

City Council Work Session

May 25, 2021, 3pm

Item #1

**City/County Court Complex Memorandum of
Agreement Review and Project Update: Council
Direction Needed**

7th Street Deck Project

Background Material for Work Session, May 25, 2021

Background:

On December 17, 2018, the County of Albemarle and the City of Charlottesville executed an inter-governmental memorandum of agreement (MOA) to redevelop the Levy Opera House and site located at 350 Park Street to serve as a co-located Court Complex (Attachment 1). The comprehensive agreement memorializes the commitment of each party to the Court Complex and the associated parking required to support it. The agreement has a number of provisions and specifically requires the City to provide the County with 90 parking spaces for their exclusive use in a new downtown garage to be constructed nearby and in operation by November 30, 2023.

Since Spring 2019, a team of staff including representatives from Public Works (Facilities Development, Engineering, Facilities Maintenance, and Environmental), Neighborhood Development Services and the Office of Economic Development have been working in conjunction with the engineering firm of Kimley Horn to plan and develop the parking facility project.

On December 2, 2019, the City Council unanimously approved a resolution that directed the following actions: 1) directs the necessary funds for the purchase of the County's portion of the jointly owned parcel, 2) directs the City Manager to authorize all necessary documents related to the closing and 3) directs staff to commence the project as outlined by Kimley Horn in the conceptual design referenced herein as Option C and dated April 2019.

To date the following tasks have been completed:

- Feasibility study and proof of concept design
- Survey and geotechnical investigation
- Appraisal and purchase of the land
- Approval by Procurement for use of Design-Build as delivery method for this project
- Preliminary discussion with the Board of Architectural Review
- Development, issuance and receipt of a Request for Qualifications (RFQ) of prospective Design-Build entities with the assistance of professional services
- Review of received Statements of Qualification with the assistance of professional services resulting in a short list of qualified firms prepared to submit project proposals
- 95% of the development and preparation of Request for Proposals (RFP) and associated Owners Criteria with the assistance of professional services

Funds expended to date (not including city staff time) on the above referenced items total approximately \$1,500,000.

Discussion:

First, recently several councilors have raised questions about the project and have suggested its

scope be altered or delayed. The project is at a critical juncture in the process - the issuance of a Request for Proposals (RFP) from Design-Build firms. Due to the approved funding levels in the FY22 CIP and previous discussions, staff is requesting clarification from City Council on how to proceed. Any significant change to the project scope at this time will result in the City *not* achieving the completion date required in the MOA. In addition, a delay is likely to result in a loss of pre-qualified teams and the possibility of needing to restart the process from the beginning.

Secondly, in terms of funding and schedule, the full project budget is \$11,340,240 (this includes funding for land acquisition costs). The FY21 CIP allocated \$2M to the project. The approved FY22 CIP adds another \$1M with the remaining \$7M to be included in the FY23 CIP. The approved FY22 CIP does not facilitate the current project schedule for a design build project.

Staff cannot proceed with a contract for design-build (anticipated to be approximately \$8.5M) until the full amount of funding is allocated and available. In the above referenced funding sequence this would not occur until the start of FY23 (July 1, 2022). The originally anticipated funding sequence called for full funding by start of FY22; the current funding sequent will likely result in a delay in project delivery of at least a year. As the proof of concept plan and related work had been projected to meet the completion date of the MOA of November 30, 2023, proceeding based on the currently approved funding plan will result in the City *not* achieving the completion date required in the MOA.

The MOA provides the County with two options if a new City-owned parking structure is not completed by the November 30, 2023 completion date. Option 1: The City to provide 100 spaces in the Market Street Parking Garage for the County's exclusive at or below level 2. Option 2: Reconvey one-half interest in the East Market Street parcel and allow County exclusive control of the lot. As neither option adds any new capacity to the parking inventory; both present a challenge in accommodating expected post-COVID-19 parking demand and have operational consequences that impact business and visitors to downtown. Each option is discussed in detail below.

Option 1: The City to provide 100 spaces in the Market Street Parking Garage (MSPG) for the County's exclusive at or below level 2 of the facility. The MSPG was built in 1975 in anticipation of the creation of the downtown pedestrian mall and the associated loss of parking on Main Street. Since that time, the facility has served as the primary parking option for customers, employees and visitors to the mall area as well as municipal functions such as City Hall and the courts. As such, the facility is managed to balance these needs while also providing for maximum efficiency.

During normal pre-COVID operations, the MSPG regularly exceeded 90% occupancy at peak during weekday business hours. On particularly high demand days, the facility reaches capacity and is forced to limit access until spaces become available again. In 2019, the facility reached capacity on 91 occasions and access was limited for periods of time ranging from 30 minutes to 4 hours. In addition, for 15 years prior to the COVID-19 pandemic there was an active waiting list for monthly permits at the MSPG.

