



AGENDA -- CITY COUNCIL  
CITY OF MARTINSVILLE, VIRGINIA

**AMENDED**

**Tuesday, January 28th, 2025**

4:00 pm Rules of Council Workshop  
Room 208, Municipal Building

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6:00 pm Closed Session  
Room 208, Municipal Building

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7:00 pm Regular Session  
Council Chambers, Municipal Building

**4:00 pm - Rules of Council Workshop and Work Session**

Room 208, Municipal Building

- a. Discuss and Consider Rules of Council
1. Discuss Consent Agenda Items
  - a. Discuss and Consider Approval of January 14th, 2025 City Council Meeting Minutes

**6:00 pm - Closed, Executive Session**

Room 208, Municipal Building

- a. Discussion, consideration, or interviews of prospective candidates for appointment.
- b. Discussion or Consultation with legal counsel and briefings by staff members, attorneys or consultants pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by such counsel, as authorized by Subsection 7.



# AGENDA -- CITY COUNCIL CITY OF MARTINSVILLE, VIRGINIA

**AMENDED**

## **7:00 pm - Regular Session**

City Council Chambers, Municipal Building

1. Call to Order
2. Pledge to the American Flag
3. Invocation
  - a. Pastor Tremayne King
4. Proclamations and Presentations
  - a. Proclamation Honoring Black History Month 2025, African Americans and Labor
  - b. Presentation Summer Reading Library Program by Blue Ridge Regional Library
  - c. Presentation of Parks Plan by Citizens Advisory Board
5. Consent Agenda
  - a. Discuss and Consider Approval of January 14th, 2025 City Council Meeting Minutes
6. Public Hearing
  - a. None
7. Regular Agenda or New Business
  - a. Discuss and Consider V.M. Draper/ Tanyard Purchase Agreement
  - b. Discuss and Consider Authorizing Exclusive Option for Negotiation of YMCA Acquisition
  - c. Discuss and Consider Authorizing Administrative Signing of Electric Master Agreements
  - d. Discuss and Consider Authorizing Termination of Solar Development Power Purchase Agreement
  - e. Discuss and Consider Second Reading of Refuse Ordinance
    - i. Motion and Roll Call Vote



# AGENDA -- CITY COUNCIL CITY OF MARTINSVILLE, VIRGINIA

## AMENDED

### 8. Actions necessary as a result of the Executive Session

- a. Consider authorizing agreed order setting forth courthouse evaluation and remediation plan in Show Cause litigation
  - i. Motion and Roll Call Vote
- b. Council Appointment of Board Applicants
  - i. Motion and Roll Call Vote

### 9. City Hall Reporting and Announcements

- A. Public Information Officer
- B. Financial Update

### 10. Communications from Visitors / Business from the Floor

- Description: The purpose of City Council Meetings is to conduct the City's Business. City Council allows for public comment, limited to matters on which the Council has the power and authority to act and are not listed on the printed agenda.
- Participation: Citizens who wish to participate in a meeting's public comment period may do so by signing up at the podium at the entrance prior to the beginning of the meeting, emailing their comments to Peyton Nibblett, Deputy Clerk of Council, at [pnibblett@martinsvilleva.gov](mailto:pnibblett@martinsvilleva.gov), calling in their comments to 276-403-5196, or mailing comments to the City of Martinsville, attn.: Peyton Nibblett, P.O. Box 1112, Martinsville, VA 24114
  - a. Comments, or a request to speak, must be received by noon the day before a Council meeting for consideration by the Council at the meeting.
  - b. Any person submitting comments or requesting to speak must identify themselves by name and address, including zip code.
  - c. Remarks are to be limited to 3 minutes or less (as read aloud), address a topic of City business, and refrain from making any personal references or accusations of a factually false and/or malicious nature.
  - d. Priority for comments is given to City residents, taxpayers, and business owners.
  - e. Speakers may not yield time.
  - f. Groups of speakers on the same topic must designate a single representative. Comments violating these rules may not be presented at the Council meeting.
  - g. Any speaker violating these rules may be removed from the podium or from the Council Chamber.
  - h. This policy does not apply to public hearings, at which any citizen of Martinsville may appear and speak on the subject of the public hearing.



AGENDA -- CITY COUNCIL  
CITY OF MARTINSVILLE, VIRGINIA

AMENDED

Contact: Peyton Nibblett, Deputy City Clerk

a. Email address: [pnibblett@martinsvilleva.gov](mailto:pnibblett@martinsvilleva.gov)

b. Office number: 276-403-5196

c. Mailing address: City of Martinsville, attn.: Peyton Nibblett, P.O. Box 1112, Martinsville, VA 24114.

11. Comments by Members of City Council

12. Communications by City Manager

13. Adjournment



# MINUTES -- CITY COUNCIL CITY OF MARTINSVILLE, VIRGINIA

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## **Tuesday, January 14th, 2025**

5:00 pm Closed, Executive Session  
Room 208, Municipal Building

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6:00 pm Work Session  
Room 208, Municipal Building

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7:00 pm Regular Session  
Council Chambers, Municipal Building

A Closed Session Meeting of Martinsville City Council was held on January 14th, 2025 at 5:00pm in Room 208, Martinsville Municipal Building, Martinsville, VA. Council Members participating included Kathy Lawson, Aaron Rawls, Julian Mei, Rayshaun Gravely, and Mayor Jones. Staff present included City Manager Aretha Ferrell-Benavides, Chief Operating Officer Edena Reese-Atmore, City Attorney Designee and Interim Managing Director of Development Eric Payne, Public Works Director Greg Maggard, Assistant to City Manager Peyton Nibblett, and EDC CEO Mark Heath. Mayor Jones called the meeting to order and advised Council would go into Closed Session beginning at 5:00 PM. In accordance with the Code of Virginia, Title 2.2 Chapter 37, Freedom of Information Act and upon a motion by Mayor Jones and seconded by Council Member Mei with the following 5-0 recorded vote: Council Member Rawls, aye; Mayor Jones, aye; Council Member Mei, aye; and Vice Mayor Lawson, aye, and Council Member Gravely, aye. Council convened in Closed Session to discuss the following matters:

- a. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.
- b. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.
- c. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily



# MINUTES -- CITY COUNCIL CITY OF MARTINSVILLE, VIRGINIA

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involve discussion of the performance of specific individuals.

- d. Discussion or Consultation with legal counsel and briefings by staff members, attorneys or consultants pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by such counsel, as authorized by Subsection 7.

## **6:00 pm - Work Session**

Room 208, Municipal Building

### 1. Discuss Consent Agenda Items

- a. Discuss and Consider Approval of December 17, 2025 City Council Meeting Minutes and January 2nd, 2025 Organizational Meeting of the City Council Minutes
- b. Discuss and Consider Setting Council Retreat Date for February 28th & March 1st
- c. Discuss and Consider Rescheduling March 11th, 2025 Meeting Date to March 13th, 2025; due to Virginia Municipal League National League of Cities Legislative Conference running from March 10th to March 12th

### 2. Briefings and Presentations

- a. Briefing on 2025 Budget Calendar
- b. Briefing on Establishing a Charter Review Committee
- c. Briefing on Community Voice Survey by Assistant to the City Manager, Peyton Nibblett
- d. Briefing on Commonwealth Blvd. Development Improvements, Waterline Expansion by Greg Maggard



# MINUTES -- CITY COUNCIL CITY OF MARTINSVILLE, VIRGINIA

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## **7:00 pm - Regular Session**

City Council Chambers, Municipal Building

### 1. Call to Order

Mayor Jones called the meeting to order beginning at 7:00 PM in Council Chambers, Martinsville Municipal Building.

### 2. Pledge to the American Flag

### 3. Invocation

a. Led by Chaplain Joe Gravely

### 4. Proclamations and Presentations

a. None

### 5. Consent Agenda

- a. Consider Approval of December 17, 2025 City Council Meeting Minutes and January 2nd, 2025 Organizational Meeting of the City Council Minutes
- b. Discuss and Consider Setting Council Retreat Date for February 28th & March 1st
- c. Discuss and Consider Rescheduling March 11th, 2025 Meeting Date to March 13th, 2025; due to Virginia Municipal League National League of Cities Legislative Conference running from March 10th to March 12th
  - i. Consent Agenda **Approved** by Motion made by Councilor Lawson and Seconded by Councilor Mei. Approved with the following vote; Lawson, aye; Rawls, aye; Mei, aye; and Gravely, aye; Jones, aye.

### 6. Public Hearing

a. None

### 7. Regular Agenda or New Business

- a. First Reading of Refuse Ordinance
  - i. **Approved** by Motion made by Councilor Lawson and Seconded by Councilor Mei. Approved with the following roll call vote; Lawson, aye; Rawls, aye; Mei, aye; and Gravely, aye; Jones, aye.
- b. Discuss and Consider Approval of Appropriation of Funds for Commonwealth Blvd. Development Improvements, Waterline Expansion for Engineering and Design



# MINUTES -- CITY COUNCIL CITY OF MARTINSVILLE, VIRGINIA

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- i. **Approved** by Motion made by Councilor Lawson and Seconded by Councilor Mei. Approved with the following vote; Lawson, aye; Rawls, aye; Mei, aye; and Gravelly, aye; Jones, aye.

## 8. Actions necessary as a result of the Executive Session

- A. Council Appointment of Tree Board Applicants
  - a. Moving to January 28th Agenda

## 9. City Hall Reporting and Announcements

- A. Public Information Officer

## 10. Communications from Visitors / Business from the Floor

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  - f. Groups of speakers on the same topic must designate a single representative. Comments violating these rules may not be presented at the Council meeting.
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# MINUTES -- CITY COUNCIL CITY OF MARTINSVILLE, VIRGINIA

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a. Email address: [pnibblett@martinsvilleva.gov](mailto:pnibblett@martinsvilleva.gov)

b. Office number: 276-403-5196

c. Mailing address: City of Martinsville, attn.: Peyton Nibblett, P.O. Box 1112, Martinsville, VA 24114.

## **A. Caleb Robertson, 701 Starling Ave**

11. Comments by Members of City Council

12. Communications by City Manager

13. Adjournment

Vice-Mayor Lawson made the motion to adjourn at 7:45 PM.



## **City of Martinsville Proclamation Recognizing Black History Month 2025**

**WHEREAS**, the City of Martinsville acknowledges the importance of honoring and celebrating Black History Month each February as a time to reflect on the profound contributions, rich history, and enduring legacy of African Americans; and

**WHEREAS**, the national theme for Black History Month 2025, "African Americans and Labor," calls attention to the various and transformative ways in which African Americans have engaged in labor across centuries and contexts, both in the United States and throughout the African Diaspora; and

**WHEREAS**, African Americans' labor has been central to shaping the cultural, social, and economic fabric of our nation, beginning with the agricultural labor of enslaved Africans that fueled the economy of early colonies, extending to the industrial and professional advancements of Black workers who have built, served, and led in myriad ways; and

**WHEREAS**, despite centuries of systemic oppression, wage disparities, and employment discrimination, African Americans have persistently organized, resisted, and excelled—from the establishment of the Brotherhood of Sleeping Car Porters and Maids by A. Philip Randolph in 1925 to the leadership of Black women like Addie Wyatt, who championed workers' rights and reproductive justice; and

**WHEREAS**, 2025 marks the 100th anniversary of the first Black labor union to receive a charter in the American Federation of Labor, symbolizing a historic milestone in the struggle for economic justice, workplace equity, and civil rights; and

**WHEREAS**, African Americans have continuously contributed to building community and advocating for justice through voluntary work, social activism, and institution building in churches, schools, and organizations, providing a foundation for the pursuit of equality and progress; and

**WHEREAS**, recognizing and studying the intersection of African Americans' work and labor struggles across time and space remains integral to understanding Black life and history, and offers new opportunities to reinterpret and reimagine the past, present, and future of our shared society;

**NOW, THEREFORE, I**, LC Jones, Mayor of Martinsville, Virginia, do hereby proclaim February 2025 as Black History Month in the City of Martinsville and call upon all residents to reflect on the 2025 theme, "African Americans and Labor," by participating in activities and discussions that celebrate the vital contributions of African Americans and deepen our understanding of their enduring impact on labor, culture, and justice.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Martinsville to be affixed this 28th day of January 2025.

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LC Jones, Mayor

**MEETINGS:** January 28, 2025

**TITLE:** VM Draper Property / Tanyard LLC

**STAFF RESPONSIBLE** Eric W. Payne, Esq., Interim Managing Director of Development;  
Stephen V. Durbin, Sands Anderson PC – City Attorney

## BACKGROUND/HISTORY

The property commonly referred to as the VM Draper property, currently owned by Tanyard LLC, occupies a potentially advantageous location for economic development, but has fallen into disrepair. The Martinsville Redevelopment and Housing Authority has negotiated with the owners to purchase the property for the price of \$125,000, which represents a reduced price accounting for the deteriorated condition of the structures. A purchase and sale agreement has been negotiated with counsel for Tanyard LLC and is ready for approval.

## POLICY EXPLANATION

This transaction represents an opportunity to abate existing nuisance conditions and acquire a property deemed well-suited for redevelopment.

## FISCAL IMPACT/FUNDING SOURCE

\$125,000 purchase price

| AVAILABLE BUDGET | PURCHASE AMOUNT |
|------------------|-----------------|
|                  | \$125,000       |

## ACTION REQUESTED/ALTERNATIVES:

1. City Council Convene as Redevelopment and Housing Authority to Approve Purchase
2. Do not Approve \_\_\_\_\_
3. Other Action as directed by City Council

## ATTACHMENTS:

- Purchase Agreement Attached.

