein to the Airport shall immediately cease. The Lessee shall, upon such expiration or termination, promptly surrender the same to the City, in good condition, excepting ordinary wear and tear. With the exception of personal property and equipment belonging to the Lessee, the Property, all structures, buildings, facilities, utilities, and the like at the Airport shall remain the exclusive property of the City.

Except as otherwise provided in this Agreement, all equipment and personal property brought in, installed, or placed by the Lessee in, on, or about the Airport while this Agreement is in effect shall be deemed to be personal and remain the

property of the Lessee. The Lessee shall have the right, at any time while this Agreement is in effect and for a period of sixty (60) days after the expiration or termination of the same, to remove any or all of its equipment and/or personal property from the Airport's premises. Lessee shall repair all damage, if any, resulting from such removal, and make reasonable restoration of the Airport's premises to the condition which existed prior to the Lessee's use of the Property and the Airport. Any and all equipment or personal property of the Lessee that is not removed by the Lessee within sixty (60) days subsequent to the expiration or termination of this Agreement shall, thereupon, become the property of the City with all other facilities located on the Airport's premises. The City may remove and/or dispose of such items without any liability. Removal by the City shall not relieve the Lessee from its obligation to pay the cost of repairing damage to the Property and the premises of the Airport caused by the removal, or from its obligation to pay the cost of restoring the Property and the Airport's premises to their pre-occupancy condition, ordinary wear and tear excepted.

ARTICLE XIII – NOTICES

Notices or demands provided to the Lessee under this Agreement shall be sufficient if sent by Certified Mail, postage prepaid, and addressed to the President of the Lessee or to such other representative or addressees as the Lessee may designate to the City in writing from time to time. As of the execution of this Agreement, the Lessee shall be notified at

**Freedom Aviation, Inc.
310 Hangar Road
Lynchburg, Virginia 24502**

Such notice or demand shall be deemed to have been given or made when sent by the use of a telegram or when deposited, postage prepaid, in the U.S. Mail.

Notices or demands provided to the City under this Agreement shall be sufficient if sent by Certified Mail, postage prepaid, addressed to the Airport Director, and sent to

**Lynchburg Regional Airport
350 Terminal Drive, Ste. 100
Lynchburg, Virginia 24502**

Such notice or demand shall be deemed to have been given or made when sent by the use of a telegram or when deposited, postage prepaid, in the U.S. Mail.

ARTICLE XIV - GENERAL PROVISIONS

- A. **Height Restrictions.** The Lessee, for itself and its successors and permitted assigns, shall restrict the height of any structures, objects, or natural growth and other obstructions on the Property and the Airport to such a height that complies with Federal Aviation Regulations, Part 77.
- B. **Interference with Airport Activities.** The Lessee, for itself and its successors and permitted assigns, shall prevent any use of the Property or the Airport's premises that would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute a hazard, as determined by the City and/or the Federal Aviation Administration.
- C. **FAA.** Whenever the terms "Federal Aviation Administration" or "FAA" are used in this Agreement, they shall be construed as referring not only to the Federal Aviation Administration, but also to such other appropriate government agencies which may be the successor or successors thereof.
- D. **Repairs to Airport.** Major airfield repairs or rebuilding may take place during the terms of this Agreement, and the Lessee accepts this Agreement subject to any inconvenience or loss of use of the Property, the Airport, or any part thereof which may become necessary because of said airfield repairs, rebuilding, construction, or expansion.
- E. **Headings.** Marginal headings contained in this Agreement are for convenience only and shall not be considered to amplify, relate, modify, or otherwise affect any of the terms, provisions or conditions of this Agreement.

- F. **Severability.** If any provision of this Agreement shall be construed to be invalid or unenforceable by a court of competent jurisdiction, then such provision shall be stricken and/or reformed as necessary by the City and the Lessee, and the remaining portions of this Agreement shall remain in full force and effect.
- G. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any legal proceedings shall be filed in the courts of the City of Lynchburg, Virginia and in no other forum.
- H. **Snow Removal.** It is expressly understood that there shall be no duty upon the City under this Agreement to remove snow or ice from the fuel farm area or the Property, except to the extent such snow removal is contained in the Airport's Snow Removal Plan (Common Areas).
- I. **Loss of Revenue.** The City shall not be liable for any loss of revenue to the Lessee resulting from City's actions or inactions concerning the maintenance and operation of the Airport, the Property, or the Airport's facilities.
- J. **Entire Agreement.** All terms and conditions with respect to this Agreement are expressly contained herein, and the Lessee agrees that no representative or agent of the City or the Lessee has made any representation or promise with respect to this Agreement not expressly contained herein.
- K. **Government Approval.** It is understood that this Agreement is made subject to its approval by the FAA and the Virginia Department of Aviation and the City Council of the City of Lynchburg, if any such approval is needed.
- L. **Reservation of Rights.** It is distinctively understood that all privileges and uses at the Airport, except to the extent herein permitted to the Lessee, are expressly reserved by the City to grant or use in its discretion as the City, in its sole discretion, may deem advisable.
- M. **No Exclusive Rights.** Nothing contained in this Agreement shall be construed as granting or authorizing the granting of any exclusive right within the meaning of Section 308(a) of the Federal Aviation Act.
- N. **Governmental Agency Agreements.** The Lessee acknowledges that the City has entered into various agreements with the United States of America and the Commonwealth of Virginia with respect to the Airport. The City represents that it intends, from time-to-time hereafter, to enter into additional agreements with the same with respect to applications for funds for improvements to be made at said Airport, in accordance with pertinent statutes, rules, and regulations of respective and duly constituted competent governmental authorities having jurisdiction thereof. This Agreement is expressly made subject to all of those said agreements now existing or hereafter made.
- O. **Business Organization.** Upon execution of this Agreement, the Lessee shall provide to the City (if it has not already done so) documents confirming its corporate status and authorization to conduct business in the Commonwealth of Virginia. The Lessee shall notify the City immediately of any change(s) in its organizational and/or corporate status, and shall notify the City immediately upon receipt of information that its authorization to conduct business in Virginia is or will be revoked.
- P. **Remedies not exclusive.** All rights and remedies described in this Agreement shall be deemed cumulative and additional to all other rights and/or remedies available at law or in equity.
- Q. **Binding Effect.** The terms, provisions and covenants of this Agreement shall bind and inure to the benefit of the respective parties hereto and to their representatives, successors, and permitted assigns.
- R. **Modification.** This Agreement may be modified by the City and the Lessee during its existence, but no modification shall be valid or enforceable unless made in writing and signed by both of the aforesaid entities. The Lynchburg City Council need not approve such modifications.
- S. **Independent Entities.** Nothing contained in this Agreement shall be construed as or deemed to make either the City or the Lessee the agent, partner, or joint venture of the other, except as may otherwise be provided in this