Given the historically high level of usage at the facility, it seems inconceivable that an additional 100 reserved spaces could be accommodated in the structure. In fact, they could not under the current model of operation. The only practical way to do so would be to

disallow transient parking Monday – Friday during business hours. To do so (without an equally accessible and attractive alternative option) is contrary to the original purpose of the facility and would cause significant disruption to the general public and the mall area businesses.

Option 2: the City to reconvey one-half interest in the East Market Street parcel and allow County exclusive control of the lot. The parcel at the corner of 7th and Market Street was purchased jointly by the City and the County in 2004 as part of a larger property purchase to facilitate a joint courts project. The parcel is currently a 63 space surface parking lot managed by the City. As part of the MOA and with City Council direction in December 2019, the City purchased the County interest and became full owner in April of 2020.

Under this scenario, the County would repurchase one-half of the lot at the current fair market value or the equal amount to what the City paid the County, whichever is less. The County would then have sole use of the lot. The City would continue to own half of the lot but have no ability to use it or generate revenue from it for the duration of the agreement.

The 63 monthly parkers currently using the lot would be displaced.

In summary, if the City does not construct the new parking facility as contemplated in the MOA, the County has the above options to choose from at their sole discretion. In addition, given the target completion date in the MOA of November 30, 2023, if the design-build process is delayed it greatly increases the chances of the facility not being ready and option 1 or 2 becoming the primary options to satisfy County court parking needs.

Alternative Options

The City may wish to attempt to renegotiate the MOA with the County to alter the terms of the agreement. This requires both parties to be willing to do so and at this point the County is proceeding per the schedule to design the Court building, and we have no reason to believe they are unsatisfied with the agreement as it stands.

Staff have identified two additional alternatives for consideration in this category:

East Parcel Facility – The feasibility study did assess using only the easternmost parcel to construct a smaller facility. The facility would be four levels with a small amount of commercial space and yield approximately 140-200 parking spaces. Estimated costs are in the \$6-8M range. The benefits of this approach include the addition of parking capacity and the preservation of the existing surface lot at 7th & Market for surface parking and/or future development. The disadvantages include fewer parking spaces and a higher cost per space given the smaller development footprint.

East Parcel Surface Lot – Develop a surface parking lot on the east parcel site. A preliminary analysis and layout has been completed by staff and suggests that the lot would yield approximately 38 spaces and cost about \$1M. The benefits of this approach include the addition of a small amount of parking capacity and the preservation of the existing surface lot at 7th & Market for surface parking and/or future development. The disadvantages include an inefficient use of the property as well as potential loss of

investment to develop the parking lot if use is short-term and a high cost per space for a surface lot.

Both alternatives may require amendment to the MOA agreeable to both parties.

Additional Considerations

It has been suggested that the need for additional new parking capacity is unwarranted and that the obligation to the County could be met with one of the alternative options discussed above provided it was coupled with better transportation demand management (TDM) efforts. The 2015 Parking Study conducted by transportation consultant, Nelson Nygaard, did suggest the City pursue TDM strategies in an effort to try and reduce demand and thus relieve pressure on existing parking facilities. Specifically, the creation of a Transportation Management Association was recommended. TMAs are usually non-profit organizations that focus on expanding knowledge of alternatives to commuting in single occupant vehicles. TMAs are common in large metro areas that experience commuter congestion and have multiple alternative transportation options available. To be successful in reducing single occupant vehicle trips, TMAs require consistent funding, dedicated partners and a considerable amount of time. According to American Community Survey data from 2019, local commuting patterns have changed little in recent years with 72% continuing to occur in single occupant vehicles.

In an effort to better maximize the value of the land, the project could be made larger and denser and could include other uses such as residential or office space. While this is certainly possible, it is largely dependent on available resources and it creates a significantly more complex project. It also has significant schedule impacts which cannot meet the deadline in the MOA. The permutations of this approach are considerable and as such are not explored in further detail here. Suffice it to say that staff and the consultant did evaluate this option and given the funding and timing constraints of the project chose to recommend the by-right garage with limited commercial on the ground level as referenced in the December 2, 2019 resolution.

Staff Recommendation

Staff continues to believe that the plan supported by City Council's December 2, 2019 resolution is a practical solution that meets the requirements of the MOA with the County and provides some additional parking capacity to meet continued high demand in the vicinity of City Hall. Should City Council agree and wish to proceed as quickly as possible a supplemental appropriation of funds (\$7M) would be needed. Alternatively, the project can be paused until such time as full funding is available and/or project objectives are clearly redefined.

