

AGENDA--CITY COUNCIL
CITY OF MARTINSVILLE, VIRGINIA

Council Chambers – Municipal Building
6:30pm CLOSED Session 7:00pm Regular Session
Tuesday October 24, 2023

6:30 pm – CLOSED SESSION

1. Items to be considered in Closed Session, in accordance with the Code of Virginia, Title 2.2, Chapter 37—Freedom of Information Act, Section 2.2-3711(A)—Closed Meetings, the following:
 - A. Appointments to boards and commissions, as authorized by Subsection 1

7:00 pm - Regular Session

Pledge to the American Flag and Invocation by Council Member Lawson

1. Read a proclamation designating October 2023 as Breast Cancer Awareness Month in the City of Martinsville. (5 mins)
2. Read a proclamation recognizing November 1, 2023 as Extra Mile Day 2023. (5 mins)
3. Hear an update from Council Members who attended the 2023 Virginia Municipal League Conference in Norfolk, Virginia on October 8-10. (10 mins)
4. Hear details about the Children's Services Act. (10 mins)
5. Hear details about Empowering Voices. (10 mins)
6. Presentation on the Pittsylvania County Community Action, Inc.'s (PCCA) Virginia Weatherization Assistance Program (VWAP). (10 mins)
7. Conduct a public hearing regarding the City's possible participation in the Commercial Property Assessed Clean Energy (C-PACE) Program. (10 mins)
8. Conduct a public hearing and consider action as the Land Bank Authority and City Council in support of a development project to be located on the western half of the Armory Property. (10 mins)
9. Presentation on the study to remove signalized intersections. (10 mins)
10. Presentation on the SDL Complaint system roll out. (10 mins)
11. Consider action as Martinsville Redevelopment and Housing Authority to approve the BB&T building Amended Contract of Sale and approval of the Development Agreement by City Council. (10 mins)

12. Business from the Floor -

The public comment portion of the Council meeting provides citizens the opportunity to discuss matters relevant to the operation of the City, which are not listed on the printed agenda.

Citizens who wish to participate in a meeting's public comment period may do so by emailing their comments to Karen Roberts, Clerk of Council, at kroberts@ci.martinsville.va.us, calling in their comments to 276-403-5182, faxing comments to 276-403-5280, or mailing comments to City of Martinsville, attn.: Karen Roberts, P.O. Drawer 1112, Martinsville, VA 24114. *Comments must be received by 12:00noon Monday, October 23, 2023*. Citizens may also request to speak at the Council meeting in the same manner.

Comments, or a request to speak, must be received by noon the day before a Council meeting for consideration by Council at the meeting. Any person submitting comments or requesting to speak must identify themselves by name and address, including zip code, limit their remarks 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. Priority for comments is given to City residents, taxpayers, and business owners. Speakers may not yield time. Groups of speakers on the same topic must designate a single representative. Comments violating these rules may not be presented at the Council meeting. Any speaker violating these rules may be removed from the podium or from the Council chamber.

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.

13. Comments by members of City Council. (5 mins)

14. Comments by City Manager. (5 mins)

Date: October 24, 2023

Item No: 1.

Department: Mayor/City Council

Issue: Read a proclamation designating October 2023 as Breast Cancer Awareness Month in the City of Martinsville.

Summary: Recognizing efforts both nationally and locally to bring awareness to breast cancer, and to honor and recognize those who have lost their life to this terrible disease as well as those who continue to fight it, a proclamation will be read designating the month of October 2023 as Breast Cancer Awareness Month in the City of Martinsville

A copy of the proclamation will be made available as requested to those groups and organizations involved in increasing awareness of breast cancer and the benefits of early testing, detection, and treatment.

Attachments: Proclamation

Recommendations: The proclamation will be read by a Council member.



Proclamation

RECOGNIZING THE MONTH OF OCTOBER, 2023 AS BREAST CANCER AWARENESS MONTH

WHEREAS, every year, too many people are touched by the pain and hardship caused by breast cancer – a disease that, among women, is not only one of the most common cancers, but also one of the leading causes of cancer-related deaths; and

WHEREAS, statistics indicate that in the United States, about 1 in 8 women born today will get breast cancer at some point; and

WHEREAS, early detection and treatment are essential; critical research efforts over time have yielded great progress in how breast cancer is diagnosed and treated and has produced a steady increase in survival rates for those suffering from this disease; and

WHEREAS, all women are encouraged to consider participating in preventive services including screening tests such as mammograms and/or genetic testing;

NOW, THEREFORE, I LC Jones, Mayor of the City of Martinsville, Virginia, do hereby proclaim the month of October, 2023 as

BREAST CANCER AWARENESS MONTH

in the City of Martinsville and we acknowledge our appreciation of local awareness groups and efforts such as the MLC Cancer Foundation and Ladies First MHC Community Breast Health Initiative. We honor all those who have lost their lives to breast cancer and we recognize the courageous survivors who are still fighting it. We encourage all citizens to promote awareness of breast cancer and the benefits of early screening and testing.

LC Jones, Mayor

Meeting Date: October 24, 2023

Item No: 2.

Department: City Council

Issue: Read a proclamation recognizing November 1, 2023 as Extra Mile Day.

Summary: The Mayor will read the proclamation, a copy of which will then be mailed to the Extra Mile America Foundation.

Attachments: Proclamation

Recommendations: Mayor will read the proclamation



PROCLAMATION

Extra Mile Day - November 1, 2022

WHEREAS, Martinsville, Virginia is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively “go the extra mile” in personal effort, volunteerism, and service; and

WHEREAS, Martinsville is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

WHEREAS, Martinsville is a community which chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

WHEREAS, Martinsville, acknowledges the mission of Extra Mile America to create 550 Extra Mile cities in America and is proud to support “Extra Mile Day” on November 1, 2023.