Agreement. Unless otherwise provided in this Agreement, nothing contained in this Agreement shall give the Lessee any authority to represent the City before any court or governmental or regulatory agency without the express prior written authorization of the City. Neither the City nor the Lessee shall be responsible or held liable for the acts or omissions of the other. Further, in performing any services or engaging in any actions pursuant to this Agreement, the Lessee is and shall be acting as an independent contractor, responsible to all parties for its acts and omissions, and the City shall not be liable for the same.

- T. **Obligation to Amend.** In the event the FAA or other governmental entity requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Lessee herein agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, provisions, and covenants of this Agreement as may be reasonably required; provided, however, that if such modifications or changes substantially change or adversely affect the financial condition of the Lessee hereunder, the Lessee shall have the option, upon sixty (60) days written notice to the City, to terminate this Agreement.
- U. **Notice of Violation of Federal Assurances.** In the event the FAA advises the City that letting the Property to the Lessee violates the assurances the City has given to the FAA not to grant exclusive rights at the Airport or in some other manner, the City shall have the right to terminate or modify this Agreement.
- V. **Third-Parties.** Nothing in this Agreement shall be deemed to create any rights to those who are not expressly made a party to this Agreement. The parties to this Agreement are the City and the Lessee.
- W. **Counterparts and signatures.** This Agreement may be executed in counterparts. Each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one Agreement. Further, this Agreement may be executed and/or sealed electronically. An electronic signature and/or seal shall be equally as enforceable as an original signature or seal.
- X. **Existing Leases.** The following agreement between the City and the Lessee or related entities of the Lessee are hereby mutually terminated, as this Agreement is intended to address and replace the same:

That certain agreement dated July 1, 2018, between the City and Aviation Resources, Inc. d/b/a Virginia Aviation, concerning: A lease of property the use of three (3) aviation fuel storage tanks and related pumping equipment located in the fuel tank farm at Lynchburg Regional Airport for a term of five (5) years that will expire June 30, 2023.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto, or authorized agents on their behalf, do hereby execute this Agreement as of the date first above written.

CITY OF LYNCHBURG

By: [_____] (Seal)
Wynter C. Benda
City Manager

(SEAL)

ATTEST: [_____]
Alicia Finney
Clerk of Council

FREEDOM AVIATION, INC.

By: [_____] (Seal)
Andrew Wallace
President

(SEAL)

ATTEST: [_____]

Name

Title

Approved as to Form:

City Attorney/Designee

Exhibit 1

Fuel Farm Location

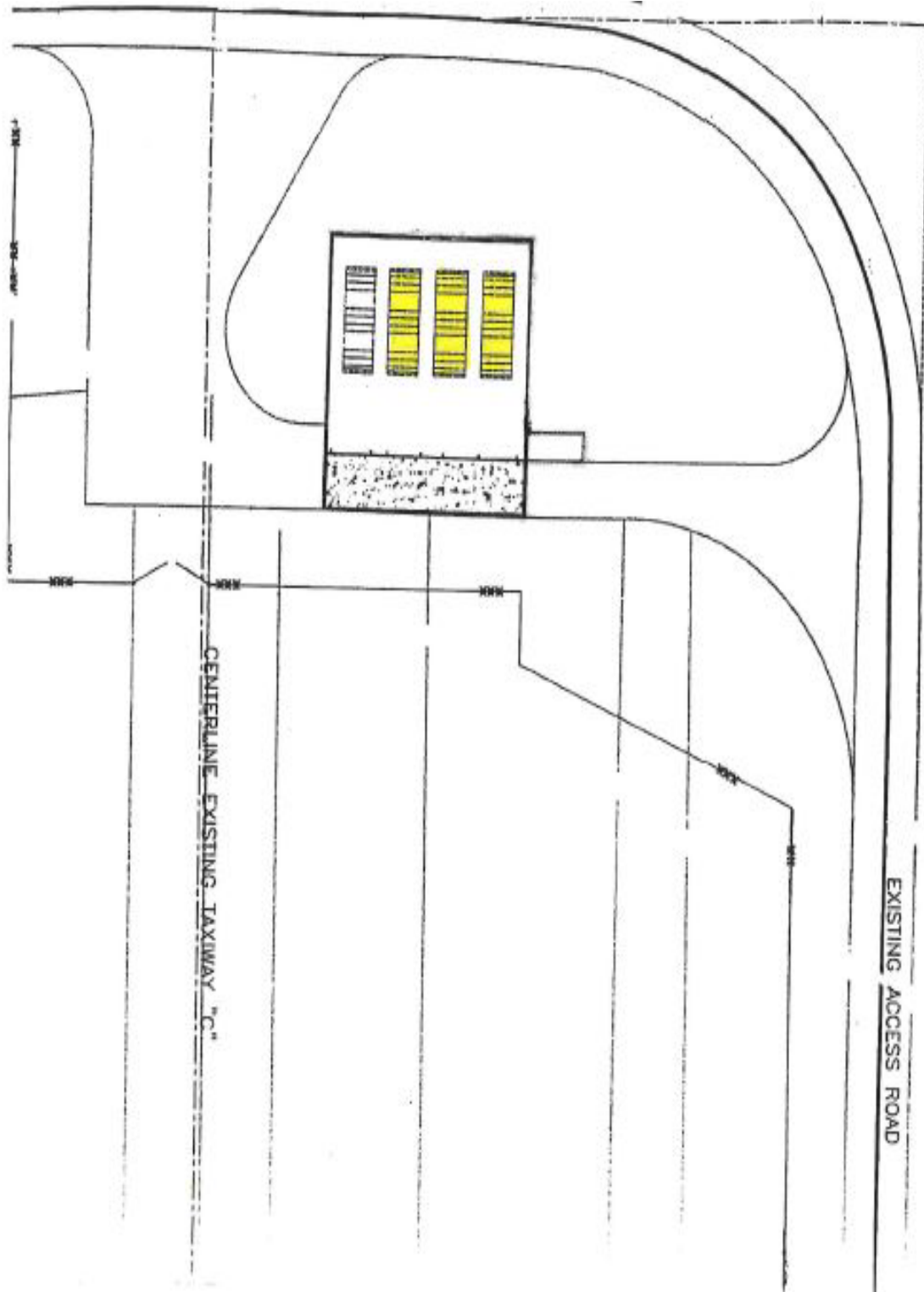


Exhibit 2

Airport Minimum Standards

<https://www.lynchburgva.gov/sites/default/files/COLFILES/Airport/LYH.Min%20Stnds.%20Dec%206%2C%202017-FINAL%20As%20Approved-ATCT%20Pic-rev%203-25-19.pdf>

RESOLUTION:

#R-22-062

A RESOLUTION TO AUTHORIZE THE LEASE OF CITY-OWNED REAL ESTATE, LOCATED AT 350 TERMINAL DRIVE, LYNCHBURG, VIRGINIA 24502, AT THE LYNCHBURG REGIONAL AIRPORT, IN CAMPBELL COUNTY, VIRGINIA; SAID LEASE BEING FOR THE PURPOSE OF ALLOWING THE USE OF THE FUEL TANK FARM AT THE LYNCHBURG REGIONAL AIRPORT

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

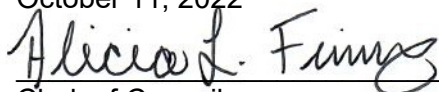
1. That the following described real estate, including any, if any, improvements thereon, may be let by the City of Lynchburg, a Virginia municipal corporation, for the purpose of providing aeronautical fuel services at the Lynchburg Regional Airport as a Fixed Base Operator (FBO).

The real estate to be let is briefly described herein as follows: Three (3) 15,000-gallon fuel storage tanks and related pumping equipment located in the fuel tank farm at the address of 350 Terminal Drive, Lynchburg, VA 24502 (Campbell County, Virginia) at the Lynchburg Regional Airport.

2. That the City Manager is hereby authorized to take any and all actions necessary to effectuate the lease of the previously described real estate. The Lease connected to this matter, between the City of Lynchburg and Freedom Aviation, Inc., to take effect on November 1, 2022, is hereby approved and incorporated into this Resolution by reference.
3. That any and all documents which may have been signed before the adoption of this Resolution, which are connected to the substance of this Resolution, are ratified.
4. That this Resolution shall become effective upon its adoption.

Adopted: October 11, 2022

Certified:


Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 11, 2022**

AGENDA ITEM #: **9**

REGULAR: **X**
ACTION: **X**

WORK SESSION:
INFORMATION:

CLOSED SESSION (Confidential):

ITEM TITLE: Lease Agreement with ARINC

RECOMMENDATION: Adopt a resolution to authorize a lease agreement between the City of Lynchburg and ARINC, Inc and authorize the City Manager to execute the same.

SUMMARY: ARINC is requesting a lease agreement for their ACARS (Aircraft Communications Addressing and Reporting System) equipment. ACARS is a digital datalink system for transmission of short messages between aircraft and ground stations via airband radio or satellite. This request is for a 5-year lease with an option to renew for up to five (5) successive one (1) year terms.

The rental rate shall automatically increase by two percent (2%) on the first day of each anniversary of the rent commencement date.

PRIOR ACTION(S): Business Item Briefing (BIB) held on September 27, 2022

FISCAL IMPACT: Rent is calculated at \$1,200 per year with a CPI escalator for the term of the agreement.

CONTACT(S): Andrew La Gala, Airport Director; (434) 455-6089

ATTACHMENT(S):

- Resolution
- ARINC Lease Agreement w/Exhibits.

REVIEWED BY: GAP

A RESOLUTION TO AUTHORIZE THE LEASE OF CITY-OWNED REAL ESTATE, LOCATED AT THE LYNCHBURG REGIONAL AIRPORT, 350 TERMINAL DRIVE, LYNCHBURG, VIRGINIA 24502, CAMPBELL COUNTY, VIRGINIA; SAID LEASE BEING FOR THE PURPOSE OF LETTING SIXTEEN (16) SQUARE FEET OF SPACE TO ARINC INCORPORATED FOR TWO (2) ASSOCIATED ANTENNAE

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the following described real estate, including any, if any, improvements thereon, may be let by the City of Lynchburg, a Virginia municipal corporation, to allow ARINC Incorporated to install communications equipment serving the aviation industry:

Sixteen (16) square feet of space in the Security Room of the Airport Terminal Building at the Lynchburg Regional Airport, 350 Terminal Drive, Suite 100, Lynchburg, VA 24502 (Campbell County, Virginia) to include an exterior/rooftop space for two (2) associated antennae.