Staff seeks clarification from City Council as to how to proceed.

Attachments:

1. Memorandum of Agreement with County for Court Expansion, December 18, 2018
2. Council Resolution Initiating Property Acquisition and Parking Structure Development, December 2, 2019

**MEMORANDUM OF AGREEMENT TO FACILITATE THE EXPANSION,
RENOVATION, AND EFFICIENT AND SAFE OPERATION OF THE ALBEMARLE
CIRCUIT COURT, THE ALBEMARLE GENERAL DISTRICT COURT, AND THE
CHARLOTTESVILLE GENERAL DISTRICT COURT**

THIS AGREEMENT is entered into this 17th day of December, 2018, by and between the **COUNTY OF ALBEMARLE, VIRGINIA** (the “County”) and the **CITY OF CHARLOTTEVILLE, VIRGINIA** (the “City”), both of whom are political subdivisions of the Commonwealth of Virginia. This agreement may be referred to as the “Agreement.” The County and the City may be referred to collectively as the “Parties.”

RECITALS

- R-1** Court Square is an approximately three-quarter acre parcel located in a part of the County that is now surrounded by the incorporated territory of the City near the City’s downtown that has served as the Albemarle County courthouse since the Eighteenth Century, and the building in Court Square in which the Albemarle County Circuit Court is located has continuously served as a County court since the early Nineteenth Century; and
- R-2** The County’s General District Court, as well as related County offices, are also located within Court Square; and
- R-3** The City’s Circuit and General Districts Courts are located near the County’s Courts and the City’s downtown, respectively; and
- R-4** As a result of the proximity of these County and City Courts to one another, as well as the location of the United States District Court in the City’s downtown, many law offices and other court-related businesses, organizations, and court-system related service providers are located in the City’s downtown area; and
- R-5** The County and the City agree that an economically strong City benefits the residents of the City, the County, and the region; and
- R-6** The County has studied the expansion, renovation, and efficient and safe operation of the Albemarle County Circuit Court and General District Courts (the “County Courts”) and related facilities since at least 1999, and more recently has studied and considered the relocation of the County Courts to the County Office Building at 401 McIntire Road, which is within the City, and to locations within the County other than Court Square; and
- R-7** This Agreement is premised on the City’s stated intention to construct a parking structure in downtown Charlottesville and the availability of those parking spaces for those persons working in and using the County Courts and their related offices, and the City’s stated intention to contribute funds for the full cost of a City General District Court court set and clerk’s office within the proposed General District Court Building, as those terms are described in this Agreement; and
- R-8** The availability of adequate and convenient parking for persons working in and using the County Courts and their related offices is essential for the current and future safe, convenient, and practical operation of the County Courts in Court Square and its immediate vicinity; and
- R-9** The County’s Board of Supervisors has determined, as stewards of the revenues received from the County’s taxpayers, that it is fiscally prudent to enter into this Agreement and affirm the County’s commitment for the County Courts to remain in Court Square and its immediate vicinity.

STATEMENT OF AGREEMENT

The County and the City agree to the following:

1. Sale of the County's One-Half Interest in the Jointly-Owned East Market Street Parcel.

The City and the County each own a one-half interest in the parcel located at 701 East Market Street, which is identified as City Parcel Identification Number 530159000 (the "East Market Street Parcel"). Subject to the requirement of Virginia Code § 15.2-1800(B) for the County's Board of Supervisors to first conduct a public hearing and the decision of the County's Board of Supervisors following the public hearing, the County agrees to sell its one-half interest in the East Market Street Parcel to the City pursuant to the following terms:

- A. Purpose.** The purpose for the County selling its one-half interest in the East Market Street Parcel is to facilitate the City's construction of a multi-level public parking structure on the parcel (the "Parking Structure"). The Parties understand that any necessary City financing and ongoing operation and maintenance of the Parking Structure is simplified if the County is not a co-owner of the East Market Street Parcel. In addition, as set forth in Section 2, the Parking Structure alleviates the County's need for ongoing ownership of the parcel.
- B. Value of the East Market Street Parcel; Independent Appraisal.** The fair market value of the East Market Street Parcel shall be determined by an independent appraisal. The Parties shall jointly select an appraiser to appraise the Parcel to determine its fair market value at the time of the appraisal. The Parties shall each contribute one-half of the cost of the independent appraisal. The City shall manage the appraisal process by ensuring that all applicable requirements are satisfied in procuring the services of an independent appraiser. Notwithstanding Section 5(I)(2), the Parties may agree to share the cost of the independent appraisal before all State legislation required to enable the County to lawfully pursue the General District Court Project described in Section 5 is signed by the Governor.
- C. Sales Price.** The County agrees to sell its one-half interest in the East Market Street Parcel for one-half the appraised value determined by the independent appraisal prepared pursuant to Section 1(B).
- D. Costs.** Each Party shall bear its own costs and expenses associated with the sale of the East Market Street Parcel, except for the cost of the independent appraisal.
- E. When the Sale Will Close.** The County's sale of its one-half interest in the East Market Street Parcel shall close within six months after completion of the independent appraisal conducted pursuant to Section 1(B), or within two months after all State legislation required to enable the County to lawfully pursue the General District Court Project described in Section 5 is signed by the Governor, whichever is latest.
- F. Sales Contract.** The Parties may enter into a separate purchase contract for the City's acquisition of the County's one-half interest in the East Market Street Parcel. The contract shall be consistent with the terms in Sections 1(A) through 1(E).
- G. Section 6 of the July 20, 2004 City-County Agreement is Inapplicable.** The procedures and requirements of Section 6 of the "City of Charlottesville/County of Albemarle Intergovernmental Agreement Regarding the Joint Purchase/Ownership of Real Estate," which pertain to the East Market Street Parcel and other properties when "either party wishes to dispose of its interest in the Property" do not apply to this conveyance.
- H. Consequences if the County's Board of Supervisors Fails to Approve Sale Following Public Hearing.** If, following the public hearing required by Virginia Code § 15.2-1800, the County's Board of Supervisors does not approve the sale of the East Street Market Parcel to the City as provided in this section, this Agreement is void.

2. Parking Structure on the East Market Street Parcel.

The City shall construct the Parking Structure on the East Market Street Parcel pursuant to the following terms:

- A. **Purpose.** The City intends to construct the Parking Structure to meet the parking needs of the City. The Parking Structure is also significantly important to the County because one of the bases for the County investing in the expansion and renovation of the County Courts as described in this Agreement is the availability of convenient vehicular parking for those persons working in and using the County Courts and their related offices.
- B. **Design of the Parking Structure.** The City shall have sole discretion in the design of the Parking Structure, subject to the following:
 1. **Providing Parking Structure Design Plans to the County.** During the City's design process for the Parking Structure and until the City's final approval of its design, the City shall provide the original and each revision of the Parking Structure design plans to the County for the County's review and comment. The purpose for the County's review and comment of the Parking Structure design plans is to ensure that the requirements of Section 2(C) are satisfied.
 2. **Changes to the Parking Structure Design After Its Approval.** The City shall not change the design of the Parking Structure after the final approval of its plans by change order or otherwise without the County's express written consent if the design change would change or affect in any way the requirements of Section 2(C) being satisfied. County approval shall not be unreasonably withheld.
- C. **Parking Spaces Allocated to the County.** The City shall provide parking spaces to the County within the Parking Structure as follows:
 1. **Number of County Parking Spaces.** The City shall provide 90 dedicated parking spaces for exclusive use and control by the County and persons working in and using the County Courts, or any other purpose (the "County Parking Spaces") as provided in this subsection.
 2. **Location of the Parking Spaces.** The 90 County Parking Spaces shall be located on the ground level within the Parking Structure to the fullest extent feasible, and exclusive of any parking spaces required to be located on the ground level to comply with the Americans with Disabilities Act. If the design of the Parking Structure does not allow all 90 County Parking Spaces to be located on the ground level, as many of the County Parking Spaces as possible shall be on the ground level and any remaining County Parking Spaces shall be located on the next level above or below the ground level subject to design considerations and applicable State or federal regulatory requirements. For the purposes of this Agreement, "ground level" means the level of the Parking Structure that is at or nearest to the level of the ground around the Parking Structure. Because of the different elevations of East Market Street and 7th Street, it is possible for more than one level of the Parking Structure to be ground level.
 3. **Access to Sidewalks Outside of the Parking Structure.** All 90 County Parking Spaces shall be located to provide convenient pedestrian access to sidewalks outside of the Parking Structure to allow persons working in and using the County Courts to safely walk to and from the County Courts.
 4. **Controlled Access.** The Parking Structure shall be designed to provide controlled access to the fullest extent feasible to the County Parking Spaces when the County has the exclusive right to use the County Parking Spaces for its purposes as provided in Section 2(C)(6). The techniques and systems to control access shall be agreed to between the City and the County while the Parking Structure is being designed. County approval shall not be unreasonably withheld.