## **REAL ESTATE PURCHASE AGREEMENT**

**THIS REAL ESTATE PURCHASE AGREEMENT** ("Agreement") is hereby entered into as of the Effective Date (as defined below), by and between **MARTINSVILLE REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (hereinafter known as the "Buyer") and **TANYARD, LLC**, a Virginia limited liability company, (hereinafter known as the "Seller").

### **RECITALS:**

A. Seller is the owner of certain real property located in Martinsville, Virginia, described as Tax Map No. 31 (02)M/54R, 31 (02)J/02, 31(02)J/03, and 31(02)J/04 (together containing 14.799 acres, more or less), together with all improvements and fixtures thereon, and all rights, privileges, easements, benefits and agreements appurtenant thereto, (hereinafter referred to as the "Property").

B. Seller desires to sell the Property and Buyer desires to purchase the Property in accordance with the terms and conditions hereinafter set forth.

### **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the mutual rights and obligations hereunder and the Deposit (as hereinafter defined), Buyer hereby agrees to buy and Seller hereby agrees to sell the Property upon the terms and conditions hereinafter set forth.

1. **Purchase Price; Payment.** The purchase price for the Property (the "Purchase Price") shall be One Hundred Twenty-Five Thousand Dollars and No Cents (\$125,000.00). The entire Purchase Price for the Property shall be due and payable by Buyer by bank cashier's check or wire transfer of funds at Closing. The Deposit shall be applied to the Purchase Price at Closing.

2. **Deposit.** Within ten (10) business days after the Effective Date, Buyer shall deliver to Sands Anderson PC (the "Escrow Agent") a deposit in the amount of One Thousand Dollars and No Cents (\$1,000.00) (the "Deposit").

3. **Investigation of Property.** Within five (5) business days after the Effective Date, Seller shall furnish to Buyer copies of all documents, plats, studies, test results, reports and all other materials relating to the Property in Seller's possession (unless already in Buyer's possession), including, but not limited to, leases, plats, plans, surveys, environmental reports, title materials, soils reports, zoning notices and approvals and any restrictive covenants (collectively, "Seller's Materials"). Commencing on the Effective Date and for the entire term of this Agreement, Buyer and Buyer's authorized representatives and agents shall have complete access to the Property for the purpose of conducting, at Buyer's sole cost and expense, surveys,

examinations, measurements, soil borings, soil analyses, engineering tests and studies, environmental tests and studies, economic and/or topographic tests, studies, and such other activities (collectively, the “Studies”) as Buyer in its sole discretion deems necessary related to planning the use of the Property and in determining whether the Property is suitable for its intended use. Buyer shall repair and remain responsible for any damage to the Property on account of the Studies or the entry onto the Property by Buyer or Buyer’s employees, agents or contractor and shall restore the Property to its condition prior to such damage. Buyer shall give Seller reasonable advance notice of its intention to enter upon the Property to conduct such inspection or to perform such tests. Buyer is solely responsible for all expenses incurred by or on behalf of Buyer in connection with such investigation activities. Buyer shall require that any contractor or agent, prior to entering upon the Property to conduct such inspections or to perform such test, shall provide Seller with an insurance certificate naming Seller as an insured party in an amount reasonably suitable to Seller covering any damage to any persons or property caused by such contractor or agent relating to its entry upon the Property. The provisions of this Section will survive Closing and the termination of this Agreement for a period of one calendar year from the date of Closing.

4. Feasibility. For a period of sixty (60) days after the Effective Date (the “Feasibility Period”), Buyer shall have the right to terminate this Agreement in the event that Buyer determines that the Property is not appropriate as a result of title defect, physical condition of any structure on the Property, environmental contamination or any other reason, in Buyer's sole and unfettered discretion. If Buyer elects to terminate this Agreement during the Feasibility Period, Buyer shall provide Seller with notice of termination on or before the final day of the Feasibility Period, and Escrow Agent shall promptly return the Deposit to Buyer.

5. Closing Date. In the event all of the conditions precedent to Buyer’s obligations hereunder have been satisfied or waived, closing under the terms of this Agreement (“Closing”) shall be held at the offices of the Buyer: 55 W. Church Street, Martinsville, Virginia, on a date set by Buyer not later than thirty (30) days after the expiration of the Feasibility Period (the “Closing Date”) with written notice thereof sent to Seller no later than seven (7) business days prior to the date set by Buyer for the Closing Date.

6. Conveyance. Seller shall convey the Property by Special Warranty Deed (the “Deed”) to Buyer or to such person or entity as Buyer may designate prior to or at Closing thereby conveying to Buyer good and marketable fee simple title to the Property. Title to the Property shall be free of all liens, defects and encumbrances except for the Permitted Title Exceptions (as that term is described herein below) as provided in Section 9 below. Seller agrees to deliver the form of the Deed to Buyer at least seven (7) business days after the date on which Seller receives a copy of Buyer's title commitment for review, comment and amendment, as well as approval and acceptance as required by law. In addition, at Closing Seller shall assign any and all leases affecting the Property to Buyer, if any. At Closing, Seller shall deliver the Deed, settlement statement prepared by the Escrow Agent, and all other documents required herein to be delivered by Seller or as may be reasonably requested by Buyer in order to effectuate the transaction contemplated herein. At Closing, Buyer shall deliver to Escrow Agent the Purchase Price, subject to adjustment as provided herein below, to be held by Escrow Agent until the Deed has been recorded, and shall deliver the signed settlement statement prepared by the Escrow Agent and all

other documents required herein to be delivered by Buyer or as may be reasonably requested by Seller in order to effectuate the transaction contemplated herein.

7. Expenses. Seller shall pay the cost of the preparation of the Deed, FIRPTA, 1099, standard form Owner's Affidavit and state and local Grantor's Tax. Buyer shall pay the expenses of examination of title, survey and the title insurance premium, if any, all recording fees, and other Closing costs ordinarily paid by Buyer for similar transactions. Each party shall pay its own attorney's fees. All utility expenses, if any, shall be prorated as of the Closing Date.

8. Taxes. Seller has paid all real estate taxes due through December 31, 2024. Buyer shall pay any and all taxes due and owing beginning as of January 1, 2025, at the consummation of the sale.

9. Title. Closing is contingent upon title to the Property being in good and marketable fee simple title and insurable by a nationally recognized title insurance company at standard rates, and subject only to Permitted Title Exceptions, as that term is described herein, and at the option of Buyer, to an ALTA survey satisfactory to Buyer.

- A. During the Feasibility Period, Buyer, at its expense, shall cause an examination of title to the Property to be made and may, at its own expense, prepare an ALTA survey of the Property (the "Survey"). Prior to the end of the Feasibility Period, Buyer shall notify Seller in writing of any defects to the title and objections to the Survey shown by such examination that are not in conformance with the above requirements. If any such defect is a monetary defect, which shall include all defects such as deeds of trust, mechanics' liens, tax liens or other liens or charges that can be discharged and released by the payment of the obligation directly or indirectly secured thereby, Seller shall pay and discharge such monetary defects at or prior to Closing, and any such liens shall not be deemed to be Permitted Title Exceptions; provided, however, that Seller shall have no liability to pay any liens recorded against the Parcel that result or arise from any acts or failures to act on the part of Buyer or anyone acting on behalf of Buyer and Buyer agrees that all such liens shall be the liability of Buyer and shall be deemed to be Permitted Title Exceptions.
- B. If a non-monetary title defect (other than a Permitted Title Exception) or objection to the Survey is found which can be remedied by legal action within a reasonable time, Seller shall, at Seller's expense, give Buyer written notice, delivered no later than seven (7) business days after receipt of Buyer's written notice of its objections, of Seller's election to either (i) terminate this Agreement or (ii) promptly take such action as is necessary to cure such non-monetary title defect or objection. If Seller, acting in good faith, elects to cure such non-monetary defect or objection but is unable to have such non-monetary defect or objection corrected within thirty (30) days after written notice of such defect is given to Seller, then this Agreement may be terminated by Buyer. If this Agreement is not so terminated, then the date for Closing shall be extended to the extent necessary for Seller to comply with this Section, not to exceed sixty (60) days. If either Seller or Buyer elects to terminate this Agreement as permitted in this Section 9B, written notice thereof shall be given to the other party in writing and this Agreement

shall terminate, the Deposit shall be returned to Buyer and all rights and obligations hereunder shall cease except for those that are expressly stated herein to survive the termination of this Agreement.

- C. All title exceptions or Survey objections as to which Buyer accepts, or as to which Buyer fails to timely notify Seller as constituting a defect or objection, or as to which Buyer has waived its objection (other than those rendering title unmarketable and any monetary defects that are not the liability of Buyer), and liens for taxes that are not yet due and payable, shall be deemed Permitted Title Exceptions.

10. Representations and Warranties of Seller. Seller represents and warrants to Buyer that the following are true, accurate and complete as of the Effective Date and will be true, accurate and complete as of Closing:

- A. Except as otherwise provided herein, after the Effective Date, Seller shall not grant any easements and/or rights-of-way over or through the Property or further encumber the Property without the prior written consent of Buyer, which consent may be withheld by Buyer in its sole discretion, nor shall Seller construct or install on the Property any improvements or permit (exclusive of natural disasters beyond Seller's control) any existing improvements, natural deposits, resources, or vegetation thereon to be wasted, removed, sold, or in any way encumbered without the prior written consent of Buyer, which consent may be withheld by Buyer in its sole discretion.
- B. Except as disclosed below, Seller has not received notice of any violations of law or municipal ordinances, orders, or requirements noted or issued by any governmental department or authority having jurisdiction over or affecting the Property, nor does Seller have any knowledge of the same. The City of Martinsville has notified Seller of potential violations regarding the Property. Buyer, hereby acknowledges that it has knowledge of the violations and will work with the City of Martinsville to obtain any information regarding the violations that it deems necessary.
- C. All bills and claims for labor performed and materials furnished to or for the benefit of the Property for all periods prior to the Closing Date (other than on account of the Studies) have been (or prior to the Closing Date will be) paid in full, and there are not now, nor shall there be on the Closing Date, mechanics' liens or materialmen's liens, whether or not perfected, on or affecting any portion of the Property, and if there shall be any such liens, Seller shall obtain the release of the same on or before the Closing Date. In connection therewith, Seller agrees, at Closing, to execute any affidavits and customary indemnity agreements which may be required by Buyer's title insurance company in order for Buyer to obtain from such title insurance company an owner's policy of title insurance covering the Property without exception for mechanics' liens or rights of parties in possession.



- D. To Seller's best information, knowledge and belief, there is no pending or threatened condemnation or similar proceeding affecting title to the Property, the Property, or any part thereof.
- E. Seller has the power to enter into this Agreement and to consummate the transaction contemplated herein and the execution of this Agreement, the consummation of the transaction contemplated herein does not violate any agreement, contract, or other instrument to which Seller is a party or is bound, and Seller is the owner of and lawfully seized of the Property as of the date of this Agreement and will continue to own and be so seized to the Closing Date.
- F. No special assessments have been levied or are threatened or pending against all or any part of the Property and Seller has no knowledge of any intended assessments. If any special assessments are levied, threatened, or pending prior to the Closing Date, Buyer may terminate this Agreement, in which event the Deposit shall be returned to Buyer and thereupon neither party shall have any further rights or obligations one to the other hereunder, unless Buyer, at its option, elects to accept the payment of the same out of the Seller's proceeds from Closing to the extent such assessments are owed up to and through the Closing Date.
- G. Except as disclosed to Buyer in writing, or to which Buyer is a party, there are no legal actions, suits, zoning or rezoning actions, or other legal or administrative proceedings pending or threatened against Seller or the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceedings, and there is no action, suit, proceeding, or claim affecting Seller or the Property relating to or arising out of the ownership, operation, use or occupancy of the Property pending in any court or by or before any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality, nor, to the best knowledge of Seller, has any such action, suit, proceeding, or claim been threatened or asserted.
- H. There are no contracts, commitments, proffers, rights of first refusal, obligations, leases or other agreements of any kind that relate to the Property, except as expressly disclosed herein.

All of the representations, warranties, and covenants of Seller contained in this Agreement or in any document delivered to Buyer pursuant to the terms of this Agreement shall be true and correct in all material respects at the Closing Date, just as though the same were made at such time. Seller shall inform Buyer immediately if any of the foregoing representations and warranties is or becomes untrue or misleading. Buyer shall have the right to require Seller to execute a certificate at Closing confirming the accuracy of the representations and warranties contained in this Agreement.

In the event that, prior to Closing, Buyer learns that any of the representations and warranties set forth in this Section 10 or in Section 11 below are not true and correct in any material respect, then Buyer, at its option, may either: (a) terminate this Agreement by delivery of notice

thereof to Seller and thereupon the Deposit shall be returned to Buyer and the parties hereto shall have no further rights or obligations to one another hereunder, or (b) waive the breach of such representations and warranties and proceed to Closing hereunder. In the event that Buyer learns after Closing that any of the representations and warranties set forth in this Section 10 or in Section 11 below are not true and correct in any material respect, then Buyer shall be entitled to assert any cause of action at law or in equity which may be available to Buyer as a result of such breach of the representations and warranties. Provided that Buyer did not elect to terminate this Agreement prior to the expiration of the Feasibility Period as permitted above, then the provisions of the preceding sentence shall survive Closing and the delivery of any deed or other instrument.

Buyer acknowledges that Seller has afforded Buyer with the full and complete opportunity to make its own independent investigation of the Property and all matters pertaining thereto, including, without limitation, compliance of the Property with all applicable laws regulations, rules, and ordinances, including, without limitation, environmental laws, and land use ordinances. Buyer further acknowledges that it is acquiring the Property based solely on its own independent investigation in an "as-is" condition at Closing without any representations and warranties, oral or written, except as such representation or warranty as are expressly set forth herein.