2. That the City Manager is hereby authorized to take any and all actions necessary to effectuate the lease of the previously described real estate. The Lease Agreement connected to this matter, between the City of Lynchburg and ARINC Incorporated, to take effect on November 1, 2022, is hereby approved and incorporated herein by reference.
3. That any and all documents which may have been signed before the adoption of this Resolution, which are connected to the substance of this Resolution, are ratified.
4. That this Resolution shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

LEASE AGREEMENT

THIS LEASE AGREEMENT (the “**Lease**”) is made as of the 1st day of November, 2022, by and between the **CITY OF LYNCHBURG** (“**Lessor**”), a municipal corporation of the Commonwealth of Virginia, and **ARINC INCORPORATED** (“**Lessee**”), a Delaware Corporation authorized to do business in the Commonwealth of Virginia. Lessor and Lessee are sometimes referred to in this Lease individually as a “**Party**” and collectively as the “**Parties**”.

W-I-T-N-E-S-S-E-T-H:

That for and in consideration of the sum of ONE DOLLAR (\$1.00) and the terms and conditions of this Lease, the receipt of such consideration being acknowledged herein, the Parties agree as follows:

1. **PREMISES.** Lessor hereby lets to Lessee and Lessee hereby leases from Lessor the following space located in **Campbell County, Virginia**: approximately sixteen (16) square feet of floor area located in the Security Room of the Airport Terminal Building of the Lynchburg Regional Airport (“**Airport**”), 350 Terminal Drive, Lynchburg, Virginia, and including exterior/rooftop space for Lessee’s two associated antennae (the “**Premises**”), as depicted on the attached diagram (Exhibit “A”), explicitly incorporated herein this Lease by reference.

2. **TERM.** The term of this Lease shall be for a period of five (5) years commencing on November 1, 2022 (the “**Rent Commencement Date**”) and expiring on September 30, 2027 (the “**Lease Term**”). Thereafter, the Lease Term may, at the option of the Parties, renew for up to five (5) successive one (1) year terms. While this Lease is in effect, Lessor and Lessee shall both have the ongoing option to terminate this Lease at any time by delivering written notice of such election to terminate to the non-terminating party at least ninety (90) days prior to the desired termination date.

3. **RENT.** Commencing on the Rent Commencement Date, Lessee shall pay Lessor, without notice or demand, rent of One Hundred Dollars (\$100.00) per *month*, payable *monthly* in advance. The first payment of rent shall be made within thirty (30) days after the Rent Commencement Date, and subsequent installments of rent shall be due and payable on the first day of each month (or if paid annually, on the first day of each annual renewal of the Lease Term). The rental rate shall automatically increase by two percent (2%) on the first day of each anniversary of the Rent Commencement Date. Lessor shall, prior to the Rent Commencement Date, complete, sign and furnish to Lessee the Lessor’s W-9 and Lessee’s supplier information form. In the event that either Party shall exercise its option to terminate this Lease, any rent which has been prepaid by Lessee that is attributable to a period after the termination date shall be refunded to Lessee within thirty (30) days after the termination date.

4. **USE AND ACCESS.** Lessee shall use the Premises for its communication equipment serving the aviation industry. Such use permitted by Lessor is non-exclusive. Lessee may install, operate, maintain, store, and remove on the Premises such communication equipment as may be necessary to its business, including transmitters, receivers, power supplies and antennas. Lessee shall not use the Premises for any other purposes without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed, and an amendment/modification to this Lease shall be completed. Lessee shall have the right to add and exchange radio equipment and antennas within its Premises without the prior written consent of Lessor. Lessee shall have access to the Premises between the hours of 7:00 AM through 10:00 PM, seven (7) days a week for the purpose of routine maintenance upon providing Lessor with at least twelve (12) hours prior notice. Lessee shall have immediate access

to the Premises at all hours of the day or night, seven (7) days a week for emergency repairs only, upon reasonable notice to Lessor.

Lessor shall have the right to enter the Premises at any time, without notice, to ensure the Premises are being solely used for the purposes permitted by this Lease and that the Premises are being properly maintained by the Lessee. In the event Lessor requires the Premises for its purposes during the Lease Term, Lessor shall have the right, subject to a minimum of ninety (90) days prior written notice to Lessee, to relocate Lessee's equipment to a substantially similar space on the Airport, subject to technical requirements of Lessee. Technical requirements must meet those provided for in the original space in Lessor and Lessee's joint determination made in good faith. In the event Lessor is not able to relocate Lessee to a suitable space, either Party may terminate this Lease, without further liability or obligation to each other, upon ninety (90) days written notice.

5. UTILITIES. Lessee, at its expense, may arrange for such telephone, communication service, and other utilities as it may require. Electric power shall be paid for by Lessor and is included in the rent.

6. MAINTENANCE AND REPAIRS. Lessor shall be responsible for the repair, replacement, and maintenance of the foundation, rooftop, structural, mechanical system, electrical elements, and building facade of the building in which the Premises are located. Lessee shall keep the Premises in a clean, neat and orderly condition, free of debris and rubbish, and upkeep the portion of the Premises where its equipment and improvements are located. At the expiration or termination of this Lease, Lessee shall surrender the Premises to Lessor in the same condition as received, normal wear and tear excepted, remove Lessee's equipment, and repair any and all damage to the Premises caused by the removal of the said equipment. However, at Lessee's option, Lessee may leave any of its equipment and/or improvements on the Premises at such time of expiration or termination, and such equipment and/or improvements shall become the sole property and responsibility of Lessor unless, at least thirty (30) days before the end of the Lease Term, Lessor has given Lessee written notice to remove the same. In the event Lessee fails to remove the same within thirty (30) days of being given such notice, then such equipment and/or improvements shall be removed and disposed of by Lessor at Lessee's expense. Lessee shall pay the cost of such removal and disposal within thirty (30) days of receiving an invoice.