5. **County Parking Space Circulation, and Dimensions.** The design of the Parking Structure shall provide safe and convenient ingress and egress from the City streets to the County Parking Spaces, access, and internal circulation shall meet the minimum requirements of City Code § 34-975, and the dimensions of each County Parking Space shall meet the minimum dimensions for a parking space for a standard vehicle (8.5 feet by 18 feet) or a compact vehicle (8 feet by 16 feet) as provided in City Code § 34-977. The ratio of County Parking Spaces for standard vehicles and compact vehicles shall be the same as it is for other parking areas within the Parking Structure.
 6. **When the County has Exclusive Right to Occupy the County Parking Spaces.** The County shall have exclusive control over access to and the right to determine the use of the County Parking Spaces as follows:
 - a. **During Regular Court Hours.** Each Monday through Friday, from 7:00 a.m. until 6:00 p.m., unless the day is a court holiday.
 - b. **During Special Court Sessions or Events.** The County shall also have exclusive control over access to and the use of the County Parking Spaces on any weekend day or evening after 6:00 p.m. when the County or any County Court knows that a judicial proceeding or other County Court event will be held on those days or during those times. The County shall provide the City advance notice of the judicial proceeding or other County Court event that will be held on a weekend day or in the evening after 6:00 p.m.
 7. **When the County does not have Exclusive Right to Occupy the County Parking Spaces.** At any time when the County does not have exclusive control of them as provided in Section 2(C)(6), the County Parking Spaces shall be under the control of the City and may be open to the public or otherwise used as the City determines to be appropriate.
 8. **Separate Lease.** Before the County begins using the County Parking Spaces, the County and the City will enter into a lease for the County Parking Spaces. The lease will be for a minimum term of 20 years, for a rent of not more than \$1.00 per year, and will permit the County to renew the lease for one time for a period not to exceed 20 years for a rent of not more than \$1.00 per year and will otherwise be consistent with the terms and conditions of this Agreement. The lease shall contain a section which provides the County with alternative off-street parking spaces if, at any time during the term of the lease, the County Parking Spaces become unavailable. The lease will make proximity as close as possible to the County Courts the City's first priority in providing alternative parking spaces.
- D. When Construction Shall Begin.** The City shall begin construction of the Parking Structure no later than May 1, 2022.
- E. When a Certificate of Occupancy Must be Issued and County Entitled Use.** The City shall issue a certificate of occupancy for the Parking Structure, or at least for the County Parking Spaces, by November 30, 2023, subject to the following:
1. **Coordination.** One of the primary objectives of this Agreement is to ensure that parking spaces are available to persons working in and using the County Courts and their related offices when the General District Court Project is completed. The Parties intend for the City's construction of the Parking Structure and for the General District Court Project to be completed as simultaneously as practicable. In furtherance of that intention:
 - a. **Meetings.** Representatives from the County and the City who will be managing the General District Court Project and the construction of the Parking Structure for their respective localities shall meet to discuss coordinating the timely completion of the two projects. The

parking, based on an average parking space size of 8.5 feet by 18 feet, less the minimum area required for safe travelways.

3. **Reduction.** The amount of the County's pro rata share is thereafter reduced by 15 percent in recognition that the County will not exclusively control the access and use of the County Parking Spaces at all times every day.

4. **Example.** For example, if the County's pro rata share is 25 percent, and the City's total annual management cost of the Parking Structure is \$200,000, the County's pro rata share is \$50,000. That amount is then reduced by 15 percent (\$7,500) for an annual County payment of \$42,500.

C. **When Payment by the County is Due.** The County shall pay the City its portion of the costs to manage and maintain the Parking Structure once each year, within 30 days after the County receives a written invoice from the City.

D. **Ongoing Assessment of Best Practices.** Upon the request of either party, City and County representatives will meet to identify and discuss City and County Courts parking needs that will inform decisions as to the best practices to address those needs.

4. **On-Street Parking.**

The City agrees to provide 15 on-street parking spaces for the County's designated use during the County Courts' operational hours, as follows:

A. **Location.** The 15 on-street parking spaces are located on the sides of the streets abutting the block containing Court Square and the City park that is bounded by East High Street, Park Street, East Jefferson Street, and 4th Street NE (the "On-Street Parking Spaces" and the "Court Square Block").

B. **Parking Spaces in Addition to Existing Dedicated Parking Spaces.** The On-Street Parking Spaces provided by the City pursuant to this section are in addition to the 16 on-street parking spaces on the same block that are already dedicated for County and Court personnel and for persons with disabilities. These 16 on-street parking spaces shall remain dedicated for County and Court personnel and for persons with disabilities during the term of this Agreement and the ratio of those parking spaces for their currently-dedicated uses shall not change without the prior written consent of the County.