11. Environmental Representations and Warranties of Seller. As used herein, and in any of the other documents executed in connection with this Agreement, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos, petroleum products, PCBs, lead and raw materials which include hazardous constituents), or other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA", "RCRA", or state super lien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). Provided that Buyer did not elect to terminate this Agreement prior to the expiration of the Feasibility Period as is permitted above, the provisions, covenants, and warranties of this Section 11 regarding Hazardous Substances shall survive Closing and the delivery of any deed or other instrument.

- A. Seller has provided the Buyer with the following documents: (a) a Phase I Environmental Site Assessment prepared for V.M. Draper Manufacturing Company dated April 7, 1999, (b) a Phase I Environmental Site Assessment prepared for City of Martinsville, et al, dated December 12, 2016, (c) a Phase II Environmental Site Assessment Sampling and Analysis Plan prepared for the City of Martinsville, et al, dated April 14, 2017, (d) an Asbestos & Lead Based Paint Survey dated February 20, 2017, and (e) a Phase II Environmental Site Assessment prepared for US EPA Region III dated November 28, 2017. Seller represents and warrants, other than what is contained in the aforesaid reports, that (i) that it has no actual knowledge of the use, presence, or disposal on the Property of Hazardous Substances; (ii) that it has no actual knowledge of the violation of any Environmental Laws on or with regard to the Property; (iii) that it has no actual knowledge of contamination of the Property from Hazardous Substances as may have been used, disposed of, or stored on neighboring tracts; and (iv) that it has no

reason to suspect that any of the foregoing has occurred, either during or prior to its ownership of the Property.

- B. Seller further represents and warrants that, other than what is contained in the aforesaid reports, it has not received any notice, summons, citation, directive, letter or other communication, written or oral, from any agency or department of the Commonwealth of Virginia or the United States Government concerning any violation of Environmental Law or any contamination, release, spill, leakage, disposal, pumping, pouring, emitting, emptying or dumping of Hazardous Substances on or near the Property.
- C. In the event that prior to Closing Buyer determines it is unable to close as a result of any Hazardous Substances, USTs, and/or water or soil contamination on the Property, Buyer shall give written notice thereof to Seller, that Buyer elects to terminate this Agreement. If Buyer proceeds to Closing, then Buyer shall be responsible for all costs of remediating the Property and shall not seek reimbursement from the Seller for any costs thereof.
- D. In the event that Buyer terminates this Contract pursuant to the terms herein, Buyer shall return all reports delivered to it by the Seller and shall provide Seller with copies of any additional reports generated by the Buyer or Buyer's agents.

12. Seller Default. If Seller refuses, fails, or is unable to perform, in any material respect, any of its covenants hereunder when performance is required or as of the Closing Date, or if any of Seller's representations should be false in any material respect when made and Buyer shall become aware of same on or prior to the Closing Date ("Seller Default"), then Buyer shall give Seller notice of such Seller Default on or prior to the Closing Date and Seller shall have five (5) business days from the date of receipt of such notice to cure such Seller Default and the Closing Date shall be extended accordingly. If Seller fails to cure such Seller Default within such five (5) business day period, then Buyer may elect to: (i) pursue specific performance of all of Seller's duties and obligations under this Agreement; (ii) terminate this Agreement whereupon the Deposit shall be returned to Buyer, and, if the remedy of specific performance is unavailable to Purchaser for any reason, then Buyer shall be entitled to recover from Seller all costs and expenses incurred by Buyer subsequent to its execution of this Agreement for its investigation of the Property, not to exceed \$15,000; or (iii) waive such Seller Default and proceed to Closing.

13. Buyer Default. If Buyer refuses, fails, or is unable to perform, in any material respect, any of its covenants hereunder when performance is required or as of the Closing Date, or if any of Buyer's representations should be false in any material respect when made and Seller shall become aware of same on or prior to the Closing Date ("Buyer Default"), then Seller shall give Buyer notice of such Buyer Default on or prior to the Closing Date and Buyer shall have five (5) business days from the date of receipt of such notice to cure such Buyer Default and the Closing Date shall be extended accordingly. If Buyer fails to cure such Buyer Default within such five (5) business day period then Seller may elect to: (i) pursue specific performance of all of Buyer's duties and obligations under this Agreement; or (ii) terminate this Agreement whereupon the Deposit shall be paid to Seller as full liquidated damages for such Buyer Default as Seller's sole

remedy; or (iii) waive such Buyer Default and proceed to Closing. Except as otherwise expressly provided in this Agreement, in the event either party disputes in writing the other party's right to the Deposit, the Escrow Agent shall have the right to file an interpleader action to determine the rightful recipient, and to receive repayment of all legal fees and expenses in so doing from the parties.

14. Parties Bound. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

15. Applicable Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

16. Commission. Seller and Buyer each warrant to the other that they have dealt with no agent or broker with respect to the transaction contemplated by this Agreement and, to the extent allowed by applicable law, each party shall indemnify the other against any claim for a commission by any such agent or broker claiming under them.

17. Conditions Precedent to Closing. The obligation of Buyer under this Agreement to purchase the Property from Seller is subject to the satisfaction, as of Closing, of each of the following conditions precedent:

- A. Seller shall represent and warrant to Buyer that Seller is not a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code of 1986, and Seller shall furnish Buyer with an affidavit to this effect complying with the provisions of Section 1445 of the Internal Revenue Code of 1986.
- B. Buyer shall have received a commitment for title insurance from a title company in accordance with the provisions of Section 9 above.
- C. On the Closing Date, there shall be no injunction or similar order, pending or threatened, preventing the performance of this Agreement.
- D. Seller shall have delivered to Buyer and to Escrow Agent such documentary and other evidence as Buyer's title company or legal counsel may reasonably require evidencing the authority of the person or persons who are executing the various documents on behalf of Seller in connection with this Agreement.
- E. The representations and warranties of Seller contained in this Agreement shall be true at Closing as though such representations and warranties were made at such time.
- F. All of the material obligations of Seller under this Agreement to be performed from and after the Effective Date through the Closing Date shall have been performed by Seller.

**MEETINGS:** January 28, 2025

**TITLE:** Exclusive Option for Negotiation of YMCA Acquisition

**STAFF RESPONSIBLE** Eric W. Payne, Esq., Interim Managing Director of Development;  
Stephen V. Durbin, Sands Anderson PC – City Attorney

## BACKGROUND/HISTORY

The property commonly referred to as the Family YMCA Incorporated of Martinsville & Henry County, will be available for purchase in the near term, once the new YMCA is completed in 2027. The YMCA is located at 3 Starling Avenue in Martinsville, VA, which is part of the historic Uptown District. The Virginia Museum of Natural History, part of the Smithsonian, has expressed an interest in acquiring this building, along with other potential buyers. Given the strategic location of the current YMCA facility and its ability to spur economic development activity in Martinsville, the City of Martinsville has a vested interest in seeking an exclusive option for the negotiation of a purchase agreement with the YMCA, which will afford the parties an opportunity to determine the most advantageous use for this facility, should it be required.

The City of Martinsville has negotiated an option price of \$1,000 for an exclusive negotiating period of 90 days, with an option to extend the same for 60 additional days. This option agreement is ready for approval.

## POLICY EXPLANATION

This transaction represents an opportunity to abate existing nuisance conditions and acquire a property deemed well-suited for redevelopment.

## FISCAL IMPACT/FUNDING SOURCE

\$1,000 purchase price: Funding Source

### AVAILABLE BUDGET

[Click here to enter text.](#)

### PURCHASE AMOUNT

**\$1,000**

**ACTION REQUESTED/ALTERNATIVES:**

1. City Council Convene as Redevelopment and Housing Authority to Approve Purchase
2. Do not Approve \_\_\_\_\_
3. Other Action as directed by City Council

**ATTACHMENTS:**

- Exclusive Option Agreement for Negotiation of Purchase Agreement Attached.

Tax Map Nos. [ ]  
Consideration: \$[ ]

**Exempt from recordation tax pursuant to Virginia Code § 58.1-811(A)(3). Exempt from the payment of Clerk's Fees pursuant to Virginia Code § 17.1-266 and Virginia Code § 17.1-279(E).**

### **OPTION AGREEMENT**

This Option Agreement (**this "Agreement"**) is made and entered into as of \_\_\_\_\_, 2025 by and between **THE FAMILY YMCA INCORPORATED, also known as THE FAMILY YMCA INCORPORATED OF MARTINSVILLE & HENRY COUNTY (the "Owner")** and **THE CITY OF MARTINSVILLE, VIRGINIA** a body politic and corporate of the Commonwealth of Virginia (**the "Buyer"**).

### **W I T N E S S E T H:**

**WHEREAS**, Owner is the fee simple owner of the property located in the City of Martinsville, Virginia, described as Tax Map Nos. \_\_\_\_ (containing \_\_ acres, more or less) and located at 3 Starling Avenue, Martinsville, Virginia 24112 which includes the YMCA building and all adjoining parcels to such building, **(together with all improvements thereto and appurtenances thereunto belonging, the "Property")**.

**WHEREAS**, Buyer is prepared to expend its resources to evaluate whether the Property meets certain requirements and is suitable for Buyer's purposes, and may upon the completion of such evaluation purchase the Property.

**WHEREAS**, Owner is willing to sell the Property to Buyer, provided Buyer commits to such purchase within the time and under the terms set forth in this Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Buyer covenant and agree as follows:

1. **Option.** Owner hereby grants to Buyer an exclusive and irrevocable option (**the "Option"**) to purchase the Property on the terms and conditions set forth in this Agreement, conditioned on the Buyer paying the Option Price (as defined below) on or before two weeks after the date first set forth above (**the "Effective Date."** The Option Price shall be deemed to have been paid when Buyer has sent a check in the amount of the Option Price to the Owner at the property address stated above on or before the Effective Date, by hand delivery, U.S. Mail, UPS or FedEx.

2. **Option Price.** As consideration for this Agreement, Buyer shall pay to Owner a total of One Thousand Dollars and No Cents (\$1,000.00) (**the "Option Price"**).

No Title Search Requested or Performed

3. **Term.** The term of the option shall be ninety (90) days from the Effective Date, provided that the Buyer may extend the term of this option by an additional sixty (60) days upon payment during the initial 90-day term of the additional amount of Five Hundred Dollars \$500 delivered in the same manner as specified in Paragraph 1. If not exercised within the term or the extension thereof (**the "Option Term"**), the Option shall be of no further force and effect. The Property shall not be listed or offered for sale during the Option Term, shall be taken off the market during the Option Term, and Owner shall not engage in any negotiations for the purchase and sale of the Property during the Option Term.

4. **Exercise of Option.** In its sole discretion, Buyer may exercise the Option prior to midnight on the date of expiration of the Option Term by giving notice thereof to Owner as hereafter provided.

5. **Conveyance.** If Buyer exercises the Option, Owner shall deliver to Buyer good and marketable fee simple title to the Property by Special Warranty Deed (**the "Deed"**), free of all liens, defects, encumbrances and tenancies except as set forth on the Title Insurance Commitment (as defined below). Owner shall execute and deliver such additional documents as may be required by Buyer's title insurer and/or to convey and assign to Buyer any easements, rights of way or commercial road access permits or similar rights to or for the benefit of the Property. If Owner refuses, fails, or is unable to perform, in any material respect, any of its covenants hereunder when performance is required or as of the Closing Date, or if any of Owner's representations should be false in any material respect when made and Buyer shall become aware of same on or prior to the Closing Date (**"Owner Default"**), then Buyer shall give Owner notice of such Owner Default on or prior to the Closing Date and Owner shall have ten (10) business days from the effective date of such notice to cure such Owner Default and the Closing Date shall be extended accordingly. If Owner fails to cure such Owner Default within such ten (10) business day period, then Buyer may elect to: (i) terminate this Agreement whereupon the Option Price plus any payments made to extend the Option term shall be returned to Buyer; or (ii) waive such Owner Default and proceed to Closing. Buyer's purchase of the Property, if it occurs, shall be on an "as is – where is" basis.

6. **Purchase Price.** The Purchase Price for the Property shall be Nine Hundred and Twenty-Five Thousand Dollars and No Cents (\$925,000.00). The Option Price, plus any amounts paid to extend the Option term paid by Buyer shall be applied to the Purchase Price at Closing (hereafter defined).

7. **Closing.** The parties shall close on the purchase of the Property within ninety (90) days after the exercise of the Option (**the "Closing" or the "Closing Date"**). At Closing, Buyer shall deliver the Purchase Price, Owner shall deliver the Deed, and Owner shall give and Buyer shall take possession of the Property, subject only to tenants and tenancies acceptable to Buyer and not to exceed ninety (90) days after Closing Date. At Closing, the Owner shall execute an affidavit as to the non-foreign status of the Owner as well as a settlement statement and such



other certificates and affidavits as may be reasonably necessary or desirable to consummate the purchase and sale contemplated hereby. Owner agrees that at the Closing the Property shall be in the same conditions as exists on the date hereof, subject to natural wear and tear and casualties beyond Owner's control. During the Option Term, Owner shall not cut or remove nor permit the cutting or removal of any timber or trees which are included as part of the Property, except as may be agreed to in writing by Buyer. The risk of loss by fire or other casualty remains with Owner until Closing. Owner shall have a reasonable amount of time after Closing to remove all personal property and equipment, excluding docks, structures, buildings, other improvements, fixtures, and/or items affixed to the land.