NOW THEREFORE, I, LC Jones, Mayor of Martinsville, Virginia, do hereby proclaim November 1, 2023, to be Extra Mile Day. I urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

LC Jones, Mayor

Meeting Date: October 24, 2023

Item No: 3.

Department: City Council

Issue: Hear an update from Council Members who attended the 2023 Virginia Municipal League Conference in Norfolk, VA on October 8-10.

Summary: Virginia Municipal League held its annual conference on October 8 - 10 in Norfolk, VA and a number of Council members attended.

Council members will provide brief comments about the conference.

Attachments: None

Recommendations: No action needed

Meeting Date: October 24, 2023

Item No: 4.

Department:

Issue: Hear details about the Children's Services Act (formerly Comprehensive Services Act) along with the services they provide from Program Coordinator Supervisor Robin Turner.

Summary: Children's Services Act is responsible for coordinating funding for services to at-risk youth and their families.

Attachments: Information about CSA

Recommendations: Recommend appointing a Private Provider as requested by CSA




Children's Services Act


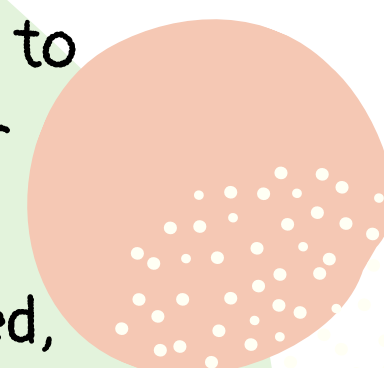
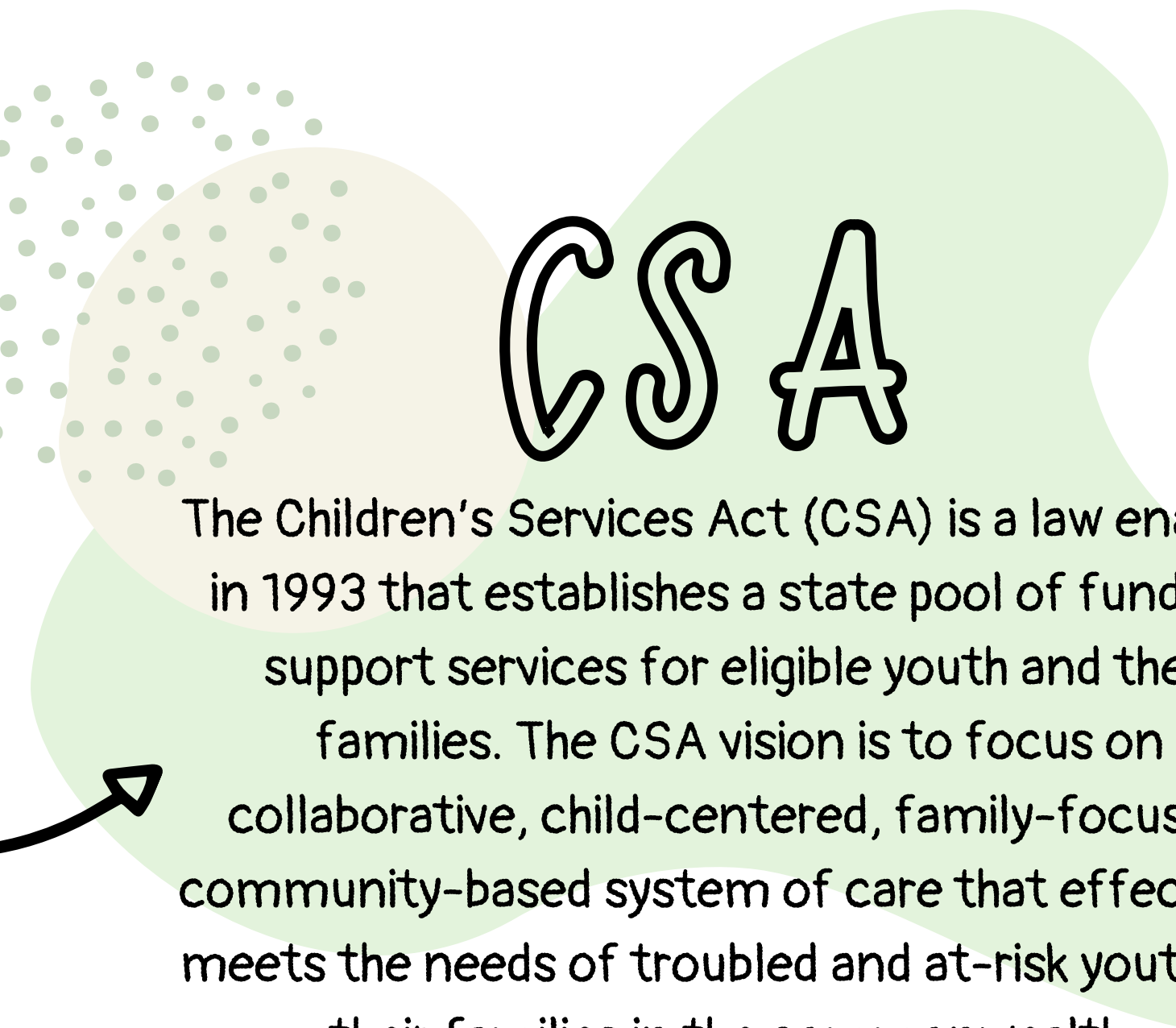
HENRY-MARTINSVILLE



CSA



The Children's Services Act (CSA) is a law enacted in 1993 that establishes a state pool of funds to support services for eligible youth and their families. The CSA vision is to focus on collaborative, child-centered, family-focused, community-based system of care that effectively meets the needs of troubled and at-risk youth and their families in the commonwealth.