7. DEFAULT AND REMEDIES UPON DEFAULT. Either Party shall have thirty (30) days after receipt (or refusal to accept delivery, which refusal shall be deemed receipt for the purposes hereof) of written notice from the other Party to cure any non-monetary default. If said default is one that cannot be cured within the thirty (30) day period, so long as the Party charged with the default diligently pursues a remedy during the thirty (30) day period, that Party shall be given additional time reasonably necessary to cure the default. If, subsequent to the foregoing requisite period, there continues to be an event of default, the non-defaulting Party may terminate this Lease.

8. ASSIGNMENT/TRANSFER/SUBLEASE. Lessee shall not assign or sublet all or any portion of the Premises or rights granted by this Lease without the prior written consent of Lessor, whose consent shall not be unreasonably withheld; provided that, the Lessee shall be permitted to assign or sublet all or any portion of the Premises or rights granted by this Lease without consent from the Lessor so long as the assignment or sublet is to corporate parents, subsidiaries and affiliates, or by way of merger, operation of law, or related to the sale of all or substantially all of the assets or stock of the Lessee to a third party so long as the assignee has revenue equal to or greater than that of Lessee. The Airport Director of the City, in his/her discretion, is authorized to execute such assignments or subleases on behalf of the City without further approval of the Lynchburg City Council.

9. INSURANCE. During the Lease Term, Lessee, at its own expense, shall maintain the following insurance coverages: (i) Commercial General Liability insurance for bodily injury and property damage in a limit of not less than USD\$1,000,000 (One Million Dollars) per occurrence and USD\$2,000,000 (Two Million Dollars) in the annual aggregate; (ii) Commercial Automobile liability insurance providing coverage for owned, non-owned and hired vehicles in an amount not less than USD\$1,000,000 (One Million Dollars) per accident and USD\$2,000,000 (Two Million Dollars) in the annual aggregate; and (iii) a Workers Compensation policy with statutory limits and Employers Liability coverage with at least the following limits: USD\$500,000 per accident, and USD\$500,000 per disease (each employee). Lessor, its officers, directors, and employees shall be listed as additional insureds on the Commercial General Liability and Automobile liability policies, and properly shown on a Certificate of Insurance to be provided to Lessor.

The insurance required of Lessee hereunder shall be primary and any insurance or self-insurance maintained by Lessor shall be secondary and apply only in excess of and shall not contribute with the insurance obtained by Lessee. Any deductibles or self-insurance retention applicable to the required coverages shall be paid by Lessee, and Lessor shall not be required to participate therewith. Lessee shall deliver to Lessor a copy of said insurance policy or certificate of insurance with the necessary endorsements to the Risk Management Division of Lessor showing the same to be in full force and effect before occupying the Premises, upon each renewal of this Lease, and at other times through the term of the Lease when Lessor requests confirmation of insurance coverage.

Lessee must give Lessor ten (10) days prior written notice of any cancellation, nonrenewal, or modification of coverage, and a binder or certificate verifying new coverage in accordance with the requirements herein prior to any change, cancellation, or nonrenewal date. In the event of such cancellation or nonrenewal notice, Lessee shall obtain and pay all premiums for the renewal or replacement of the insurance required thereunder. Lessee shall, at least sixty (60) days prior to the expiration of the insurance policies required hereunder, furnish Lessor with renewals or "binders" for the policies, or Lessor may order the required insurance and charge the cost to Lessee. All insurance will be obtained by Lessee from insurance companies authorized by Virginia's State Corporation Commission to do business in Virginia. All rights of subrogation are waived by Lessee, and such waiver shall be listed as an endorsement on all certificates of insurance provided to Lessor.

10. INDEMNIFICATION. Lessee shall indemnify, defend, and hold harmless Lessor, its officers, directors, and employees from all third-party legal liability (including reasonable attorney's fees), including bodily injury, death, and property damage to the extent caused by the negligence or misconduct of Lessee in its use and/or occupancy of the Premises.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE.

11. ENVIRONMENTAL. Lessee agrees that the Premises will not be used for disposal of hazardous or toxic materials. Lessee shall not dispose of hazardous substances, hazardous waste, hazardous materials, and toxic substances as defined under any federal, state or local laws and regulations in effect during the Lease Term. Lessee shall indemnify, defend, and hold harmless Lessor, its officers, directors, and employees from all third-party legal liability (including reasonable attorney's fees), penalties, and the like which may arise against the Lessor, its officers, directors, and employees as a result of a violation of this section. Lessee is not responsible or liable for environmental contamination arising prior to, during or after the Lease Term not caused by Lessee.

12. COMPLIANCE WITH LAWS. Lessee, its officers, employees, and contractors shall observe and comply with all laws and regulations promulgated under any federal, state, county or municipal laws affecting the use of the Premises and the manner in which the Premises should be used by the Lessee. During the Lease Term, Lessee shall obtain and maintain all required local, state, and federal permits, licenses, approvals, and the like concerning its operations on the Premises.

13. NOTICES. Any notice required by this Lease must be hand delivered, sent by certified mail, return receipt requested, or by a reputable overnight delivery service to the appropriate party at the addresses set out below or to any other address that the Parties subsequently designate in writing.