8. **Due Diligence Period/Access to Property.** At any time after execution of this Agreement until the end of the Option Term Buyer, or its agents, may, after reasonable notice to Owner, enter upon the Property to conduct any inspections, tests, surveys, environmental study, engineering study, feasibility study or any other studies regarding the Property (the “**Inspection Period**”), provided that Buyer’s access and inspections shall be arranged so as not to disrupt Owner’s ongoing business operations. During the Inspection Period, the Buyer may obtain at its expense a commitment for an owner’s policy of title insurance for the Property (the “**Title Insurance Commitment**”) and investigate the current zoning applicable to the Property. Owner shall cooperate with the Buyer in its request to review all documents as it pertains to the Property including but not limited to Buyer’s right to receive copies of all leases, past and current financial information for all tenants, service contracts, contracts with suppliers, equipment leases, and any additional items reasonably requested by Buyer (“**Inspection Materials**”). The Owner shall provide Buyer with a copy of the Inspection Materials within ten (10) business days from the Effective Date. If during the Inspection Period the Buyer determines that any matter relating the to the Property is unacceptable for any reason or no reason, in Buyer’s sole discretion, then Buyer shall be entitled to either: (i) to terminate this Agreement by providing written notice to Owner (a “**Termination Notice**”); or (ii) to waive such facts, matters or conditions and proceed with the transaction contemplated by this Agreement. If Buyer timely provides a Termination Notice, this Agreement shall be terminated and the parties shall be relieved of any further obligation to each other with respect to this Agreement and the sale of the Property.

9. **Broker.** The Owner shall pay any fees, costs and expenses to any broker or realtor involved or related to the purchase or sale of the Property or in the procurement of the Option. Owner agrees to indemnify and hold Buyer harmless from any such fees, costs and expenses.

10. **Closing Costs.** Owner shall pay its attorney’s fees, any broker's or realtor's fee or commission in connection with this Agreement and the sale of the Property, and the grantor's tax due on recording the Deed, if any. Real estate taxes, utility expenses, and rental income, if any, shall be prorated between Owner and Buyer as of the date of Closing. Buyer shall pay all other expenses of Closing.

11. **Further Assurances.** Owner shall execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

12. **Representations, Covenants and Warranties.** Owner represents, covenants and warrants, effective as of the date of this agreement and Closing, that: (a) it has good and marketable fee simple title to the Property; (b) it has complete authority to enter into and perform its obligations under this Agreement and no presently existing contracts or obligations that would prevent the consummation of the transactions contemplated hereby; (c) there are no existing boundary, water, or drainage disputes of which Owner has any knowledge; (d) there are no actions or proceedings threatened against Owner to condemn all or any part of the Property; (e) Owner has paid for all work, labor and materials furnished to the Property, and there will be no mechanic's liens and/or rights of any person to file a mechanic's lien against the Property for any reason whatsoever; (f) Owner has received no notice of any environmental contamination on or affecting the Property and/or hazardous substances present on or affecting the Property; (g) to the best of Owner's knowledge and belief, Owner has not caused or permitted any environmental contamination on or affecting the Property, and knows of no such environmental contamination caused or permitted by any other person or entity; (h) to the best of Owner's knowledge and belief, Owner has not caused or permitted, and to the knowledge of Owner, no prior or current other owner, tenant, user, operator or other person or entity has caused or permitted, the Property to contain, or to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process, hazardous substances or other dangerous or toxic substances or solid wastes; and (i) there is no action, suit, proceeding, claim, investigation, citizen suit or review pending or threatened against or affecting the title to the Property. During the period between execution of this Agreement and Closing, Purchaser shall not make any alterations to any building on the Property or commence construction on the Property, other than as agreed to in writing by the Buyer.

13. **Notice.** Any notice under this agreement shall be given in writing delivered either in person, by overnight courier service or by certified mail, postage prepaid and return receipt requested, to the parties as follows:

**TO BUYER:** City of Martinsville, Virginia  
55 West Church Street  
Martinsville, VA 24112  
c/o Aretha Ferrell-Benavides, City Manager

**WITH A COPY TO:** Stephen V. Durbin, Esquire  
Sands Anderson P.C.  
P.O. Box 2009  
150 Pepper's Ferry Rd. NE  
Christiansburg, Virginia 24068

**TO OWNER:**

or [Include physical address for delivery]

Notice given as required above shall be effective immediately if personally delivered or upon receipt, one (1) business day after being deposited with an overnight courier service and three (3) days after mailing if mailed by certified mail.

14. **Condition.** Owner agrees to maintain the Property in its present condition, ordinary wear and tear excepted, from the date of this Agreement until Closing. Owner shall not (i) grant any easements, rights-of-way or any other estate or interest in the Property whatsoever, or (ii) restrict or otherwise encumber the Property.

15. **Survey.** Buyer shall be entitled to obtain a survey of the Property at its expense.

16. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, personal representatives, successors in interest, and assigns of the parties. This Agreement may be assigned by Buyer in Buyer's sole discretion.

17. **Applicable Law.** This Agreement shall be construed according to the laws of the Commonwealth of Virginia. Sole jurisdiction and venue for adjudication of any dispute arising out of this Agreement shall be in the Circuit Court of the City of Martinsville, Virginia.

18. **Memorandum.** Buyer shall be entitled to record at its expense this Agreement, or a Memorandum of Option, in the Office of the Clerk of the Circuit Court Martinsville, Virginia. Owner shall sign such a Memorandum upon request.

19. **Miscellaneous.** If either party breaches this Agreement, the non-breaching party may recover its reasonable attorneys' fees incurred in enforcing this Agreement, as set by the Court. The Owner agrees that the Buyer, among any other applicable remedies available at law or

equity, shall be entitled to specific performance of this Agreement. This Agreement contains the entire agreement between the parties hereto and may not be modified or amended except in a writing executed by all of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, successors and assigns. Owner acknowledges and agrees that Owner has had the opportunity to review this Agreement with its separate counsel and therefor this Agreement shall not be construed against either party. This Agreement may be executed in two or more counterparts, each of which shall be an original and both of which together shall constitute one and the same instrument. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders. The singular shall include the plural and vice versa unless the context specifically requires otherwise.

20. **Authorization.** This Agreement has been duly approved and authorized by Owner and Buyer.

**[Signature pages to follow]**

**IN WITNESS WHEREOF**, the parties hereto have affixed their signatures as of the day and year first above written.

**THE FAMILY YMCA INCORPORATED /  
THE FAMILY YMCA INCORPORATED OF  
MARTINSVILLE & HENRY COUNTY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by [\_\_\_\_\_] as \_\_\_\_\_ of The Family YMCA Incorporated, Also Known As The Family YMCA Incorporated Of Martinsville & Henry County, on behalf thereof

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

**THE CITY OF MARTINSVILLE, VIRGINIA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the City  
of Martinsville, Virginia.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

- G. There shall be no contamination of the Property by Hazardous Substances and no violations of Environmental Law, and the Property shall not have been damaged by fire, flood or natural disaster.

In the event any of the above conditions precedent are not satisfied, Buyer shall have the right, in addition to all other remedies available to it at law or in equity, to terminate this Agreement.

18. Possession. Exclusive possession of the Property shall be delivered to Buyer at Closing, subject only to any leases of the Property then in effect and acceptable to Buyer.

19. Entire Agreement. This Agreement contains the full and final agreement between the parties hereto with respect to the sale and purchase of the Property. Buyer and Seller shall not be bound by any terms, conditions, statements, warranties, or representations, oral or written, not contained herein. No change or modification of this Agreement shall be valid unless the same is in writing and is signed by the parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless the same is in writing and is signed by the party against which it is sought to be enforced. Any provision or provisions of this Agreement, which shall prove to be invalid, void, or illegal, shall in no way affect, impair or invalidate any other provisions hereof, and the remaining provisions shall remain in full force and effect. Whenever any provisions shall be capable of more than one interpretation, one of which renders the provisions invalid, void, or illegal, and the other which renders it valid or legal, the interpretation given shall be that which renders the provision valid or legal.

20. Notices. All notices, demands, or other communications that may be necessary or given hereunder shall be in writing and shall be deemed to be delivered: (i) the same day if delivered by hand, (ii) one (1) business day following deposit with a nationally recognized overnight courier service (costs prepaid), or (iii) five (5) business days after being deposited with the U.S. Postal Service, postage prepaid as registered or certified mail, return receipt requested. Notices shall be addressed as follows:

**TO BUYER:** Martinsville Housing and Redevelopment Authority  
55 West Church Street  
Martinsville, VA 24112  
Attention: Aretha Ferrell-Benavides, Executive Director

with a copy to:

Stephen Durbin, Esquire  
Sands Anderson P.C.  
150 Peppers Ferry Road NE  
Christiansburg, VA 24073

**TO SELLER:** Tanyard, LLC

P.O. Box 8224  
Roanoke, VA, 24014  
Attention: Nancy Dearing

with a copy to:

George I. Vogel, III, Esquire  
Vogel Law Group, PLC  
204 McClanahan Street, SW  
Roanoke, VA 24014

Any party hereto may change its address for notice purposes hereunder by delivering notice thereof to the other parties in accordance with the foregoing. Rejection or refusal to accept, or the inability to deliver because of a changed address of which no notice was given shall not affect the validity of notice given in accordance with this Section.

21. Assignment. Buyer and Seller may assign this Agreement in whole or in part with the prior consent of the other, provided such consent shall not be unreasonably withheld.

22. Condemnation. In the event that prior to Closing hereunder there shall occur or be commenced a taking by condemnation or eminent domain of all or any portion of the Property or a proposed conveyance to a condemning authority in lieu of condemnation, then Buyer, at its option, may either (i) terminate this Agreement by delivery of notice thereof to Seller, and thereupon the parties hereto shall have no further rights or obligations hereunder, or (ii) proceed to Closing hereunder, in which event Seller shall assign to Buyer at Closing all interest of Seller in and to any condemnation proceeds that may be payable to Seller on account of such condemnation and thereupon Buyer shall control all negotiations and proceedings undertaken with the condemning authority with respect to the Property. Buyer shall receive a credit at Closing in the amount of any condemnation proceeds paid to Seller with respect to the Property prior to the Closing Date.

23. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

24. Weekends and Holidays. Any date specified in this Agreement for the performance of an obligation or expiration of a time period which is a Saturday, Sunday or a legal holiday shall be extended to the first regular business day after such date which is not a Saturday, Sunday or a legal holiday.

25. Counterpart Originals. This Agreement may be executed in one or more original counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

26. Litigation. In the event that any party is required to resort to litigation to enforce its rights under this Agreement, Seller and Buyer agree that any judgment awarded to the prevailing



party may include all litigation expenses of the substantially prevailing party, including, without limitation, reasonable attorneys' fees and court costs.

27. Seller's Counsel. Seller acknowledges and agrees that Seller has had the opportunity to review this Agreement with counsel and therefore this Agreement shall not be construed against either party.

28. Effective Date. Buyer and Seller agree that the date this Agreement shall be binding and effective (the "Effective Date") is the later of the dates each party caused this Agreement to be executed as evidenced in the signature blocks below; provided, however, that failure to enter a date next to a signature block by either party shall not invalidate such signature and shall be construed as a waiver of that party's right to dispute the Effective Date as determined by the date entered next to the other party's signature block.

29. "AS IS". Buyer and Seller acknowledge that there are potential code violations located on the Property which have been asserted by the City of Martinsville. Buyer, as an affiliated entity with the City of Martinsville, agrees that no enforcement of the potential code violations shall be enacted while this Contract is in effect, that the purchase price stated herein reflects the potential existence of the code violations, and that the Seller will not be required to undertake any remediation of the potential code violations while this Contract is in effect or after Closing. The property is being sold "AS IS" in its current condition.

[The remainder of this page is intentionally left blank.  
Signatures appear on the following page.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

**MARTINSVILLE REDEVELOPMENT  
AND HOUSING AUTHORITY**

Date:     /     /2024.

By: \_\_\_\_\_  
Executive Director

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as Executive Director of the Martinsville Redevelopment and Housing Authority, on its behalf.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[Affix Seal]

My Registration No.:

**TANYARD, LLC**

Date:     /     /2024.

By: \_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as [Managing Member] of Tanyard, LLC, on its behalf.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[Affix Seal]

My Registration No.:

**MEETINGS:** January 28, 2025

**TITLE:** Electric Master Agreements

**STAFF RESPONSIBLE** Electric Director

## BACKGROUND/HISTORY

Martinsville receives approximately 50 percent of its power needs from market power. We have typically entered one to three-year contracts, depending on pricing. After responses are received from the RFP and the provider is chosen, the contract is executed within 1-2 days. Due to pricing volatility, RFPs are sent out strategically during the years when future purchases are needed. Due to the fast-moving market, prompt execution is necessary to lock in pricing for the required timeframe.

## POLICY EXPLANATION

By entering into these agreements, we will receive responses from these parties when an RFP is issued for market purchases. The agreement also gives the city manager the authority to sign future purchase power contracts.

## FISCAL IMPACT/FUNDING SOURCE

Future power costs may have the single most significant impact on the electric budget, as electric rates are directly tied to the cost of power.

| AVAILABLE BUDGET | PURCHASE AMOUNT |
|------------------|-----------------|
| NA               | NA              |

## ACTION REQUESTED/ALTERNATIVES:

1. Council authorization to sign master power agreements for future execution.

## ATTACHMENTS:

1. Example Agreement

**Credit and Collections:**

Attn: Linda Conover  
Phone: 276-403-5143  
Facsimile: 276-403-5118  
Email: lconover@ci.martinsville.va.us

With additional Notices of an Event of Default or  
Potential Event of Default to:

Attn: City Manager  
Phone: 276-403-5293  
Facsimile: 276-403-5233  
Email: djoyce@ci.martinsville.va.us

**Credit and Collections:**

Attn: Linda Conover  
Phone: 276-403-5143  
Facsimile: 276-403-5118  
Email: lconover@ci.martinsville.va.us

**Wire Transfer:**

BNK: Citibank, N.A.  
ABA: 021000089  
ACCT: 30603873

**Credit and Collections:**

Attn: Director – Credit Risk Management  
Email: margindesk@shell.com

With additional Notices of an Event of Default or  
Potential Event of Default to:

Attn: General Counsel  
Phone: 713-767-5500; Fax 713-230-2900

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A: Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

Party B Tariff: Market-Based Rate Tariff, as amended October 27, 2016 and accepted February 9, 2017, FERC Docket Number ER17-201-000, and as may be amended from time to time.