The teams

The Henry-Martinsville CSA is made-up of two multi-disciplinary teams. The Family Assessment and Planning Team (FAPT) who meet on the second and fourth Tuesday of each month and the Community Policy and Management Team (CPMT) who meet on the last Thursday of every month. They consist of members who are statutorily required by the Code of Virginia to participate. Under section 2.2-5207 of the code of Virginia, Family Assessment and Planning Teams and under section 2.2-5205 of the code of Virginia, Community Policy and Management teams must have members from the following:

FAPT

- Henry-Martinsville Department of Social Services
- Piedmont Community Services
- Juvenile & Domestic Relations Court Services Unit
- Henry County & Martinsville City Public Schools
- Parent Representative

Optional Appointments

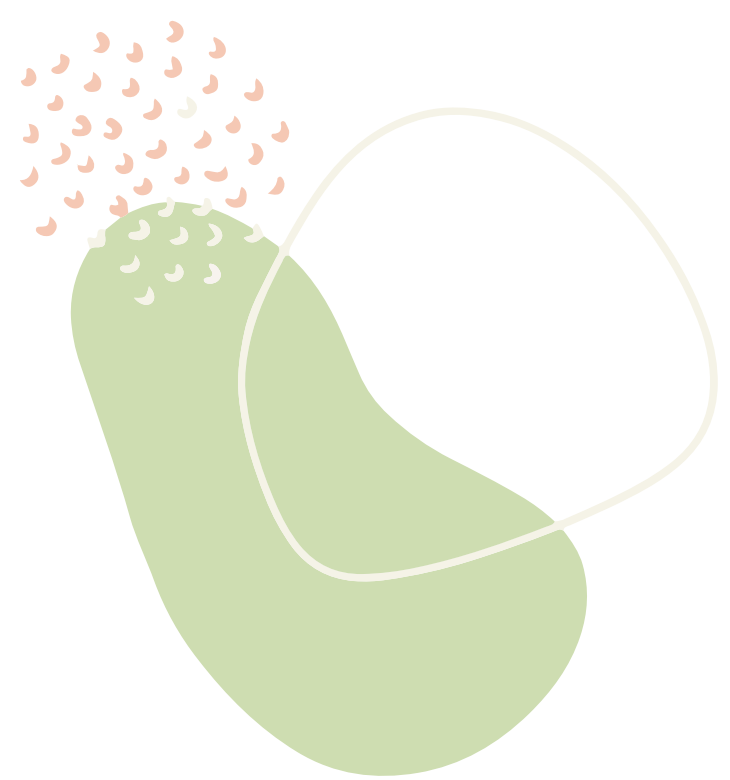
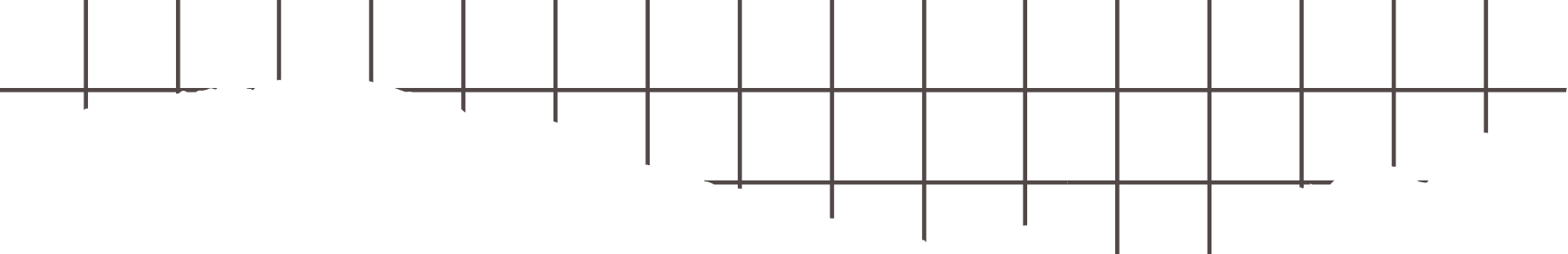
- Virginia Department of Health
- Private Provider

CPMT

- Henry County & Martinsville City Administration
- Henry-Martinsville Department of Social Services
- Piedmont Community Services
- Juvenile & Domestic Relations Court Services Unit
- Henry County & Martinsville City Public Schools
- Private Provider
- Parent Representative
- Virginia Department of Health