To Lessor:

Lynchburg Regional Airport
350 Terminal Drive, Suite 100
Lynchburg, VA 24502
Attention: Airport Director

To Lessee:

ARINC Incorporated
2551 Riva Road
Annapolis, MD 21401-7435
Attention: Real Estate, Mailstop 5-1B35

14. ELECTRONIC SIGNATURES. The Parties acknowledge and agree that this Lease may be executed by electronic signature, which shall be considered as an original signature for all intents and purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature. This Lease may be executed in counterparts. Each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one document.

15. COVENANT OF NON-DISCRIMINATION. Lessee does hereby covenant that no person on the grounds of race, sex, color, national origin, or any other basis prohibited by federal or Virginia law shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the operation of any of the facilities, buildings, or the like which may be connected to this Lease. Lessee further covenants it will not discriminate against and will make all reasonable efforts to accommodate persons with disabilities as required by the Americans with Disabilities Act.

16. THIRD-PARTY RIGHTS. Nothing in this Lease shall be deemed to create any rights to those who are not expressly made a party to this Lease. The Parties to this Lease are the Lessor and the Lessee.

17. INDEPENDENT ENTITIES. Nothing contained in this Lease shall be construed as or deemed to make either the Lessor or the Lessee the agent, partner, or joint venture of the other, except as may otherwise be provided in this Lessee. Unless specifically provided in this Lease, nothing contained in this Lease shall give the Lessee any authority to represent the Lessor before any court or governmental or regulatory agency without the express prior written authorization of the Lessor. Unless otherwise provided in this Lease, neither the Lessor nor the Lessee shall be responsible or held liable for the acts or omissions of the other. Further, in performing any services or engaging in any actions pursuant to this Lease, the Lessee is and shall be acting as an independent contractor, responsible to all parties for its acts and omissions, and the Lessor shall not be liable for the same.

18. MODIFICATION. This Lease may be modified by the Lessor and the Lessee during its existence, but no modification shall be valid or enforceable unless made in writing and signed by both of the aforesaid Parties.

19. RESERVATION OF RIGHTS. It is distinctively understood that all privileges and uses of the Lessor's property and the Premises, except to the extent herein demised to the Lessee, are expressly reserved by the Lessor to use at its discretion as the Lessor deems appropriate. Further, Lessee assumes the risk of using the Premises for its purposes and holds Lessor harmless from all damages, liabilities, penalties, and the like arising against Lessee, its facilities, and/or its property so long as such damages, liabilities, penalties, or the like did not arise as a result of Lessor's negligence or misconduct.

20. REMEDIES NOT EXCLUSIVE. All rights and remedies described in this Lease shall be cumulative and additional to all other rights and/or remedies available at law or inequity.

21. SEVERABILITY. In the event that any provision, or portion thereof, of this Lease shall be construed to be invalid or unenforceable by a court of competent jurisdiction, then the remaining portions of this Lease shall remain in full force and effect.

22. SUCCESSORS. All rights and obligations of this Lease will be binding upon the Parties' permitted successors and assigns.

23. GOVERNING LAW. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any legal proceedings related to the same shall be filed in the courts of Campbell County, Virginia and in no other forum.

24. APPROVAL BY CITY COUNCIL. It is understood by the Parties that this Lease is conditioned upon the approval of the Lynchburg City Council.

25. WAIVER. No rights or obligations of this Lease will be deemed waived except by a specific written waiver executed by the Parties.

26. ENTIRE AGREEMENT. All provisions with respect to this Lease are expressly contained herein. No representative or agent of the Lessor or the Lessee has made any representation or promise with respect to this Lease not contained herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed by their duly authorized representatives as of the date first above written.

CITY OF LYNCHBURG

ARINC INCORPORATED

By: _____ (Seal)

By: _____ (Seal)