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**Article Two**

Transaction Terms and Conditions      ☒ Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

Remedies for Failure to Deliver or Receive      ☒ Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies      Cross Default for Party A:

☒ Party A:      Cross Default Amount: \$1,500,000

☐ Other Entity: \_\_\_\_\_      Cross Default Amount: \$ \_\_\_\_\_

Cross Default for Party B:

☒ Party B: Shell Energy      Cross Default Amount:  
\$50,000,000

☐ Other Entity: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

**5.6 Closeout Setoffs**

☐ Option A (Applicable if no other selection is made.)

☒ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_

☐ Option C (No Setoff)

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**Article 8**

Credit and Collateral Requirements

**8.1 Party A Credit Protection:**

(a) Financial Information:

- ☒ Option A  
☐ Option B Specify: \_\_\_\_\_  
☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- ☒ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party B Independent Amount: Not Applicable

Party B Rounding Amount:

(d) Downgrade Event:

- ☐ Not Applicable  
☒ Applicable

If applicable, complete the following:

☐ Not Applicable

☒ Other:

Specify: It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below **BBB-** from S&P or below **Baa3** from Moody's or if Party B is not rated by either S&P or Moody's.

(e) Guarantor for Party B: None

Guarantee Amount: N/A

**8.2 Party B Credit Protection:**

(a) Financial Information:

- ☒ Option A  
☐ Option B Specify: \_\_\_\_\_  
☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- ☐ Not Applicable  
☒ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable

☐ Applicable

If applicable, complete the following:

Party A Independent Amount: Not Applicable

Party A Rounding Amount:

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ Not Applicable

☐ It shall be a Downgrade Event for Party A, if Party A's, or its Guarantor

☐ Other:

Specify: \_\_\_\_\_

(e) Guarantor for Party A: None

Guarantee Amount: N/A

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**Article 10**

Confidentiality

☒ Confidentiality Applicable

If not checked, inapplicable.

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**Schedule M**

☒ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.4. If not checked, inapplicable

**Other Changes**

**This Master Power Purchase and Sale Agreement incorporates by reference the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.**

The Parties hereby further agree that the following additional changes shall be made to the General Terms and Conditions of the Master Power Purchase and Sale Agreement:

**ARTICLE ONE: GENERAL DEFINITIONS**

The following definitions are amended as set forth below:

1. Section 1.1 Affiliates. Add the following to the end of the paragraph: "Notwithstanding the foregoing, with respect to Shell Energy, "Affiliates" shall mean Shell Energy and its subsidiaries for purposes of Section 5.6 and Section 10.2(vi)."

2. Section 1.4 Business Day. Add “, the Friday immediately following the Thanksgiving holiday” before “or a Federal Reserve Bank Holiday”.
3. Section 1.23, Force Majeure, is deleted in its entirety and replaced with:

“ ‘Force Majeure’ means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the control of, or the result of acts or omissions by, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price or under more advantageous terms. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to ‘force majeure’ or ‘uncontrollable force’ or an equivalent term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.”
5. Section 1.27, the definition of Letter(s) of Credit is amended by deleting the words “U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s” and replacing it with “Qualified Institution”.
6. The following definition is added as Section 1.29A:

“ ‘Merger Event’ means, with respect to a Party or its Guarantor, that such Party or its Guarantor consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party or other entity hereunder, or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder, or (iii) the resulting entity’s creditworthiness is materially weaker than that of such Party or other entity immediately prior to such action.”
7. The following definition is added as Section 1.45:

“Performance Assurance.” Means collateral in the form of (i) Cash, (ii) Letters of Credit, (iii) a guaranty from a Guarantor who has a Credit Rating of (a) BBB- or better from S&P or (b) Baa3 or better from Moody’s; provided, if a Guarantor has a Credit Rating from both S&P and Moody’s, the lower Credit Rating shall apply, or (iv) other security acceptable to the Requesting Party.

8. The following definition is added as Section 1.48A:  
“‘Qualified Institution’ means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, which is not a the Pledgor (or a subsidiary of the Affiliate of the Pledgor) and which has assets of at least \$10 Billion Dollars and a Credit Rating of at least “A-” by S&P, or “A3” by Moody’s.”
9. Section 1.50, the definition of Recording, is amended by changing “Section 2.4” to “Section 2.5”.
10. Section 1.51, the definition of Replacement Price, is amended by adding the phrase “for delivery” in the second line immediately before the phrase “at the Delivery Point, and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.
11. Section 1.52, the definition of S&P, is amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Service LLC”, and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”.
12. Section 1.53, the definition of Sales Price, is amended by (i) deleting the phrase “at the Delivery Point” from the second line, and (ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”.
13. Section 1.63. Add the following definition as Section 1.63: “Current Assets” shall mean with respect to any Person, as of any date of determination, the aggregate amount of all assets of such Person which would be classified as current assets in accordance with GAAP.
14. Section 1.64. Add the following definition as Section 1.64: “Current Liabilities” shall mean with respect to any Person, as of any date of determination, the aggregate amount of all liabilities of said person (including tax and other proper accruals) which would be classified as current liabilities in accordance with GAAP.
15. Section 1.65. Add the following definition as Section 1.65: “Current Ratio” shall mean with respect to any Person, as of any date of determination, the quotient of Current Assets divided by Current Liabilities.
16. Section 1.66. Add the following definition as Section 1.66: “GAAP” shall mean, with respect to any Person, accounting principles that are generally accepted in the country in which said person is organized.
17. Section 1.67. Add the following definition as Section 1.67: “Intangible Assets” shall mean, with respect to any Person, as of any date of determination, intangible assets properly classified as such on the balance sheet of such Person prepared in accordance with GAAP, and includes copyrights, patents, trademarks, and goodwill.
18. Section 1.68. Add the following definition as Section 1.68: “Person” shall mean any individual, partnership, firm, corporation, association, joint venture, trust or other entity, or any government or political subdivision or agency, department or instrumentality thereof.
19. Section 1.69. Add the following definition as Section 1.69: “Tangible Net Worth” of any Person shall mean as of any date of determination an amount equal to the remainder of (i) Total Assets minus (ii) the sum of the values of Intangible Assets and Total Liabilities, in each case determined by reference to the most recently prepared audited (or unaudited, if



audited financials are not then available) quarterly consolidated financial statements or annual consolidated financial statements of such Person prepared in accordance with GAAP.

20. Section 1.70. Add the following definition as Section 1.70: “Total Assets” of any Person shall mean, as of any date of determination, the aggregate amount of all assets of such Person, which would be properly classified as total assets on the balance sheet of such Person prepared in accordance with GAAP.
21. Section 1.71. Add the following definition as Section 1.71: “Total Liabilities” of any Person shall mean, as of any date of determination, the aggregate amount of all liabilities of such Person (including tax and other proper accruals) which would be properly classified as total liabilities on the balance sheet of such Person prepared in accordance with GAAP.

## ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

### Section 5.1: Events of Default

Section 5.1(f) is deleted in its entirety and replaced with the following: “a Merger Event occurs with respect to such Party or its Guarantor;”

Section 5.1(g) Delete from line 8 “or becoming capable at such time of being declared”.

Section 5.1(h)(ii) is amended to delete the following phrase from the third and fourth lines thereof: “and such failure shall not be remedied within three (3) Business Days after written notice”.

Section 5.1(h)(v) Add to the last sentence “made in connection with this Agreement” immediately after the words “any guaranty”.

Section 5.1, Events of Default shall be amended by adding the following new subsection (i) to the end of Section 5.1:

“(i) Notwithstanding 5.1(c) above, the unexcused failure of a Party to meet its obligation to provide (through Scheduling or delivery or nomination, etc.) or receive all or part of the Product pursuant to the terms and conditions specified in the Confirmation, provided such unexcused failure occurs over a period of five (5), or more, consecutive days.”

### Section 5.2: Declaration of an Early Termination Date and Calculation of Settlement Amounts

Section 5.2 is amended to delete the following phrase from the last two lines: “under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable” and replace it with the following phrase: “under applicable law on the Early Termination Date, then each such Transaction (individually, an “Excluded Transaction” and collectively, the “Excluded Transactions”) shall be terminated as soon thereafter as is reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Excluded Transactions shall be calculated in accordance with Section 5.3 below.”

The following shall be added to the end of Section 5.2:

“The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to

replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Notwithstanding the foregoing, the Non-Defaulting Party (or its agent) shall first make a Commercially Reasonable effort to determine its Gains and Losses solely by reference to quotations (either firm or indicative) of relevant rates or prices supplied by one or more third parties. In the event that subsequent to such Commercially Reasonable effort, the Non-Defaulting Party (or its agent) reasonably believes that it cannot reasonably determine its Gains and Losses by reference to such quotations from third parties, the Non-Defaulting Party may determine in Commercially Reasonable its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. ‘Commercially Reasonable’ for purposes of this Section 5.2 shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a replacement Transaction in order to determine the Settlement Amount.”

#### Section 5.3: Net Out of Settlement Amounts

Section 5.3 is amended by deleting in the last sentence the phrase “to or due from the Non-Defaulting Party as appropriate” and replacing it with the phrase “and paid in accordance with Section 5.4 below.”

#### Section 5.4: Notice of Payment of Termination Payment

Section 5.4 is deleted in its entirety and replaced with the following:

Notwithstanding any provision or anything to the contrary contained in this Agreement, in determining the Termination Payment, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount that is calculated due to an event under Article 5. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party within three (3) Business Days after such notice is effective. The Termination Payment shall bear interest at the Interest Rate from the date upon which notice is effective until paid.

## ARTICLE SIX: PAYMENT AND NETTING

Section 6.3 shall be amended by deleting the words, “twelve (12) months” and inserting “two (2) years” in the third, sixteenth and eighteenth sentences.

Section 6.3 shall be amended by deleting the words, “two (2)” and inserting “three (3)” in the tenth sentence.

## ARTICLE SEVEN: LIMITATIONS

### Section 7.1: Limitation of Remedies, Liability and Damages

(i) Delete the first sentence in its entirety and replace it with the following: “EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, (A) SELLER HEREBY NEGATES ALL EXPRESS, IMPLIED, OR STATUTORY REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING THOSE RELATING TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AND (B) BUYER ACKNOWLEDGES THAT IT IS RELYING ON ITS OWN JUDGMENT IN ENTERING INTO THIS AGREEMENT AND IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION OF SELLER OR OF ANY AGENT OR EMPLOYEE OF SELLER.”

(ii) Add in line 19 the following: (a) “SET FORTH IN THIS AGREEMENT” in the fifth sentence after “INDEMNITY PROVISION” and before “OR OTHERWISE”, (b) “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISION OR OTHERWISE”, and (c) add to the end of the last sentence “AND ARE NOT PENALTIES”.

## ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

### Section 8.1: Party A Credit Protection

Section 8.1(a) Option A shall be amended as follows: (i) delete in line 2 “annual report containing” and (ii) add in line seven add the phrase “or International Financial Reporting Standards (“IFRS”) at the end of the words “accounting principles” and 8.2 (a) Financial Information. Option A. Add in line seven the phrase “or International Financial Reporting Standards (“IFRS”) at the end of the words “accounting principles”.

Sections 8.1(d) and 8.2(d) shall be amended as follows: after the comma in line five, add the phrase “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing”.

8.4 UCC Waiver. Add the following as Section 8.4:

“Section 8.4: Section 8 of the Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances and all other implied rights relating to financial assurances, including, but not limited to Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.”

## ARTICLE TEN: MISCELLANEOUS

### Section 10.4: Indemnity

Section 10.4 shall be amended by the word “Each” at the beginning of the first and second sentence and replacing it with the phrase “To the extent permitted by applicable law and only to the extent permitted by applicable law, each”.

### Section 10.5: Assignment

Section 10.5 shall be amended by

1. in the second line, deleting the phrase “which consent may be withheld in the exercise of its sole discretion” and replacing it with the phrase “which consent shall not be unreasonably withheld, provided, however, the failure of assignee to satisfy KYC requirements would be reasonable grounds to withhold consent to the assignment” moving the parenthetical “(and without relieving itself from liability hereunder)” that appears in the fourth line so that it follows immediately after the word “arrangements” in item (i) of Section 10.5.
2. Delete clause (ii) and the portion of clause (iii) before the words “provided, however”, and replace them with the following: “(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, as of the Effective Date, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets and has cleared the know your customer evaluation of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date; ...”

### Section 10.6: Governing Law

The phrase “State of New York” shall be replaced with the “Commonwealth of Virginia.”

### Section 10.7 Notices.

Add to the second sentence “, electronic mail or other mutually agreeable electronic means” between “overnight courier service” and “or”. Add to line four after the word “facsimile” the words “, electronic mail or other mutually agreeable electronic means”.

### Section 10.8: General

Section 10.8 Add at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) Arbitration provisions, if applicable, (vi) the obligation of either Party to make payments hereunder shall also survive the termination of the Agreement or any Transaction.”

Section 10.8 is further amended by adding the following to the end thereof:

“Each Party authorizes the other Party to affix an ink or digital stamp of its own signature to any Confirmation and agrees to be bound by a document executed in such a manner. This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

Section 10.10 Bankruptcy Issues.