Optional Appointments

- Local Government Official
- Local Law Enforcement



FAPT

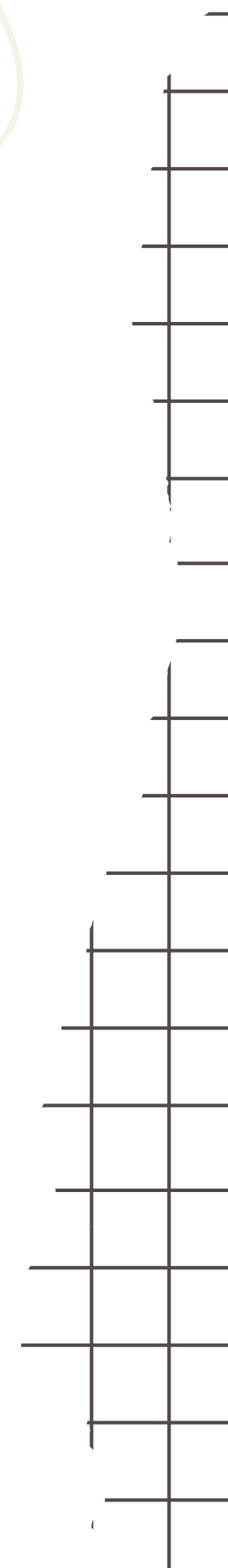
What we do

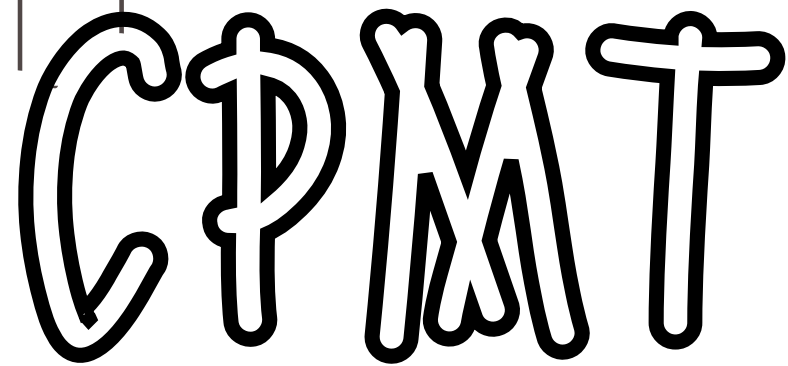


“Family Assessment and Planning Team (FAPT)” implements the CSA by recommending services for children and families. FAPT will assess the strengths and needs of youth and families and identify services to meet the families’ needs by drawing from the knowledge and experience of its various agency and program representatives. Families are included in all FAPT assessments, service planning, and decision making.

Roles & Responsibilities

Review referrals, determine eligibility, ensure parental participation, development of the Individual and Family Service Plan (IFSP), monitor services, completes utilization reviews, and assess for parental contribution.





What we do

“Community Policy and Management Team (CPMT)” plays a vital role in the management of the local CSA program. The CPMT is the local administrative body for the CSA and is established in the Code of Virginia. CPMT is the entity that develops, implements, and monitors the local CSA program through policy development, quality assurance, and oversight functions. Local CPMTs are charged with a wide array of important tasks and each one is valuable to your local CSA program’s operation.

Roles & Responsibilities

Planning and Policy Development- Development of interagency policies and procedures to govern the provision of services. Development of interagency fiscal policies, governing access to the state pool of funds. Long-range planning and establishing policies and procedures for appeals by youth and families.

Program and Fiscal Management- Establishing quality assurance and accountability procedures for program utilization and funds management. Reviewing recommendations for, authorizing and monitoring the expenditure of funds by FAPT. Establishing a Utilization Management Process.

Ensuring that services and funding seek to serve families in the appropriate, least restrictive environment.

Data Collecting and Reporting- Annually reporting to the Office of Children’s Services on the gaps in services necessary to keep children in the community, as well as barriers to the development of these services. Reporting on program and fiscal operations and recommendations for system improvement.

Appointment

THE LOCAL GOVERNING BODY APPOINTS CPMT MEMBERS AND CPMT APPOINTS FAPT MEMBERS. THIS INCLUDES THE HEAD OF THE FOUR CORE AGENCIES (DSS, CSU, SCHOOLS, CSB)

WHAT TO LOOK FOR WHEN APPOINTING A


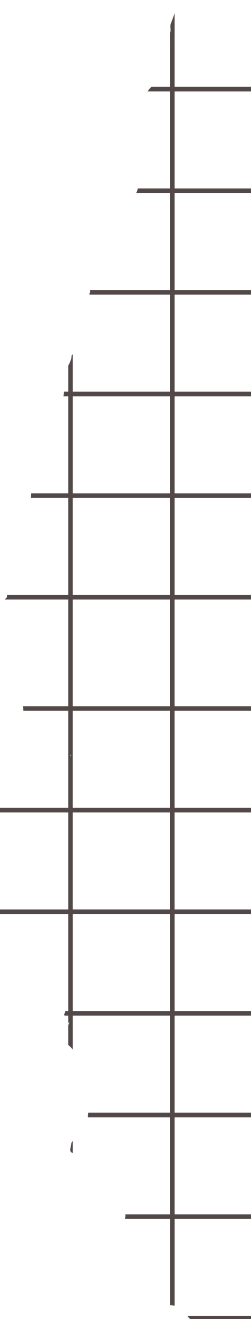
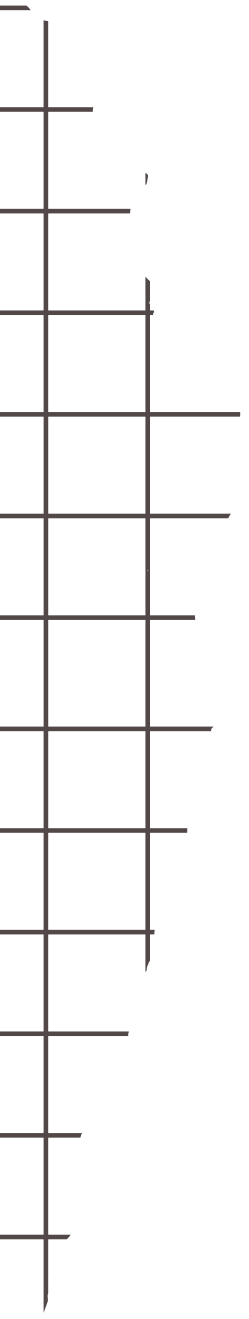
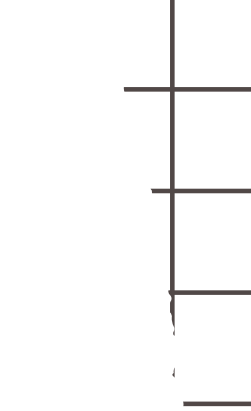

PRIVATE PROVIDER

- KNOWLEDGE OF A VARIETY OF MENTAL HEALTH SERVICES
- PROFESSIONAL EXPERIENCE WITH CHILD-SERVING, SYSTEM OF CARE NETWORKS
- EXPERIENCE WITH MANAGEMENT AND OVERSIGHT OF POLICIES AND BUDGETS


Note: The private provider and parent representative as well as their alternates are appointed for a two-year renewable term.