Name: _____

Name: Susan Keegan

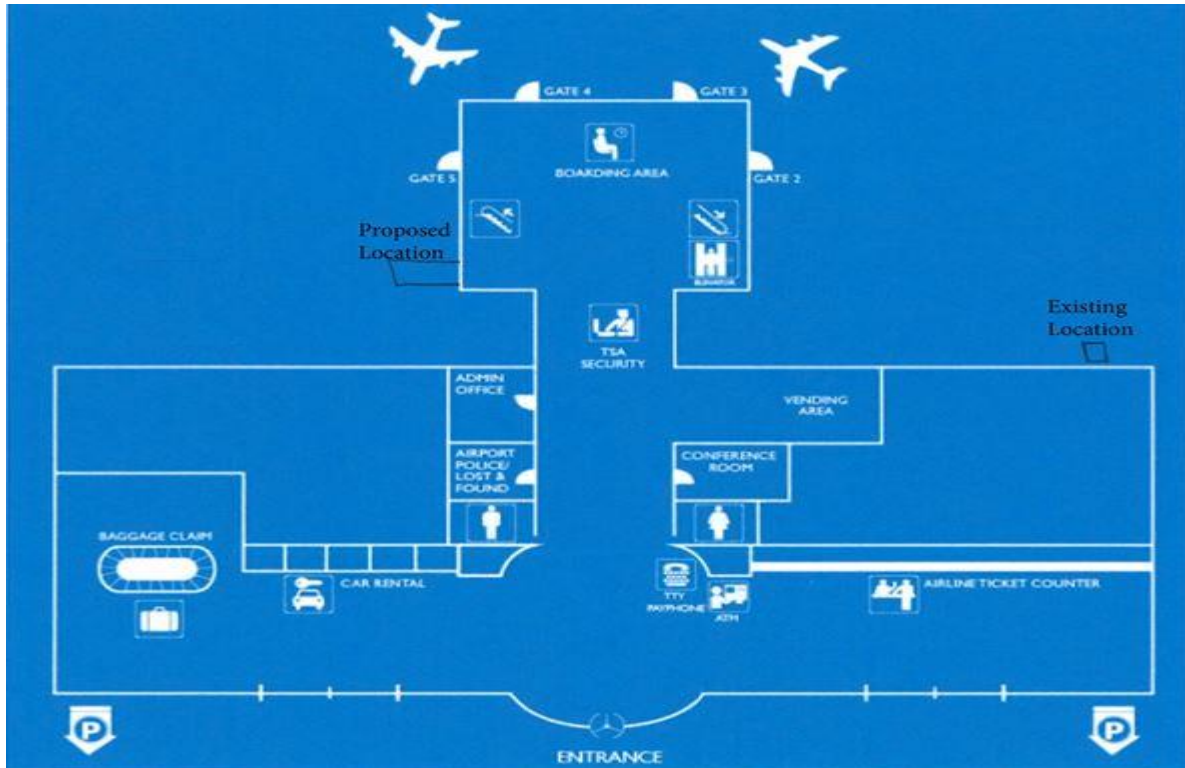
Title: _____

Title: Vice President

Approved as to Form:

City Attorney/Designee

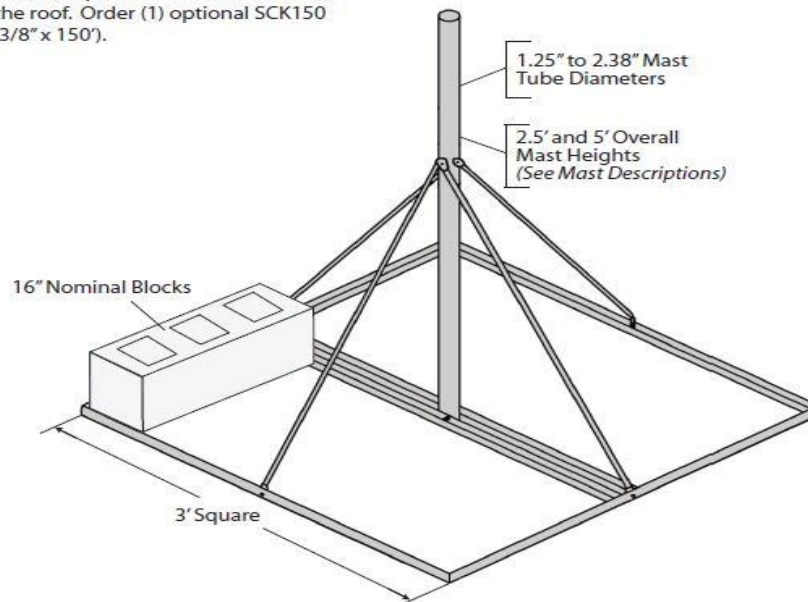
Exhibit A Premises



FRM NON-PENETRATING

The FRM mount is a lightweight mount and is galvanized for corrosion protection. The FRM mount is easily shipped via UPS.

Order (1) optional FRMMAT (1/8" thick) or (1) optional FRMPAD (3/8" thick) for a protective barrier between the mount and the roof. Order (1) optional SCK150 safety cable kit (3/8" x 150').



RESOLUTION TO AUTHORIZE THE LEASE OF CITY-OWNED REAL ESTATE, LOCATED AT THE LYNCHBURG REGIONAL AIRPORT, 350 TERMINAL DRIVE, LYNCHBURG, VIRGINIA 24502, CAMPBELL COUNTY, VIRGINIA; SAID LEASE BEING FOR THE PURPOSE OF LETTING SIXTEEN (16) SQUARE FEET OF SPACE TO ARINC INCORPORATED FOR TWO (2) ASSOCIATED ANTENNAE

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

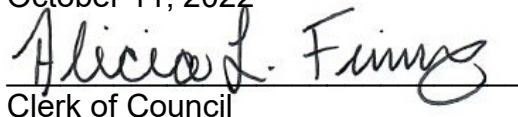
1. That the following described real estate, including any, if any, improvements thereon, may be let by the City of Lynchburg, a Virginia municipal corporation, to allow ARINC Incorporated to install communications equipment serving the aviation industry:

Sixteen (16) square feet of space in the Security Room of the Airport Terminal Building at the Lynchburg Regional Airport, 350 Terminal Drive, Suite 100, Lynchburg, VA 24502 (Campbell County, Virginia) to include an exterior/rooftop space for two (2) associated antennae.

2. That the City Manager is hereby authorized to take any and all actions necessary to effectuate the lease of the previously described real estate. The Lease Agreement connected to this matter, between the City of Lynchburg and ARINC Incorporated, to take effect on November 1, 2022, is hereby approved and incorporated herein by reference.
3. That any and all documents which may have been signed before the adoption of this Resolution, which are connected to the substance of this Resolution, are ratified.
4. That this Resolution shall become effective upon its adoption.

Adopted: October 11, 2022

Certified:


Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 11, 2022**

AGENDA ITEM #: **10**

CONSENT:
ACTION: X

REGULAR: X
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: James River Arts & Cultural District Ordinance

RECOMMENDATION: Adopt City Code amendments to the James River Arts & Cultural District

SUMMARY: The Office of Economic Development & Tourism (OEDT) works to position arts and culture, and the organizations that serve our community, as a critical sector that contributes to the City's economic health. To this end, the James River Arts & Cultural District was established in 2011.

The program includes business incentives and an annual appropriation of amusement tax generated in the District granted by the Office of Economic Development & Tourism through an application process to support programs, events, and projects that drive traffic and spending in the District.