Delete Section 10.10 in its entirety and replace with the following: “The Parties intend that (i) all Transactions constitute a “forward contract” within the meaning of the United States Bankruptcy Code (the “Bankruptcy Code”) or a “swap agreement” within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code.”

Section 10.11: Confidentiality

Section 10.11 shall be amended to add the following: (i) in the third line “or any non-public financial statements disclosed by a Party” after the phrase “conditions of a Transaction”; (ii) in the third line, the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party”; (iii) in the third line, the phrase “or the Party’s Affiliates” immediately after the phrase “other than the Party’s”; (iv) in the fourth line, the word “insurers, directors, City Council members, Utility Commission members,” prior to “employees”; and (v) the seventh line “or to the extent such information is delivered to such third party for the sole purpose of calculating a published index” after the phrase “or regulatory proceeding”.

Section 10.11 shall be further amended by adding the following sentence at the end thereof:

“With respect to information provided in connection with a Transaction, this obligation shall survive for a period of one (1) year following the expiration or termination of such Transaction. With respect to financial statements provided in connection with the Agreement, this obligation shall survive for a period of three (3) years following the date such financial statements were provided to a Party.”

Section 10.11 shall be further amended by adding the following provision as the last paragraph of Section 10.11:

“Notwithstanding any other provision contained in the Master Agreement,  
nothing contained herein shall restrict or limit the ability of any Party to comply with any federal or state law, rule, or regulation relating to the disclosure of documents or information, including, without limitation, the Virginia Freedom of Information Act.”

The following new sections shall be added at the end of Article Ten:

“10.12 SUBMISSION TO JURISDICTION AND VENUE. THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE COMMONWEALTH OF VIRGINIA.

10.13 Imaged Agreement. Any original executed Agreement, Confirmation, or other related document may be photocopied and stored on computer tapes and disks (the ‘Imaged Agreement’). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation, or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation, or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

10.14 FERC Standard of Review; Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party, or FERC acting *sua sponte*, shall be the ‘public interest’ application of the ‘just and reasonable’ standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 527 (2010) ( the ‘Mobile-Sierra’ doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the ‘public interest’ application of the ‘just and reasonable’ standard of review and otherwise as set forth in the foregoing section (a).”

10.15 Dodd-Frank Treatment.

- (a) **Representations.** Unless Party A and Party B specify otherwise in a Confirmation, Party A and Party B agree that all Transactions entered between them under the Master Agreement shall either be a forward contract within the meaning of the Commodity Exchange Act, as amended (“CEA”), and the regulations of the Commodity Futures Trading Commission (“CFTC”) or qualify for the commodity trade option exemption under CFTC Regulation § 32.3. In accordance with this Agreement, the Parties make the following representations:
  - (i) each Party represents to the other that it is a commercial market participant with respect to the specified commodity;
  - (ii) each Party represents to the other that it intends to make or take physical delivery of the specified nonfinancial commodity; and
  - (iii) to the extent a transaction has volumetric optionality, the holder of such optionality represents to the other Party (a) that such optionality is primarily intended to address physical factors (such as weather, environmental factors, customer demand, available production, transport, shipping, operational constraints, or other physical factors) or regulatory requirements that reasonably influence demand for, or the supply of, the specified nonfinancial commodity; and (b) that such optionality is not primarily intended to address price risk.
- (c) **Commodity Trade Option.** To the extent a Transaction is, or is deemed to be, a commodity option, the Parties agree that as of the date the Transaction is entered into between the Parties:
  - (i) the seller of the option represents to the buyer of the option that in connection with the Transaction, the seller of the option is either (a) an eligible contract participant as defined in section 1a(18) of the CEA and the regulations of the CFTC, or (b) a producer, processor, commercial user of or a merchant handling the commodity that is the subject of the Transaction, or the products or byproducts thereof, and is offering or entering into the Transaction solely for purposes related to its business as such;
  - (ii) the buyer of the option represents to the seller of the option that in connection with the Transaction the buyer of the option is a producer, processor, commercial user of or a merchant handling the commodity that is the subject of the Transaction or the products or byproducts thereof and is offering or entering into the Transaction solely for purposes related to its business as such; and
  - (iii) each Party represents to the other that the option, if exercised, would result in the sale of an exempt commodity for immediate or deferred delivery.
- (d) **Buybacks and Sellbacks.** From time to time, the Parties may enter into one or more Transactions for a deemed buyback or sellback of, or to otherwise adjust or offset,

previously contracted for volumes and then subsequently net the Transactions and volumes at issue. To the extent such Transactions offset or cancel each other, the Transactions shall be deemed integrated as one Transaction for purposes of the foregoing representations.

- (e) **Deemed Acceptance.** Notwithstanding any contrary language in the Master Agreement, to the extent that (i) a Confirmation is issued for a particular Transaction, (ii) such Transaction includes Forward Contract or Commodity Trade Option language substantially similar to the foregoing, and (iii) such Confirmation is deemed accepted in accordance with the Master Agreement, the Forward Contract or Commodity Trade Option language contained therein shall also be deemed accepted and the representations shall be made by each Party as of the date of the Confirmation without the necessity of an actual signature on such Confirmation.
- (f) **Reporting.** In the event this Master Agreement, or any transaction hereunder, requires reporting or recordkeeping under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), Party B agrees that it shall report all such transactions to the extent they may be required to be reported under applicable law, and Party A agrees to promptly provide to Party B any reasonably necessary information in connection with such reporting. For the avoidance of doubt, each Party shall be responsible for complying with any recordkeeping requirements applicable to it or any transactions as required by law.

10.16 Market Disruption, Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provision shall be applicable to such Transaction:

(a) Market Disruption. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “Disrupted Day”), then:

(i.) The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.

(ii) If the Parties have not specified a fallback Floating Price, it shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties have not so agreed on or before the 12th Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined by each Party obtaining in good faith a quote from a leading dealer (other than either of the Parties) in the relevant market and averaging the two quotes; provided, however, that if the Parties are unable to obtain quotations within twelve (12) Business Days thereafter, Shell Energy shall be entitled to declare an Early Termination Date for the affected Transactions in accordance with Section 5.2. Notwithstanding the foregoing, if the Parties have determined a Floating Price pursuant to this Section and at a later date the responsible exchange, publication or market announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price and either Party may notify the other Party of the correction and the amount payable as a result of that correction in accordance with Section 10.16(b) hereof.



“Determination Period” means each calendar month a part or all of which is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events:

- (i.) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;
- (ii.) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;
- (iii.) the temporary or permanent discontinuance or unavailability of the Price Source;
- (iv.) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
- (v.) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

“Price Source” means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

“RTO” means any regional transmission operator or independent system operator.

“RTO Transaction” means a Transaction in which the Price Source is an RTO.

“Trading Day” means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(b) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO’s procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication

or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

(c) Rounding. When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.

- 10.17 WAIVER OF JURY TRIAL. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.
- 10.18 Utility Disclaimer. Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.
- 10.20 Data Privacy. The parties may provide each other with information related to an identified or identifiable individual (“Personal Data”), the processing and transfer of which will be done in accordance with applicable data protection law.
- 10.21 Anti-Corruption. Each Party represents, warrants and covenants to the other that: (i) it will comply with the Anti-Corruption Laws (as defined herein) with respect to all Transactions under this Agreement; (ii) it has not made and will not make, offer, authorize, or accept any payment, gift, or other benefit, directly or indirectly (whether via its affiliates, agents, contractors or other third parties), to or from any government official or any other person for the purpose of facilitating or carrying out any transaction hereunder which would violate the Anti-Corruption Laws; (iii) it will promptly notify the other Party if it becomes aware of any violation of the Anti-Corruption Laws in connection with any Transaction hereunder, subject to the preservation of legal privilege; and (iv) except as the other Party may agree in writing, all payments payable to a Party pursuant to this Agreement shall be made only to the account of such Party, and not to the account of any other person. “Anti-Corruption Laws” mean (a) the United States Foreign Corrupt Practices Act of 1977; (b) the United Kingdom Bribery Act 2010; and (c) all applicable laws that prohibit money laundering, or otherwise dealing in the proceeds of crime, or the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to any government official or any other person, or tax evasion.

- 10.22 Schedule M. The form Schedule M is replaced in its entirety with the Schedule M attached to this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

PARTY A:  
[COMPANY]

PARTY B:  
Shell Energy North America (US). L.P.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

**EXHIBIT A**

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This confirmation letter shall confirm the “Transaction” set forth below and agreed to on \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (“Party A”) and the \_\_\_\_\_ (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Trade Date: \_\_\_\_\_

Master Agreement: EEI Master Power Purchase and Sale Agreement dated \_\_\_\_\_, 2012  
between Seller and Buyer.

Seller: Party A

Buyer: Party B

**[The following details are to be negotiated on a case-by-case basis.]**

Product:

Delivery Period:

Contract Quantity:

Days and Hours of  
Delivery:

Delivery Point:

RTO Pricing Schedules:

Contract Price:

Price Party B Pays:

Price Party A Pays:

Calculation Procedures:

Scheduling and Delivery  
Procedures:

Special Provisions:

For the avoidance of doubt: (i) it is the intent of Seller and Buyer that any costs, including, but not limited to, fees, taxes, tariffs, and/or surcharges incurred by Seller, resulting from legislation or regulation relating to CFTC reporting (Dodd-Frank), Green House Gas (GHG) or Carbon Dioxide (CO2) will not affect the Contract Price of this Transaction in any manner and (ii) this Transaction is not tied to, or contingent upon, any specific generation unit(s).

This confirmation letter is being provided pursuant to and in accordance with the above-referenced Master Agreement and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Party A:

[COMPANY]

Party B:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## **SCHEDULE M**

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

- A. The Parties agree to add the following definitions in Article One.

“Act” means § 15.2-2109, Code of Virginia, 1950, as amended.

“Governmental Entity or Public Power System” means a municipality, town, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by



Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, and (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement.

Section 3.5 No Immunity Claim. To the extent permitted by applicable law and only to the extent of applicable law, Governmental Entity or Public Power System warrants and covenants that with respect only to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that

is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE COMMONWEALTH OF VIRGINIA SHALL APPLY.

H. The Parties agree to add the following provision as a new Section 10.12:

10.12 Non-Discrimination. During the performance of the Master Agreement, Seller agrees as follows:

1. The Parties shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Seller. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Parties, in all solicitations or advertisements for employees placed by or on behalf of Seller, will state that Seller is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of these provisions.
4. The Parties shall include the foregoing provisions concerning non-discrimination in every subcontract or purchase order of over ten thousand dollars (\$10,000.00) so that the provisions will be binding upon each subcontractor or vendor under the direct control of the Party. These

provisions shall only apply to the extent they are relevant to the goods provided under this Master Agreement.

I. The Parties agree to add the following provision as a new Section 10.13:

10.13 Drug-Free Workplace. During the performance of the Master Agreement:

1. The Parties agrees to (i) provide a drug-free workplace for employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that shall be taken against employees for violations of this prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Seller that it maintains a drug-free workplace, and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. under the direct control of the Party. These provisions shall only apply to the extent they are relevant to the goods provided under this Master Agreement.

2. For the purposes of the above, "drug-free workplace" means a site for the performance of work done in connection with this Master Agreement, or a subcontract or purchase order awarded to a subcontractor or vendor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance under the subcontract or this Master Agreement.

J. The Parties agree to add the following provision as a new Section 10.14:

10.14 Faith-Based Organizations. Pursuant to Virginia Code § 2.2-4343.1, in all invitations to bid, requests for proposals, contracts, and purchase orders, the City does not discriminate against faith-based organizations.

"Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

If Seller is a faith-based organization, then Seller shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this Master Agreement the following notice:

NOTICE

Pursuant to § 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to a contract between the City and a faith-based organization, you are hereby notified as follows:

Neither the City's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the City.

K. The Parties agree to add the following provision as a new Section 10.15:

10.15 Immigration Laws. Pursuant to Virginia Code § 2.2-4311.1, during the performance of the Master Agreement, the Seller shall not knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 .

L. The Parties agree to add the following provision as a new Section 10.16:

10.16 Authority to Transact Business. Pursuant to Virginia Code § 2.2-4311.2, any Seller organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Virginia Code Title 13.1 or Title 50 or as otherwise required by law.

M. Notwithstanding the absence of Section 3.6, Party A shall not defend, excuse or justify the non-availability of budgetary appropriation under this Master Agreement.

**MEETINGS:** January 28, 2025

**TITLE:** Power Purchase Agreement Termination: City of Martinsville and Martinsville Solar, LLC

**STAFF RESPONSIBLE**

## BACKGROUND/HISTORY

In July, 2020 the City and Martinsville Solar, LLC (the “Company”) entered into a power purchase agreement whereby the Company would construct a solar development on a portion of the land formerly owned by E.I. DuPont de Nemours (formerly known as Lynwood Golf Course). The Company has decided not to move forward with the project. The Agreement provided that in the event of a termination by Company, the City would have the right to purchase the property for one dollar (\$1.00). The City also was to receive a termination payment of \$320,000.00 as liquidated damages. Staff and legal counsel have reviewed the termination agreement and have incorporated recommended edits into the final draft.

## POLICY EXPLANATION

The City has the right to acquire the property for \$1.00, which could be used for future economic development or other beneficial use, and receive the termination payment as a result of the termination of the agreement.