PARENT REPRESENTATIVE

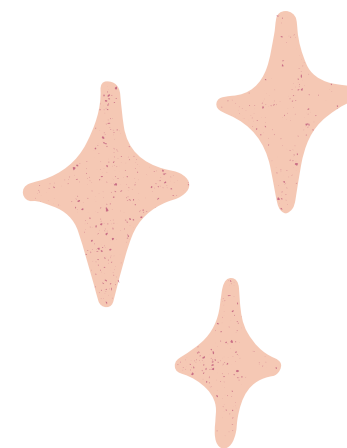
- RESIDENT OF THE LOCALITY
- WILLING TO LEARN ABOUT ISSUES AS IT RELATES TO MENTAL OR PHYSICAL SPECIAL NEEDS OF A CHILD
- MUST RESPECT THE BELIEFS AND TRADITIONS OF INDIVIDUALS COMING FROM A VARIETY OF CULTURAL, RELIGIOUS AND ETHNIC BACKGROUNDS
- CONFIDENT AND WILLING TO SPEAK OUT IN GROUPS



Data



DEMOGRAPHICS AND UTILIZATION



	2020	2021	2022	2023
Distinct Child Count	32	38	36	38
Net Expenditures	\$0.6M	\$0.7M	\$1.1M	\$1.2M
Local Net Match	\$0.2M	\$0.2M	\$0.4M	\$0.4M
Average Expenditure	\$18,484	\$18,354	\$29,658	\$30,441
Base Match Rate	0.3321	0.3321	0.3321	0.3321



FINANCE



Special Education

- Children served - 6
- FY23 Dollars Spent \$541,774.76

Foster Care

- Children served - 14
- FY 23 Dollars Spent \$526,902.04

Foster Care Prevention

- Children served - 16
- FY23 Dollars Spent \$46,042.97

CHINS (child in need of services

- Children served - 10
- FY23 Dollars Spent \$36,879.54



Non-Mandated

- Children served - 1
- FY 23 Dollars Spent \$5,150

Local Dollars Spent

- FY23 \$383,221.13

State Dollars Spent

- FY23 \$773,528.19
- 

Meeting Date: October 24, 2023

Item No: 5.

Department:

Issue: Hear details about Empowering Voices along with the services they provide from Founder Latoya Preston.

Summary: Empowering Voices is a non-profit organization focused on mental health and substance abuse in underserved communities.

Attachments: None

Recommendations: No action needed



**Non-profit-Organizers: Latoya Preston, Greg Preston, Torey Morris,
Marsha Evans, Alethea Lambert, Tracy Jones, Chris Wilson, Lisa McIntosh**

Email:empoweringvoicesswva@gmail.com

Phone: 276-634-8311

Mission Statement: **Our mission is to promote mental health awareness and
combat substance abuse within the underserved communities in
Martinsville and Henry County, by identifying culturally competent and
holistic services that foster healing, empowerment, and resilience.**

Sponsored by: Life Stages Enrichment Services Inc.



Various topics to be addressed including bullying, gang violence, substance addiction/ treatment, mental health, domestic violence, community development, trauma, grief, etc.

Offer free resources to the community to build healthy relationships within the family unit as a whole, and build community solidarity.

Break-out sessions/ workshops, for men, women, and children to foster healing for the family as whole, offer support to Parents, Teachers, Administrators, and mentoring to students in the Martinsville City and Henry County Schools

Include City Council, Henry County Board Of Supervisors, the Harvest Foundation, Chamber of Commerce, United Way, West Piedmont Health District, Pan-Hellenic Council, Clergy/Local churches, and other organizations, and community partners willing to support the mission.

Planning for the first virtual/in-person session (Marsha Evans, LPC and Lisa McIntosh, LPC) High Ridge Missionary Baptist Church

Meeting Date: October 24, 2023

Item No: 6.

Department:

Issue: Presentation on the Pittsylvania County Community Action, Inc.'s (PCCA) Virginia Weatherization Assistance Program (VWAP) from Director of Housing John Saunders.

Summary: The PCCA VWAP serves the City of Martinsville and can provide assistance during the colder months.

Attachments:

Recommendations: No action needed. For information only.

Virginia Weatherization Assistance Program

The Weatherization Assistance Program (WAP) operates in all 50 states, the District of Columbia, Native American tribes, and U.S. Territories. In Virginia the program is administered by the Virginia Department of Housing and Community Development (DHCD) located in Richmond, Virginia (<http://www.dhcd.virginia.gov/>).

21 non-profit organizations provide weatherization services in every town, city, and county in Virginia. The following link will help locate the weatherization provider in your area -

<http://www.dhcd.virginia.gov/index.php/housing-programs-and-assistance/73-weatherization.html>.



"Before our house was weatherized, we were struggling to pay off our electricity bill, which had grown to over \$1,000. Thanks to roof and ceiling repairs, improved insulation, and a new heat pump, our electricity bills are down to \$100 or less per month!"

-Candy Moore, Pulaski, Virginia

2012 Weatherization Assistance Program Information

Total Homes Weatherized: 6222

What kinds of homes are being weatherized?

Single Family Unit, Owned	42%
Single Family Unit, Rented	3%
Multi Family (5+ Units/site)	39%
Mobile Home, Owned	14%
Mobile Home, Rented	2%
Shelter	0%

What are the poverty levels of these residents?*

Under 75% Poverty	33%
75-100%	19%
101-125%	15%
126-150%	11%
Over 150% Poverty	22%

Funding for weatherization services provided by The Department of Energy (DOE), Low-Income Home Energy Assistance Program (LIHEAP), and American Recovery and Reinvestment Act (ARRA).

Who lives in these houses?