C. **When the County has Exclusive Right to Occupy the On-Street Parking Spaces.** The County shall have exclusive control over access to and the right to determine the use of the On-Street Parking Spaces on the days and during the times as provided in Section 2(C)(6).

D. **When County May Begin Use.** The City will make the On-Street Parking Spaces available for County occupation pursuant to this Agreement when the Virginia General Assembly enacts, with the signature of the Governor, all of the amendments to the Code of Virginia listed in Section 5(I) of this Agreement and the County demonstrates, to the City's satisfaction, that all funds necessary for completion of the General District Courts Project are budgeted by the County.

E. **Enforcement.** The County will develop an enforcement policy, strategy, or plan, or a combination thereof (collectively, the "Plan"), intended to ensure that all of the on-street parking spaces (both the previously dedicated 16 on-street parking spaces (not including the parking spaces already designated for persons with disabilities) and the 15 On-Street Parking Spaces are available for use by County Court personnel and persons using the County Courts on the days and during the times as provided in Section 2(C)(6). The County will provide the Plan to the City for its review and approval before the Plan is implemented.

- F. **Reversion.** Alternatively, at the County's sole option, the County may occupy up to 120 parking spaces in the Parking Structure pursuant to Sections 2 and 3 of this Agreement, and up to 15 of the On-Street Parking Spaces described in Section 4 of this Agreement shall revert back to the sole ownership, use, and control of the City, all of which shall be as agreed to between the City and the County before the County executes its option and the on-street parking spaces revert to the City.

5. The General District Court Project.

To facilitate the General District Court Project, the County and the City agree as follows:

- A. **General District Court Project described.** The "General District Court Project" is the County's relocation and expansion of its General District Court and other offices from Court Square to the property located at 350 Park Street, which is identified as City Parcel Identification Numbers 530109000 and 530108000, and which is jointly owned by the City and the County (the "Project Property"). The General District Court Project will include two County General District Court court sets, a shell for a third County General District Court set, and one City General District Court court set. The General District Court Project will also include spaces for Court Clerks and for storage, and will renovate the Levy Opera House building so that the County Commonwealth's Attorney's Office may be relocated there. For the purposes of this Agreement, a "court set" includes a courtroom, judge's chambers, and places for people conducting court business to meet. The General District Court Project is part of a larger project that will include renovating and modernizing the existing County Circuit Court buildings located in Court Square.
- B. **City Consent to Use the Property.** The City consents to the County using the Project Property and constructing and operating the General District Courts on the Project Property for as long as they are located there.
- C. **City Contribution for a City General District Court Court Set.** Within 60 days after receiving a written request from the County, the City shall contribute \$6,838,028 to design and construct the General District Court Project, by which the City will obtain a City General District Court court set and a clerk's office.
1. **Consequences if the City Fails to Appropriate and Transfer.** The County acknowledges that the City's financial contribution to the General District Court Project is subject to appropriation by the City Council. If the City Council does not appropriate the City's contribution and its contribution is not transferred to the County as provided in this Agreement, the City shall pay any costs incurred by the County to redesign the General District Court Project to accommodate only the three County General District Court court sets, any costs related to the delay in the start of construction of the Project, and the City's pro rata share, had it made its full contribution, of the costs for the General District Court Building's foundation, common areas, and circulation elements (access points, entries, lobbies, and hallways that allow people to move around the building).
 2. **Liquidated Damages.** The Parties agree that it would be difficult if not impossible to ascertain the amount of damages sustained by the County arising from the costs related to the delay in the start of construction of the Project caused by the City Council's failure to make the financial contribution to the County pursuant to this Agreement. It is therefore expressly agreed by the Parties that if the City fails to make the financial contribution to the County pursuant to this Agreement which results in Project delay, the City shall pay to the County as liquidated damages, and not as a penalty, the sum of \$200,000.