## FISCAL IMPACT/FUNDING SOURCE

The City would receive \$320,000.00

| AVAILABLE BUDGET | PURCHASE AMOUNT |
|------------------|-----------------|
|                  | \$1.00          |

## ACTION REQUESTED/ALTERNATIVES:

1. City Council Approve the termination agreement and authorize a signatory.
2. Do not Approve \_\_\_\_\_
3. Other Action as directed by City Council

**ATTACHMENTS:**

- Agreement Attached

## TERMINATION AGREEMENT

This TERMINATION AGREEMENT (this “**Agreement**”) is made and entered into by and between City of Martinsville, Virginia (the “**Buyer**”) and Martinsville Solar, LLC, a Delaware limited liability company (“**Seller**”), each hereinafter referred to as a “**Party**” and, collectively, as the “**Parties**,” effective as of [REDACTED], 2025 (the “**Effective Date**”). Capitalized terms used and not defined herein have the meanings set forth in the PPA (as defined below).

WHEREAS, Seller and Buyer are parties to that certain Solar Project Power Purchase Agreement, dated as of July 31, 2020, as modified by that certain Martinsville PPA Side Letter, dated as of November 10, 2021, and as amended by that certain First Amendment to Solar Project Power Purchase Agreement (the “**First Amendment**”), dated as of August 31, 2022 (the “**PPA**”, and together with all amendments, supplements or other modifications thereto other than this Agreement, collectively, the “**Terminating Agreements**”); and

WHEREAS, Seller and Buyer desire to terminate the Terminating Agreements as of the date hereof, pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the representations, warranties, covenants and agreements set forth in this Agreement, and subject to and on the terms and conditions set forth in this Agreement, the Parties agree as follows:

1. Termination. Effective as of the Effective Date, except for the Parties’ respective rights and obligations under Section 11.9 of the PPA (*Buyer Land Purchase Option*), (a) the Terminating Agreements shall automatically terminate without any further actions by the Parties and be of no further force and effect and (b) all obligations each Party had, has or may have arising out of or under the Terminating Agreements shall be deemed fully satisfied and cease to be existing and outstanding.
2. Termination Payment. The Parties hereby acknowledge and agree that Seller shall pay to Buyer, as liquidated damages in connection with the termination of the Terminating Agreements, \$320,000 (the “**Termination Payment**”) within thirty (30) Business Days following the Effective Date to the following account of Buyer:

[insert bank/account info]

3. Release. Other than with respect to the obligations set forth in Section 4 hereof, upon payment of the Termination Payment pursuant to Section 2 hereof, each Party absolutely and unconditionally releases and forever discharges the other Party and all of its respective successors and assigns, and all of their respective direct and indirect equity holders, subsidiaries and affiliates (collectively, the “**Released Parties**”) (a) from any and all liabilities and obligations under the Terminating Agreements, including, without limitation, any performance or observance of any covenants, conditions and/or agreements set forth in the Terminating Agreements; and (b) from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which either Party has had,

now has or has made claim to have against the other Party or any other Released Party for or by reason of any act, omission, matter, cause or thing whatsoever arising from the beginning of time to and including the date of this Agreement, whether such claims, demands and causes of action are matured or unmatured or known or unknown; provided, however, that nothing herein shall terminate, waive, release or discharge (i) the Parties' respective rights and obligations under Section 11.9 of the PPA (*Buyer Land Purchase Option*) or (ii) Seller's obligation to make the payment set forth in Section 2 hereof.

4. Buyer Land Purchase Option. Buyer hereby elects to exercise the Buyer Land Purchase Option pursuant to Section 11.9 of the PPA (*Buyer Land Purchase Option*), and in accordance therewith the Parties hereby agree to negotiate in good faith such definitive documents reasonably necessary to consummate such real property sale transaction. The property subject to this option contains approximately 192+/- acres, formerly known as the Lynwood Golf Course, along with all improvements thereon, if any, and all easements, rights, privileges, remainders, reversions and appurtenances thereunto belonging and in any way appertaining if any, and as more particularly described in that certain Special Warranty Deed dated January 31, 2023 between E. I. Du Pont De Nemours and Company (Grantor) and CVEC Martinsville Land Co., LLC (Grantee), and recorded in the Clerk's Office of the Henry County Circuit Court as Instrument No. 230000950.
5. Transfer of Facility Permits. Within thirty (30) Business Days following the Effective Date, Seller shall provide Buyer with a list of all permits and pending permit applications, if any, previously obtained and currently held by Seller for the purpose of developing and/or operating the Facility (collectively, the "**Facility Permits**"). Seller agrees to provide such other information regarding the Facility Permits as Buyer may reasonably request. Upon request by Buyer, Seller shall, to the extent permitted by applicable law (including the terms of any such permit) and at no cost to Seller, work in good faith to transfer to Buyer, or to such other entity as Buyer may direct, any of the Facility Permits which Buyer elects to acquire.]<sup>1</sup>
6. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, INTERPRETED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.
7. Counterparts. This Agreement may be executed in one or more counterparts (including by electronic scan or .pdf format delivered by electronic mail), each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement and shall become effective when counterparts have been signed by each of the Parties delivered to the other Party, it being understood that all parties need not sign the same counterpart.

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<sup>1</sup> Note to Draft: Subject to Seller's ongoing review.



8. Miscellaneous. This Agreement contains all of the agreements of the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and representations pertaining to any such matter. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. No provision of this Agreement may be amended except by an express agreement in writing signed by the Parties or their respective successors-in-interest. In the event of a conflict between the terms and provisions of this Agreement and those contained in the Terminating Agreements, the terms and provisions of this Agreement shall control. The Parties agree to perform, execute and deliver or cause to be performed, executed and delivered any and all such further acts, deeds and assurances as may be necessary to consummate the actions contemplated in this Agreement.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

**CITY OF MARTINSVILLE, VIRGINIA**

By: \_\_\_\_\_  
Name:  
Title:

**MARTINSVILLE SOLAR, LLC**

By: \_\_\_\_\_  
Name:  
Title:

# STAFF REPORT

**MEETINGS:** January 28, 2025

**TITLE:** Second Reading of Chapter 18-Solid Waste Ordinance

**STAFF RESPONSIBLE** Greg Maggard

## BACKGROUND/HISTORY

Chapter 18, Article 2 of the City Code has not been updated since 1982. This article deals primarily with the city's administration, enforcement, and collection of refuse. The current article is vague and requires antiquated enforcement actions.

The revised Article 2 provides additional definitions for clarity, allows for more effective enforcement, and increases efficiency in collection operations.

## POLICY EXPLANATION

The key outcome of Part 2.2 of the City's Strategic Plan is clean, attractive, and vibrant neighborhoods and communities. The revisions proposed in this Article meet this key outcome by providing for increased administration, enforcement, and refuse collection.

## FISCAL IMPACT/FUNDING SOURCE

Refuse Enterprise Fund will be used to purchase additional 8-yard dumpsters and electrical locks

### AVAILABLE BUDGET

19,500.00

### PURCHASE AMOUNT

12,000.00

## ACTION REQUESTED/ALTERNATIVES:

Approve first reading of Solid Waste Ordinance

Deny first reading of Solid Waste Ordinance

Other action as directed by Council

## ATTACHMENTS:

1. Draft ordinance
2. Summary of Changes

# STAFF REPORT

City of Martinsville, Virginia

Ordinance No. 2025-\_\_\_\_

**WHEREAS**, the City of Martinsville is empowered through Chapter 1, Section 2-19 and 2-20 of the Martinsville City Charter to provide for the collection and disposal of garbage, trash and other refuse, and to compel the abatement and removal of all public nuisances within the city; to require all lands, lots and other premises within the city to be kept clean and sanitary; and generally to define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the city; and,

**WHEREAS**, the City of Martinsville is likewise empowered pursuant to Chapter 9 of Title 15.2 of the Code of Virginia, 1950, as amended, to require that owners of real property keep their premises free from accumulations of solid waste and other public nuisances, and to remediate such nuisance conditions at such time or times as the City Council may prescribe; and,

**WHEREAS**, the City of Martinsville is further empowered pursuant to § 15.2-1115 of the Code of Virginia, 1950, as amended, to compel the abatement or removal of all nuisances and to abate such nuisances at the cost of noncompliant landowners; and to assess liens against properties for such abatement expense; and,

**WHEREAS**, the Council of the City of Martinsville has determined that the accumulation of solid waste on real property within the City is harmful to public health; tends to harbor or serve as a breeding ground for mosquitos, rodents and other animals harmful to public health; tends to diminish neighborhood housing values and is otherwise injurious to the public health, safety and welfare and constitutes a public nuisance.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of -Martinsville, Virginia, in Regular Session held \_\_\_\_\_, 2025 that Sections 18-13 through 18-25 of the Code of the City of Martinsville be amended to hereafter read as follows:

**Secs. 18-3—18-12. Reserved.**

## **ARTICLE II. REFUSE**

### **Sec. 18-13. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Asbestos-containing material (ACM)* means any material or product, which contains more than one (1) percent asbestos.

*Ashes* means the residue from the burning of wood, coal, coke or other combustible materials.

*Bulk container* means a metal or plastic receptacle or container designed and constructed for the storing of solid waste until its collection for disposal and which can be mechanically lifted, hoisted or rolled on or off and emptied by mechanical collection vehicles.

*Bulk solid waste* means items of solid waste, such as furniture, bedding, mattresses, brush, and similar items, which are acceptable for collection by the city but because of their size, bulk or weight, require special collection procedures other than those required and provided for garbage and debris. The term includes white goods and other forms of solid waste otherwise acceptable for collection when bundled, bagged or otherwise collected or assembled in such a way that such waste requires special collection procedures other than those required and provided for garbage and debris.

*Collection* means the process or activity required to collect, remove and convey solid waste from its source or location to a site for final disposal.

*Commercial premises* means any premises or property upon which a wholesale, retail, service, manufacturing or processing business is located or conducted, including, but not limited to, restaurants, hotels, motels, markets, stores and other outlets, theaters, warehouses, factories, processing and manufacturing plants or facilities, automobile sales rooms, service stations and repair shops and offices of every kind; and the premises or property of organizations and institutions, such as, and including, all schools, hospitals, churches, clubs and societies; and any premises or property upon which is located an apartment building or buildings, other than condominiums, containing an aggregate of four (4) or more single-family dwelling units or apartments; and all other premises not defined herein as for a residential premises.

*Commercial solid waste* means the solid waste generated, produced or accumulated upon commercial premises.

*Condominiums* means premises, including the land and buildings thereon, containing multiple dwelling units or apartments, each of which is or may be separately owned, and the undivided interests in the common elements of such premises which are vested in the unit owners and which have been lawfully created pursuant to the Condominium Act contained in chapter 4.2 of title 55 (section 55-79.39 et seq.) of the Code of Virginia.

*Container* means a receptacle designed, and required or permitted by this chapter, for the purpose of storing garbage and debris until its collection for disposal.

*Contractor* means any person or firm who shall agree, written or otherwise, to perform work in return for compensation in any form.

*Debris* means nonputrescible solid waste consisting of both combustible and noncombustible wastes, such as paper, cardboard, wood, rags, sweepings, and similar discarded materials.

*Director* means the Director of the Department of Public Works of the City.

*Disposal* means the delivery and deposit of solid waste to and at an approved disposal facility for final processing or storage.

*Friable asbestos* means any material containing more than one (1) percent asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure. Friable asbestos shall be considered hazardous waste.

*Garbage* means putrescible animal or vegetable waste resulting from the handling, preparation, cooking or serving of food.

*Hazardous waste* means a hazardous waste as described by the Virginia Hazardous Waste Regulation or the EPA.

*Infectious waste* means solid or liquid wastes, which contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in an infectious disease.

*Placement* means the placing of all types of solid waste for collection and disposal.

*Premises* means any lot or parcel of land, together with any building, part of a building or group of buildings located thereon, which constitutes a single property.

*Public property* means and includes all public streets and highways, including the curbs, gutters and median strips thereof, sidewalks, alleys, parking lots and other public rights-of-way, and all public parks, playgrounds, buildings and grounds.

*Refuse* means all putrescible and nonputrescible solid waste, whether combustible or noncombustible, including garbage, debris, ashes, dead animals, and materials resulting from industrial, commercial, domestic and community activities, but excluding hazardous wastes, body wastes and the sludges, screenings, pumpings and residue from cesspools, septic tanks sewage and infectious wastes.

*Residential premises* means and includes a single-family dwelling, any premises or property upon which is located an apartment building containing less than four (4) single-family dwelling units or apartments, all condominiums and all other property or premises not defined herein as commercial premises.

*Residential solid waste* means the solid waste generated, produced or accumulated upon residential premises.

*Solid waste* means and includes garbage, refuse, ashes, grass clippings, trees, shrubs, and yard waste, as well as bulk solid waste, commercial solid waste, and hazardous waste.

*Solid waste removal contractor* means a person licensed by the City to engage in the collection, removal and disposal of solid waste as a private business venture.

*White goods* means solid waste in the form of appliances such as refrigerators, freezers, stoves, washers, dryers, air conditioners, and all other types of appliances.

*Yard waste* means lawn clippings, tree and shrub trimmings, limbs, tree trunks, leaves, and other such arboreal material.

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**Sec. 18-14. Supervision of collection and disposal; administration and enforcement.**

(a) The collection and disposal of solid waste under the provisions of this chapter shall be under the supervision and direction of the Director of Public Works, who, by and with the consent of and subject to the control of the City Manager, shall also be in charge generally of the administration and enforcement of this chapter.

(b) City Council declares the accumulation of litter, garbage, refuse, or any other variety of solid waste upon real property within the City, other than as prescribed in this chapter, to be a public nuisance. Whenever it is observed that any person is accumulating, preparing, storing, conveying, or disposing of solid waste within the City in a manner contrary to the requirements of this chapter, the Director or his/her designee, shall, except as hereinafter provided, serve the owner of such parcel, or on the occupant thereof, or both, notice to cause such violations to be removed from such land or premises within three (3) days from the date of such notice.