Elderly-Occupied	40%
Disabled-Occupied	21%
Native American-Occupied	<1%
Children-Occupied less than 18 years	39%

Weatherization Crews

Highly trained and professionally certified weatherization personnel use advanced energy audits and sophisticated diagnostic equipment to identify cost-effective energy saving measures for each home. Every program operates under an approved set of installation standards that are based on proven best practice approaches. Every program is responsible for a prescribed quality control protocol and is also monitored by the state office (DHCD). These measures include a computerized comprehensive energy audit, heating and cooling system efficiency and safety inspections, blower door directed air-sealing, duct diagnostics and repair, and advanced insulation applications. In Virginia all crews receive specialized training. A nationally certified Department of Energy approved training center, Energy Solutions Research and Training Center (ESRTC), is located in Christiansburg, VA. ESRTC is a state of the art facility with advanced training props, classrooms, equipment, and an experienced training staff. ESRTC is also accredited by the Interstate Renewable Energy Council (IREC). For more information visit: <http://chptrainingcenter.org>

"The new heat pump keeps the temperature consistent and the insulation has plugged all the air leaks and can be noticed already. The men who did the work were very courteous and did an excellent job."

-Doris Ott, Forest, VA

Virginia Weatherization Impact

- Over the life of the measures, weatherization saves 53 metric tons of carbon emissions per home.*
- For every \$1 invested in the program,* Weatherization returns \$2.51 to the household and the local community.
- Increased job training and local employment.
- Reduces utility bill payments thus creating more disposable income in the household.
- Improved housing quality.
- Improved health and safety for occupants of weatherized homes.
- Saves lives on a daily basis.

"It (weatherization) has made a huge difference in cooling and heating. It has lowered our light bill. We have never seen work get done so fast and very efficient".

-Teaford and Dorothy Martin, Martinsville, VA

*ORNL/TM-2010/66, EIA February 2010 Short Term Energy Outlook

**For 2012 poverty level information visit <http://aspe.hhs.gov/poverty/12poverty.shtml>



Weatherization
Works

The Weatherization Assistance Program

"America's largest, oldest, and most comprehensive residential energy efficiency program."



*Weatherization
Works*

Mission

The U.S. Department of Energy's Weatherization Assistance Program (WAP) increases the energy efficiency of dwellings occupied by low-income Americans, thereby reducing their energy costs, while safeguarding their health and safety. Among low-income households, the program prioritizes those with elderly residents, individuals with disabilities and families with children.



Operations

Created in 1976, the program utilizes partnerships between state and local level Weatherization agencies to achieve its goals. Weatherization programs operate in all 50 states, the District of Columbia and among Native American tribes. More than 970 local agencies comprise this national network. Services are provided in every city, town and county in America. Since the program's inception over 7 million homes have been weatherized.

Weatherization Services

Trained weatherization technicians use advanced energy audits and sophisticated diagnostics equipment to identify cost-effective, energy saving measures for each home. These measures include:

- Heating and Cooling Safety Inspections
- Combustion Appliance Zone Testing
- Whole House Pressure Testing
- Heating and Cooling System Repair and Replacement
- Blower Door Directed Air Sealing
- Duct Diagnostics and Repair
- Advanced Insulation Techniques
- Carbon Monoxide Testing
- Inefficient Appliance Replacement
- Mechanical Ventilation
- Energy Education

Job Creation and the Economy*

- 7,000 living wage jobs are supported by Weatherization.
- Workers are highly trained and certified and make up the largest energy efficiency retrofit workforce in the nation.
- Thousands of local, American businesses are supported by the activities of the Weatherization Assistance Program.
- Weatherization provides a marketplace for innovation in the energy upgrade and energy efficiency retrofit industry and supports the growth of American businesses.

Weatherization Impact**

- Weatherization reduces residential and power plant emissions of carbon dioxide by 2.65 metric tons per year per home.
- Weatherization decreases national energy consumption by the equivalent of 24.1 million barrels of oil annually.
- Over 7.4 million homes weatherized since program's inception.

Leadership

The Weatherization Assistance Program (WAP) has pioneered the tools, techniques, diagnostic approaches, and measures that have laid the foundation for the home performance contracting industry and the national energy efficiency retrofit effort. WAP has developed and implemented proven best practices that are tested daily in real world situations. These applications and this technical expertise have provided the necessary leadership required to address the growing need in our country to make our existing homes more energy efficient.

For More Information

- Department of Energy Office of Weatherization and Intergovernmental Program: <http://www1.eere.energy.gov/wip/>
- Weatherization Assistance Program Technical Assistance Center: <http://www.waptac.org>



The Association of Energy Conservation Professionals (AECPE): <http://www.aecpes.org>
220 Parkway Lane, Box 5A, Floyd, VA 24091, aecp@swva.net

*Source: Weatherization Assistance Program Technical Assistance Center (www.waptac.org) **Source: ORNL/TM-2010/66, EIA February 2010 Short Term Energy Outlook

Date: October 24, 2023

Item No: 7.

Department: City Manager

Issue: Conduct a public hearing regarding the City's possible participation in the Commercial Property Assessed Clean Energy (C-PACE) program.

Summary: Commercial Property Assessed Clean Energy (C-PACE) is a market-based financing tool building owners and developers can use to fund energy efficiency, renewable energy, water saving property enhancements, or other improvements as authorized by law without upfront costs. Private capital providers fund building improvements or new construction after a rigorous assessment of the project. It transforms and reduces expenses related to energy through a capital investment.

In 2020 the General Assembly passed legislation allowing Virginia to offer a statewide C-PACE program. The program launched in September 2022 and is now active and open to localities wishing to participate. The Virginia PACE Authority (VPA) is administering the program for the state energy office (Virginia Energy). The enacted legislation enabled localities to implement local C-PACE programs but required each jurisdiction to enact its own ordinance. Though the legislation requires action by localities, localities are neither the lender nor guaranteeing the collection of funds. The City is facilitating a property rights transaction that carries with the land. Although State law mandates that the City levy the lien, private capital providers carry the risk if the property owner defaults on a loan. C-PACE repayments are collected through local property taxes.

C-PACE benefits a wide variety of stakeholders: property owners who need to update older buildings, to build in resiliency, reduce energy costs and increase net operating income; contractors who are seeking job opportunities; lenders providing financing; builders who will be able to finance more energy efficiency and renewable energy in new commercial buildings; and citizens who seek reduced greenhouse gas emissions and a healthier environment.