- D. Ownership and Maintenance of the Project Property and the General District Court Building.** The County and the City jointly own the Project Property and joint ownership shall continue. The County and the City shall also jointly own the General District Court Building. The County's ownership interest shall be based on the percentage of its financial contribution to the total General District Court Project cost and the City's ownership interest shall be based on the percentage of its financial contribution to the total General District Court Project cost.
1. **Management and Maintenance of the Project Property and the General District Court Building.** The Project Property and the General District Court Building (collectively, the "Project Property") shall be managed and maintained (collectively "managed") by the County or a vendor selected by the County, provided that the City and the City General District Court may, at its option, manage and maintain the City General District Court court set.
 2. **Costs.** The City's portion of management costs is 15.68 percent of the total amount of the County's annual management costs of the Project Property.
 3. **When Payment by the City is Due.** The City shall pay the County its share of the costs to manage the Project Property in December of each calendar year, within 30 days after the City receives a written invoice from the County.
- E. Future Capital Costs.** Any capital costs to be incurred after the City issues the certificate of occupancy for the General District Court Building are subject to the following:
1. **Capital Maintenance.** The County shall be responsible for capital maintenance of the Project Property and shall be the fiscal agent for all funding issues pertaining to capital maintenance of the Project Property.
 - a. **Costs.** The City's portion of capital maintenance costs is 15.68 percent of the total amount of any capital maintenance project.
 - b. **When Payment by the City is Due.** The City shall pay the County its share of the costs for capital maintenance within 30 days after the City receives a written invoice from the County.
 2. **Capital Improvements to the Interiors of the General District Court Court Sets.** Any capital upgrades, modifications, or other capital improvements of any General District Court court set shall be solely funded by the County for any County General District Court court set and by the City for the City General District Court court set, provided that any capital upgrades, modifications, or other capital improvements for all four General District Court sets being performed as part of a single project shall be subject to the responsibilities, fiscal agency, cost formula, and payment schedule as provided in Section 5(E)(1).
- F. Furnishing and Equipping.** Each Party shall be responsible for, and pay the full cost of, its respective General District Court court sets. The Parties shall equally share the cost of furnishing and equipping any common areas of the General District Court Building.
- G. Permitting Fees.** When completed, the General District Court Project will be composed of up to four General District Court court sets (one of which will be a shell for future completion by the County). One of the court sets will be a City General District Court court set. The County is responsible for paying any City-imposed permitting fees, provided that the County's obligation to pay permitting fees shall be reduced by the amount of any building inspection fees pursuant to Virginia Code § 15.2-1804, and further provided that the City shall pay 25 percent of all City permitting fees, including any fees imposed by a City utility. Payment by the City of its 25 percent share may be accomplished by reducing the total local fees to be paid for the General District Court Project to 75 percent of that total, less any reduction in building inspection fees pursuant to Virginia Code § 15.2-1804.

H. Charlottesville Circuit Court's Interim Occupation of the Levy House. The Parties entered into a memorandum of understanding on May 9, 2018 to allow the Charlottesville Circuit Court to occupy a portion of a floor of the building known as the Levy House until August 31, 2019 while the Charlottesville Circuit Court's permanent building is being renovated. If the Charlottesville Circuit Court's occupation of the Levy House extends beyond August 31, 2019, upon the written request by the County, the City shall immediately relocate the Charlottesville Circuit Court to another building. If the City does not relocate the Charlottesville Circuit Court by the deadline provided in the County's written request, the City shall pay to the County any costs incurred by the County resulting from the delay, including any increase in the cost for the General District Court Project if the Project must be re-bid.

I. Cooperation in Pursuing Amendments to State Law. The Parties acknowledge that the County's county seat is Court Square and that the County's General District Court Project would relocate the County's General District Courts from Court Square, which is located in the County, to the Project Property, which is located in the City. In addition, the General District Court Building that will be constructed on the Project Property will be jointly used by the County and the City if the City makes its financial contribution for the City General District Court court set pursuant to Section 5(C). Therefore:

1. **Cooperation.** The Parties agree to jointly cooperate from the date of this Agreement until June 30, 2020 in pursuing before the General Assembly any required amendments to State law, including the following:
 - a. **Amendment to Virginia Code § 15.2-1638.** Virginia Code § 15.2-1638 provides that the fee simple of the lands and of the buildings and improvements thereon used for courthouses "shall be in the county or city." Because Project Property is jointly owned by the County and the City, and because the new General District Court Building may be jointly owned, an amendment to Virginia Code § 15.2-1638 is required in order to accomplish the General District Court Project as proposed.
 - b. **Amendment to Virginia Code § 16.1-69.35.** Virginia Code § 16.1-69.35(5) currently leaves it to the discretion of the chief judge of the general district court to determine whether court shall be held in any place or places in addition to the county seat. Because the General District Court Project would relocate the County's General District Court from Court Square, the County's county seat, an amendment to Virginia Code § 16.1-69.35 is required in order to allow the General District Court Project to proceed.
2. **Consequences if Amendments Not Obtained.** If all State legislation required to enable the County to lawfully pursue the General District Court Project described in Section 5 is not effective by July 1, 2020, neither party shall have any obligation under this Agreement except as provided in Section 1(B).