A consortium of arts and cultural organizations within the District has requested that City Council consider a boundary amendment to include the following changes:

- 1) the Central Business District extending up Fifth Street to Taylor Street to include the old City Cemetery and Legacy Museum, Madison House for the Arts, and up Rivermont Avenue to Bedford Avenue.; and
- 2) the Pierce Street Renaissance Historic District, including the properties adjacent to Pierce Street between Thirteenth Street and Fifteenth Street; and
- 3) the areas along Norwood Street, A Street, B Street, and Cabell Street encompass and include the Point of Honor.

Additionally, staff has added language to the ordinance to limit future boundary adjustments to protect the integrity of the arts and cultural district.

PRIOR ACTION(S): N/A

FISCAL IMPACT: Amusement Tax collected from existing "qualified arts organizations" in the District is used to fund the Arts & Cultural Project Grant, administered by the Office of Economic Development & Tourism since 2012. Since 2012, the program has awarded grants totaling \$491,809 to 177 projects or programs, with an estimated economic impact of \$22,239,660.

CONTACT(S): Anna Bentson 455-4493, Marjette Upshur 455-4492

ATTACHMENT(S):

- Draft Ordinance changes

REVIEWED BY: MMB WCB

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY AMENDING SECTIONS 13.1-1, 13.1-2, AND 13.1-4 OF ARTICLE I OF CHAPTER 13.1 OF SUCH CODE, AND BY AMENDING SECTION 13.1-10 OF ARTICLE II OF CHAPTER 13.1 OF SUCH CODE; THE AMENDED SECTIONS RELATING TO THE JAMES RIVER ARTS AND CULTURAL DISTRICT

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted by amending Sections 13.1-1, 13.1-2, and 13.1-4 of Article I of Chapter 13.1 of such code as follows:

Sec. 13.1-1. Purpose.

The Lynchburg City Council finds that the continued development and success of its arts and cultural venues requires incentives, and determines that the most appropriate method of offering incentives for the areas described below is to create an Arts and Cultural District in ~~that~~ such areas, as authorized by Section ~~15.2-1129.1~~ 15.2-943.1 of the Code of Virginia, 1950, as amended. The Lynchburg City Council believes the establishment of an Arts and Cultural District will improve the economic conditions of these geographic areas located in the central portion of the city which could, in turn, benefit the welfare of the citizens of Lynchburg. Thus, such Arts and Cultural District is hereby created, and shall be governed as provided in this Chapter and in accordance with the applicable requirements of the Code of Virginia, 1950, as amended.

Effective January 1, 2023, in order to be added to the Arts and Cultural District created hereunder, the land proposed for the same must contain at least ten (10) contiguous parcels and be zoned in a manner that would lawfully permit a Qualified arts organization(s) or Qualified artist(s) to operate their business(es).

Sec. 13.1-2. Administration.

The administrator of the ~~e~~City's Arts and Cultural District shall be the ~~e~~City ~~m~~Manager or his designee. The administrator or his designee shall determine the procedures for obtaining the benefits created by this ~~e~~Chapter and for the administration of this ~~e~~Chapter.

Sec. 13.1-4. Name and boundaries.

The City's Arts and Cultural ~~d~~istrict shall be named the "James River Arts and Cultural District" and shall consist of all the land and buildings in:

- 1) the Central Business District extending up Fifth Street to Taylor Street to include the ~~e~~Old City Cemetery ~~and~~ Legacy Museum, Madison House for the Arts, and up Rivermont Avenue to Bedford Avenue; ~~and~~
- 2) the Pierce Street Renaissance Historic District, including the properties adjacent to Pierce Street between Thirteenth Street and Fifteenth Street; and

3) the areas along Norwood Street, A Street, B Street, and Cabell Street that encompass and include Point of Honor.

2. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted by amending Section 13.1-10 of Article II of Chapter 13.1 of such code as follows:

Sec. 13.1-10. Taxes eligible for exemption.

- (a) *Business, professional and occupational license taxes and fees.* Qualified arts organizations and Qualified artists shall be exempted from the payment of the business, professional and occupational license (BPOL) taxes and fees for three (3) full years following the actual occupation and/or certification of the ~~e~~Qualified arts organization or Qualified artist within the City's Arts and Cultural District. To secure the above exemption, the ~~arts~~ organization or artist shall file all necessary tax applications and apply to the administrator or his designee for certification as a ~~e~~Qualified arts organization or Qualified artist. Upon certification by the administrator or his designee and proof that no taxes are outstanding at the time of the application, the ~~arts~~ organization or artist shall be entitled to the exemption created by this section.
- (b) *Admissions taxes.* The fees for admission taxes imposed by the Lynchburg City Code and collected by ~~e~~Qualified arts organizations or Qualified artists in the City's Arts and Cultural district shall be redistributed to promote and market ~~the~~ such district and to improve aesthetic or other infrastructure in ~~the~~ such district. This distribution is subject to annual appropriation by the Lynchburg eCity eCouncil.

3. That this Ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

ORDINANCE:

#O-22-064

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY AMENDING SECTIONS 13.1-1, 13.1-2, AND 13.1-4 OF ARTICLE I OF CHAPTER 13.1 OF SUCH CODE, AND BY AMENDING SECTION 13.1-10 OF ARTICLE II OF CHAPTER 13.1 OF SUCH CODE; THE AMENDED SECTIONS RELATING TO THE JAMES RIVER ARTS AND CULTURAL DISTRICT

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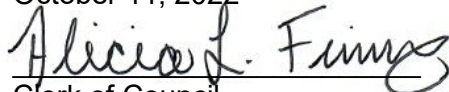
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3. That this Ordinance shall become effective upon its adoption.

Adopted: October 11, 2022

Certified:


Clerk of Council