Funding is provided by capital lenders. Lenders work with building owners and contractors to assess qualifications for financing. With 100 percent financing, building owners can take on large projects that can produce immediate savings and preserve cash flow. Capital providers can then bring their lending power to a sector of the market where others have not been able to capitalize on an opportunity. Eligible improvements can include Heating, Ventilation and Air Conditioning (HVAC), boilers, solar photovoltaic (PV) systems, high efficiency lighting, insulation, windows, water conservation and energy audits.

In order to participate in the program, both a public hearing and ordinance are required.

Attachments: Copy of § 15.2-958.3 Commercial Property Assessed Clean Energy (C-PACE) financing programs and Copy of an Ordinance of the City of Martinsville creating a commercial property assessed clean energy (C-PACE) financing program

Recommendations: Consider the approval of the Ordinance creating a C-PACE financing program

§ 15.2-958.3. Commercial Property Assessed Clean Energy (C-PACE) financing programs

A. As used in this section:

"Eligible improvements" means any of the following improvements made to eligible properties:

1. Energy efficiency improvements;
2. Water efficiency and safe drinking water improvements;
3. Renewable energy improvements;
4. Resiliency improvements;
5. Stormwater management improvements;
6. Environmental remediation improvements; and
7. Electric vehicle infrastructure improvements.

A program administrator may include in its C-PACE loan program guide or other administrative documentation definitions, interpretations, and examples of these categories of eligible improvements.

"Eligible properties" means all assessable commercial real estate located within the Commonwealth, with all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the locality, other than a residential dwelling with fewer than five dwelling units or a condominium as defined in § 55.1-2000 used for residential purposes. Common areas of real estate owned by a cooperative or a property owners' association described in Subtitle IV (§ 55.1-1800 et seq.) of Title 55.1 that have a separate real property tax identification number are eligible properties. Eligible properties shall be eligible to participate in the C-PACE loan program.

"Program administrator" means a third party that is contracted for professional services to administer a C-PACE loan program.

"Resiliency improvement" means an improvement that increases the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:

1. Flood mitigation or the mitigation of the impacts of flooding;
2. Inundation adaptation;
3. Natural or nature-based features and living shorelines, as defined in § 28.2-104.1;
4. Enhancement of fire or wind resistance;

5. Microgrids;

6. Energy storage; and

7. Enhancement of the resilience capacity of a natural system, structure, or infrastructure.

B. Any locality may, by ordinance, authorize contracts to provide C-PACE loans (loans) for the initial acquisition, installation, and refinancing of eligible improvements located on eligible properties by free and willing property owners of such eligible properties. The ordinance may refer to the mode of financing as Commercial Property Assessed Clean Energy (C-PACE) financing and shall include but not be limited to the following:

1. The kinds of eligible improvements that qualify for loans;

2. The proposed arrangement for such C-PACE loan program (loan program), including (i) a statement concerning the source of funding for the C-PACE loan; (ii) the time period during which contracting property owners would repay the C-PACE loan; and (iii) the method of apportioning all or any portion of the costs incidental to financing, administration, and collection of the C-PACE loan among the parties to the C-PACE transaction;

3. (i) A minimum dollar amount that may be financed with respect to an eligible property; (ii) if a locality or other public body is originating the loans, a maximum aggregate dollar amount that may be financed with respect to loans originated by the locality or other public body, and (iii) provisions that the loan program may approve a loan application submitted within two years of the locality's issuance of a certificate of occupancy or other evidence that eligible improvements comply substantially with the plans and specifications previously approved by the locality and that such loan may refinance or reimburse the property owner for the total costs of such eligible improvements;

4. In the case of a loan program described in clause (ii) of subdivision 3, a method for setting requests from owners of eligible properties for financing in priority order in the event that requests appear likely to exceed the authorization amount of the loan program. Priority shall be given to those requests from owners of eligible properties who meet established income or assessed property value eligibility requirements;

5. Identification of a local official authorized to enter into contracts on behalf of the locality. A locality may contract with a program administrator to administer such loan program;

6. Identification of any fee that the locality intends to impose on the property owner requesting to participate in the loan program to offset the cost of administering the loan program. The fee may be assessed as a program fee paid by the property owner requesting to participate in the program; and

7. A draft contract specifying the terms and conditions proposed by the locality.

C. The locality may combine the loan payments required by the contracts with billings for water or sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish the order in which loan payments will be applied to the different charges. The locality may not combine its billings for loan payments required by a contract authorized pursuant to this section with billings of another locality or political subdivision, including an authority operating pursuant to Chapter 51 (§ 15.2-5100 et seq.), unless such locality or political subdivision has

given its consent by duly adopted resolution or ordinance. The locality may, either by ordinance or its program guide, delegate the billing; collection, including enforcement; and remittance of C-PACE loan payments to a third party.

D. The locality shall offer private lending institutions the opportunity to participate in local C-PACE loan programs established pursuant to this section.

E. In order to secure the loan authorized pursuant to this section, the locality shall place a voluntary special assessment lien equal in value to the loan against any property where such eligible improvements are being installed. The locality may bundle or package said loans for transfer to private lenders in such a manner that would allow the voluntary special assessment liens to remain in full force to secure the loans. The placement of a voluntary special assessment lien shall not require a new assessment on the value of the real property that is being improved under the loan program.

F. A voluntary special assessment lien imposed on real property under this section:

1. Shall have the same priority status as a property tax lien against real property, except that such voluntary special assessment lien shall have priority over any previously recorded mortgage or deed of trust lien only if (i) a written subordination agreement, in a form and substance acceptable to each prior lienholder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the special assessment lien in the land records where the property is located, and (ii) evidence that the property owner is current on payments on loans secured by a mortgage or deed of trust lien on the property and on property tax payments, that the property owner is not insolvent or in bankruptcy proceedings, and that the title of the benefited property is not in dispute is submitted to the locality prior to recording of the special assessment lien;
2. Shall run with the land, and that portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien;
3. May be enforced by the local government in the same manner that a property tax lien against real property is enforced by the local government. A local government shall be entitled to recover costs and expenses, including attorney fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax; and
4. May incur interest and penalties for delinquent installments of the assessment in the same manner as delinquent property taxes.