6. Legislative Powers and Rights of Voters Not Affected by this Agreement.

The following legislative powers and voters' rights are not affected by this Agreement, subject to the consequences provided below:

- A. **Resolution by the County's Board of Supervisors.** The City acknowledges that the County's Board of Supervisors may not contract away the Board's legislative powers. Therefore, this Agreement shall not be construed to affect in any way the authority of the Board to adopt a resolution pursuant to Virginia Code § 15.2-1644(A) requesting the County's Circuit Court to order an election on the question of removing the County's county seat (referred to in Virginia Code § 15.2-1644(A) as the "courthouse") to one or more places specified in the resolution.

- B. **Petition by County Voters.** The City acknowledges that the County’s Board of Supervisors may not infringe upon the right of the County’s registered voters to petition the County’s Circuit Court pursuant to Virginia Code § 15.2-1644(A) requesting the Court to order an election on the question of removing the County’s county seat (referred to in Virginia Code § 15.2-1644(A) as the “courthouse”) to one or more places specified in the petition.
- C. **Consequences of a Successful Referendum.** If the referendum on the question requested by the County’s Board of Supervisors or petitioned for by the County’s registered voters pursuant to Virginia Code § 15.2-1644(A) is approved by the voters as provided by law, this Agreement continues in force and effect only until construction of the County court facilities are relocated pursuant to the referendum and the County court facilities are completed and occupied.

7. **Notices and any Other Communications.**

Any notice or other communication required by this Agreement shall be in writing and be mailed by first class mail or delivered by electronic means, including by email, to the chief administrative officer of the other Party.

- A. **Mailing Addresses.** The mailing addresses of the chief administrative officers are as follows:

County Executive	City Manager
County of Albemarle	City of Charlottesville
401 McIntire Road	605 East Main Street
Charlottesville, Virginia 22902	Charlottesville, Virginia 22902

- B. **Email Addresses.** Email communications shall be addressed using the chief administrative officer’s official email address issued by the Party.

8. **Miscellaneous.**

- A. **Amendments.** This Agreement may be amended in writing as mutually agreed by the County and the City.
- B. **Assignment.** Neither Party may assign or transfer any interest in this Agreement, whether by assignment or novation, without the prior written consent of the other Party.
- C. **Non-Severability.** The terms and conditions of this Agreement are integrated with one another. However, if any part of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement is terminated only if it defeats the purposes of this Agreement for each Party as stated in the Recitals.
- D. **Entire Agreement.** This Agreement contains the entire agreement of the County and the City and supersedes any and all other prior or contemporaneous agreements or understandings, whether verbal or written, with respect to the matters that are the subject of this Agreement.
- E. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia.
- F. **Approval Required.** This Agreement shall not become effective or binding upon the County and the City until it is approved by actions of the County’s Board of Supervisors and the City Council, and executed by an authorized official of each Party.

IN WITNESS WHEREOF, and as authorized by actions of the Albemarle County Board of Supervisors and the Charlottesville City Council, the County and the City each hereby execute this Agreement as of the date first above written, by and through their respective authorized officials:


COUNTY OF ALBEMARLE, VIRGINIA

By: 
Chair, Board of County Supervisors

Approved as to Form: 
County Attorney

CITY OF CHARLOTTESVILLE, VIRGINIA

By: 
Mayor, City Council

Approved as to Form: 
City Attorney

RESOLUTION

**Transfer CIP Contingency Account for Acquisition of Land at 701 East Market Street
\$1,280,000**

WHEREAS, on December 17, 2018, Albemarle County and the City of Charlottesville signed a memorandum of agreement to develop a joint court complex located at 350 Park Street in downtown Charlottesville; and

WHEREAS, the agreement is premised on the City's stated intention to construct a parking structure on property owned jointly by the City and the County and adjacent property owned solely by the City, both on East Market Street; and

WHEREAS, the agreement stipulates that the City will purchase the County's one-half interest of the jointly owned property following the completion of a professional appraisal; and

WHEREAS, the appraisal indicates the value of the County's one-half ownership to be \$1,280,000;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that funding for purposes of acquiring parcel #530159000 located at 701 East Market is hereby transferred in the following manner:

Transfer From:

\$1,280,000 Fund: 426 WBS: CP-080 G/L Account: 599999

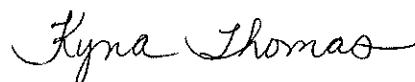
Transfer To

\$1,280,000 Fund: 426 WBS: P-01008 G/L Account: 599999

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute, on behalf of the City of Charlottesville, all necessary documents required in conjunction with the aforementioned purchase of property; and

BE IT FURTHER RESOLVED that City staff is directed to proceed immediately with development of a parking structure as presented at this meeting, consisting of approximately 300 spaces and 12,000 square feet of street front commercial space, such that the timelines prescribed in the memorandum of agreement can be met.

Approved by Council
December 2, 2019



Kyna Thomas, CMC
Clerk of Council