(c) Service of the notice provided for in subsection (b) shall be by first class mail, personal delivery by delivering it to the owner or by delivering it and leaving it in possession of any person in charge of the premises, or posting in a conspicuous place upon the parcel; provided, however, that if the parcel is unoccupied and the owner is unknown or cannot be found by the exercise of due diligence, such notice shall be sufficient against the owner if given by first class mail to the owner's last known mailing address as indicated on the tax records of the City, and posted in a conspicuous place upon the land or premises. The Director of Public Works, or his/her designee, is hereby authorized to deliver or post such notices.

(d) Failure to comply with the terms of a notice issued and served as provided in this section within the time prescribed in such notice shall constitute a class 4 misdemeanor, and each day thereafter that the violation continues shall constitute a separate offense. In addition to any penalties imposed hereunder, the City may institute legal action to enjoin the continuing violation of this section and may remove or contract for the removal of such violation, in which event the cost and expenses thereof, including administrative fees as prescribed by the City of Martinsville Fee Schedule, shall be chargeable to and paid by the owner or occupant of the parcel. Any such charge which is not paid within sixty (60) days of the date on which it is billed to the owner of such land or premises shall constitute a lien upon the property and may be collected in any manner provided by law for the collection of taxes, or in the same manner provided by law for liens of judgments; provided, however, that no such lien shall be valid against any owner of a parcel unless notice was issued as prescribed in this section.

(e) Upon receipt of the written notice described above, the property owner may appeal the order to the City Manager. Such appeal must be made in writing during the three-day interval given in the notice from the Director of Public Works, or his/her designee. Any actions required in the notice shall be delayed pending the City Manager's response to the appeal.

(f) If the owner or occupant fails to abate the public nuisance as required, the Director of Public Works is hereby authorized to use City forces to abate the nuisance or, at his/her option, the Director of Public Works may contract for this abatement on behalf of the City with a private contractor which abatement expenses shall be paid by the owner and/or occupant and subject to collection as prescribed in subsections (h), (i), (j), and (k) below.

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(g) Any owner or occupant may abate the violation themselves without liability to the City, provided that they do so before commencement of abatement by City personnel or contractors.

(h) The Director of Public Works shall keep an account of the cost of abating violations under this article and embody such account in periodic reports with assessment lists, which shall be transmitted to the City Clerk and the Director of Finance at convenient intervals. The copy retained by the City Clerk shall be available for public inspection. The report shall refer to each parcel as to which a violation was abated, by description sufficient to identify the parcel and specify in addition to the cost of abatement an additional charge for each such parcel to be assessed against the owner or owners including administrative fees as prescribed by the City of Martinsville Fee Schedule.

(i) The Director of Finance or his/her designee shall bill the owner or occupant of the land assessed with the costs of abatement, for the costs of such abatement and for the administrative fees as prescribed and as shown on the assessment report.

(j) Whenever a bill for such assessments remains unpaid for sixty (60) days after the billing date, the City Clerk shall record with the Clerk of the Circuit Court a statement of lien claim. This statement shall contain a description of the premises and the expenses and costs incurred, including, but not limited to, the costs of recordation. A copy of this statement shall be mailed to the owner or occupant if his/her address is known. Provided, however, the failure of the owner or occupant to receive such notice shall not affect the right to foreclose or otherwise enforce or collect on the lien for these assessments as provided in this section.

(k) The costs and expenses incurred by the City in such violation abatement, including administrative fees as prescribed by the City of Martinsville Fee Schedule, with which the owner and lienholder of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on parity with liens for unpaid local taxes and enforceable in the same manner as provided in articles 3 and 4 of [chapter 39](#) of title 58.1 of the Code of Virginia or in the same manner provided by law for liens of judgment. The City Attorney is hereby authorized to institute such proceedings in the name of the City in the General District or Circuit Court for the City of Martinsville against any property for which the bill has remained unpaid sixty (60) days after it has been rendered.

#### **Sec. 18-15. General container requirements.**

- (a) It shall be the duty of every owner, lessee or occupant of any premises in the city where refuse is created to provide or cause to be provided a suitable container for such refuse, which container shall meet the requirements of this section.
- (b) It shall be the duty of every owner of an apartment or multiple-family dwelling containing more than four (4) individual units to provide an adequate number of large-volume dumpsters of a type approved by the Director of Public Works.
- (c) It shall be the duty of every owner, lessee or occupant of any premises in the city creating refuse in such volume between regularly scheduled collections that such refuse exceeds the



volume of five (5) thirty-two (32) gallon containers to provide an adequate number of large-volume dumpsters of a type approved by the Director of Public Works.

- (d) It shall be the duty of every owner, lessee or occupant of any premises in the city not subject to the provisions of subsection (b) or (c) above to provide or cause to be provided an adequate number of galvanized metal or plastic watertight, sanitary containers, each with a tight-fitting cover and two (2) side handles, having a minimum capacity of twenty (20) gallons and a maximum capacity of thirty-two (32) gallons.
- (e) Any refuse container shall hold its contents without leakage or spillage.
- (f) All refuse containers shall be kept tightly covered.

**Sec. 18-16. Storage of ashes.**

Ashes shall be stored in metal containers having a maximum capacity of twenty (20) gallons and shall be kept separate from garbage and rubbish.

**Sec. 18-17. Condemnation of defective containers.**

(a) Any solid waste container, on any premises within the City, which does not conform to the standards of design, construction or condition prescribed by this chapter shall be condemned by the Director or his/her designated agent and must be replaced by the owner, tenant, lessee or occupant of the premises within seven (7) days after such condemnation and, thereafter, shall not be used for the storage of solid waste until and unless brought into conformance with such standards.

(b) Notice of condemnation pursuant to this section shall be given by affixing or attaching to the container a tag or decal setting forth the date of and reason for its condemnation and advising that the container must be either brought into conformance with the required standards or replaced with an authorized container within seven (7) days after such condemnation and notice.

(c) Any condemned container which is not brought into compliance with the standards prescribed therefore or replaced as required and which is not removed from use by its owner within the time allowed therefore may be collected and disposed of by the City as solid waste.

**Sec. 18-18. Collection generally.**

- (a) All refuse shall be collected by the city at regular intervals no less frequently than once per week. It shall be the duty of every owner, lessee or occupant having one or more large-volume dumpsters to see that such dumpsters are accessible for emptying. It shall be the duty of every other owner, lessee or occupant to place or cause to be placed their refuse container at the side of the curb line of the premises, at a location accessible to the collection crews, unless such owner, lessee or occupant has been exempted from the requirement of curbside placement by the Director of Public Works under the provisions of this section. Bulk solid waste, such as paper, cardboard or wooden boxes, must be flattened and tied in bundles with heavy, stout cord, such bundles not to exceed thirty-six (36) inches in length or breadth, twenty (20) inches in height and fifty (50) pounds in weight, unless

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special arrangements are made with the Director of Public works for the collection of such items.

- (b) It shall be unlawful for any nonresident of the city, or any owner or occupant of a property situated within the city limits, or any agent of either, to bring refuse of any kind from outside the city into the city, or from another collection site located within the city, and deposit it anywhere in the city for collection by the city or its agent.
- (c) It shall be unlawful to transfer refuse generated at one site in the city to another site in the city for collection, without the prior written approval of the Director of Public Works.
- (d) The Director of Public Works may excuse any owner, lessee or occupant of any residential premises in the city from the duty of placing their refuse at the curb line for collection, if the director finds, from the written statements of a medical doctor, that such owner, lessee or occupant is physically or medically unable to place the refuse at the curb line.

Charter reference(s)—Authority of city to collect and dispose of garbage and other waste, Ch. 1, § 2(19).

**Sec. 18-18.1. Collection of refuse in Uptown.**

- (a) It shall be unlawful for any person to place any item of solid waste upon the streets, sidewalks or other public areas within the Uptown Martinsville Historic District. Every owner, lessee or occupant of any premises in the Uptown Martinsville Historic District shall dispose of all items of solid waste acceptable for collection by the City in dumpsters to be provided by the city and placed at various locations throughout the Uptown Martinsville Historic District. All refuse shall be collected by the city at regular intervals no less frequently than once per week. Nothing herein shall prohibit occupants of real property within the district from contracting for individual dumpster service for their premises.

**Sec. 18-18.2. Certain solid waste not to be collected by the City.**

The collection, removal and disposal of the following types or items of solid waste shall be the sole responsibility of the owner, tenant, lessee and occupant of the premises upon which the solid waste is produced, generated or accumulated and shall not be collected by the City for disposal:

- (1) Hazardous or infectious waste. The Public Works Department will assist the residential owner or occupant in arranging proper disposal of hazardous or infectious waste on a case-by-case basis.

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(2) Solid waste, which is not prepared, stored and placed for collection in acceptable containers, or which is otherwise not in accordance with, or which exceeds the weight, size, volume or quantity prescribed by, the requirements of this chapter.

(3) Any item of solid waste, which, because of its size, bulk, shape or weight, two (2) employees cannot safely and conveniently lift and place into a collection vehicle.

(4) Solid waste resulting from construction, reconstruction, repair, renovation, demolition or work by a contractor.

(5) Body wastes and the sludges, screenings, pumpings and residue from cesspools, septic tanks and sewage.

(6) Earth, rocks and soil.

(7) Motor vehicles or parts of motor vehicles.

(8) Any item of solid waste which will damage the collection equipment or injure collection personnel.

**Sec. 18-19. Removal of containers from curb after collection.**

After the collection of refuse by the city collectors, all refuse containers placed at the curb line of the premises shall be returned by the owner, lessee or occupant to the premises by night of the day of collection and shall there remain until the next day of collection.

(Ord. of 8-24-1982, § 8-12)

**Sec. 18-20. Rules and regulations of Director of Public Works concerning collection and handling.**

The Director of Public Works in hereby authorized to promulgate such rules or regulations concerning the collection or handling of refuse as he/she may deem necessary, not in conflict with this Code or state law.

(Ord. of 8-24-1982, § 8-16)

**Sec. 18-21. Suspension of collection service.**

The Director of Public Works may, in his/her discretion, suspend refuse collection service to any person who fails or refuses to comply with this article or any rules or regulations lawfully promulgated thereunder.

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**Sec. 18-22. Public receptacles generally.**

- (a) For the better appearance and beautification of the city, the Director of Public Works may cause to be placed, at any location deemed appropriate, public refuse receptacles for the deposit of trash, garbage, litter and rubbish. Such receptacles shall not be used for the disposal of refuse from residence or commercial establishments.
- (b) The Litter Receptacle Regulations adopted by the Department of Conservation and Economic Development of the Commonwealth of Virginia, November 22, 1978, pursuant to section 10-200 of the Code of Virginia, are hereby adopted and incorporated into this section by reference as if set forth herein verbatim.

**Sec. 18-23. Damaging or defacing containers or public receptacles.**

It shall be unlawful and a Class 3 misdemeanor for any person to disturb, damage or deface any refuse container placed at the curb line for collection or any public refuse receptacle.

**Sec. 18-24. Violations of chapter.**

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 4 misdemeanor.

**Sec. 18-25. Fee schedule.***(a) Collection and landfill charges:*

Individual living units (one (1) pickup per week), per month: \$12.50

Dumpsters, commercial and apartments (for each time emptied), per container: \$22.50

Business not currently using dumpsters (for two (2) pickups per week), per month \$25.00

Additional fee per dumpster empty for call-in/empty on demand service \$5.00

*(b) Landfill charges:*

Unsplit tires (thirteen-inch and larger), each, not to exceed \$2.00

Car with bagged garbage only (minimum charges) \$1.50

All other vehicles, per ton \$45.20

Adopted upon second reading this \_\_\_\_ day of January, 2025. This ordinance shall become effective after ten days have elapsed from the date of adoption recited herein.

Mayor L.C. Jones: \_\_\_\_\_

Vice Mayor Kathy Lawson: \_\_\_\_\_

Council Member Aaron Rawls: \_\_\_\_\_

Council Member Rayshaun Gravely: \_\_\_\_\_

Council Member Julian Mei: \_\_\_\_\_

**Attest:**

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**Peyton Nibblett, Clerk of Council**

## **Summary of Substantial Changes to Refuse Ordinance**

**8/16/2024**

1. **Section 18-13**

**Additional Definitions** - Provides clarity to ordinance.

2. **Section 18-14**

**Enforcement Revisions** – Changes clearly outline the violation, notification, abatement, fine, and collection processes.

3. **Section 18-15**

**Container Required** – Current code requires all customers utilize a container.

4. **Section 18-17**

**Container Requirements** – Allows for removal of any trash container that is deemed no longer suitable to ensure refuse is properly contained.

5. **Section 18-18.1**

**Uptown Collection** – Would eliminate curbside pickup to all businesses in Uptown. Provides for centralized dumpsters throughout Uptown.

6. **Section 18-18.2**

**Items Not for Pickup** – Provides a list of specific items that will not be collected.

**MEETINGS:** January 28, 2025

**TITLE:** Council Appointment of Boards and Commissions Applicants

**STAFF RESPONSIBLE** Peyton Nibblett, Deputy City Clerk

## **BACKGROUND/HISTORY**

## **POLICY EXPLANATION**

N/A

## **FISCAL IMPACT/FUNDING SOURCE**

**AVAILABLE BUDGET**  
N/A

**PURCHASE AMOUNT**  
N/A

## **ACTION REQUESTED/ALTERNATIVES:**

1. City Council Approve Appointments
2. City Council Do Not Approve Appointments
3. Other Action as directed by City Council

## **ATTACHMENTS:**