G. Prior to the enactment of an ordinance pursuant to this section, a public hearing shall be held at which interested persons may object to or inquire about the proposed loan program or any of its particulars. The public hearing shall be published once a week for two successive weeks, with the first notice appearing no more than 14 days before the hearing, in a newspaper of general circulation in the locality.

H. The Department of Energy shall serve as a statewide sponsor for a loan program that meets the requirements of this section. The Department of Energy shall engage a private program administrator through a competitive selection process to develop the statewide loan program. A locality, in its adoption or amendment of its C-PACE ordinance described in subsection B, may opt into the statewide C-PACE loan program sponsored by the Department of Energy, and such action shall not require the locality to undertake any competitive procurement process.

2009, c. [773](#);2010, c. [141](#);2015, cc. [389](#), [427](#);2019, cc. [564](#), [753](#);2020, c. [664](#);2021, c. [6](#);2021, Sp. Sess. I, c. [532](#);2022, c. [402](#);2023, cc. [506](#), [507](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**MARTINSVILLE VIRGINIA
PROPOSED CITY ORDINANCE No. 2023-4**

**AN ORDINANCE OF THE CITY OF MARTINSVILLE, VIRGINIA CREATING A
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING
PROGRAM**

BE IT ORDAINED by the City Council of the City of Martinsville, Virginia that Chapter 25, Commercial Property Assessed Clean Energy (C-PACE) Financing and Resiliency Program of the City Code of the City of Martinsville, Virginia is hereby enacted as set forth below, including Appendix A and Appendix B.

CHAPTER 25- COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING AND RESILIENCY PROGRAM

ARTICLE I. - IN GENERAL

Sec. 25-1. - Purpose.

The purpose of this chapter is to create a “The City of Martinsville Commercial Property Assessed Clean Energy (C-PACE) Financing Program,” to operate in coordination with the statewide C-PACE program, all in accordance with Va. Code §15.2-958.3 (hereinafter, the “C-PACE Act”). The local and statewide C-PACE programs, working together, will facilitate Loans made by Capital Providers to Property Owners of Eligible Properties to finance Eligible Improvements thereon. The C-PACE program will facilitate loans made by Capital Providers to Property Owners to finance renewable energy production and distribution facilities, energy efficiency improvements, water usage efficiency, resiliency, and stormwater management improvements. Subject to the limitations set forth in this chapter, the C-PACE Act, or other applicable law, each C-PACE Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by a voluntary special assessment lien on the Property that is the subject of such Loan.

Sec. 25-2. - Definitions.

- (a) *Assessment Payment Schedule* means the schedule of installments of C-PACE Payments to be made in the repayment of the C-PACE Loan, which shall be attached as Exhibit A-2 to the C-PACE Program Agreement.
- (b) *Capital Provider* means (i) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guidelines to originate a C-PACE Loan and its successors and assigns; or (ii) the current holder of a C-PACE Loan.
- (c) *City* means the City of Martinsville, Virginia.

- (d) *Clerk's office* means the Office of the Clerk of the Circuit Court of the City of Martinsville, Virginia.
- (e) *Commonwealth* means the Commonwealth of Virginia.
- (f) *Council* means the Council of the City of Martinsville, Virginia.
- (g) *C-PACE* means Commercial Property Assessed Clean Energy.
- (h) *C-PACE Act* means Virginia's "Commercial Property Assessed Clean Energy (C-PACE) financing programs" law, codified at Va. Code §15.2-958.3.
- (i) *C-PACE Amendment* means an amendment of the C-PACE Lien executed by the Capital Provider, the Property Owner and the Program Manager, as permitted in the C-PACE Documents, which C-PACE Amendment shall be recorded in the Clerk's Office to evidence each amendment to the C-PACE Loan and the C-PACE Lien.
- (j) *C-PACE Assignment (CP)* means a written assignment by one Capital Provider to another Capital Provider of the C-PACE Payments and/or C-PACE Lien pursuant to the terms of the assignment document.
- (k) *C-PACE Assignment (Locality)* means a written assignment by the City to the Capital Provider to whom the C-PACE Loan is then due, wherein the City relinquishes and assigns its right to enforce the C-PACE Lien to the Capital Provider, substantially in the form attached as Addendum 1 to the C-PACE Lien Certificate.
- (l) *C-PACE Documents* means the C-PACE Program Agreement, Financing Agreement, C-PACE Lien Certificate, C-PACE Assignment (CP) (if any), C-PACE Assignment (Locality) (if any), C-PACE Amendment (if any), and any other document, agreement, or instrument executed in connection with a C-PACE Loan.
- (m) *C-PACE Lien* or *Lien* means the voluntary special assessment lien levied against the Property as security for the C-PACE Loan.
- (n) *C-PACE Lien Certificate* means the voluntary special assessment lien document duly recorded among the Land Records against an Eligible Property to secure a C-PACE Loan.
- (o) *C-PACE Loan* or *Loan* means a loan from a Capital Provider to finance a Project, in accordance with the Program Guidelines.
- (p) *C-PACE Payment* means the periodic installment payments of the C-PACE Loan by a Property Owner, due and payable to the Capital Provider or Program Administrator as permitted by the C-PACE Act in such amounts and at such times as described in the Assessment Payment Schedule.
- (q) *C-PACE Program* means the program established by the City through this chapter, in accordance with the C-PACE Act, that in coordination with the Statewide Program facilitates

the financing of Eligible Improvements and provides for a C-PACE Lien to be levied and recorded against the Property to secure the C-PACE Loan.

(r) *C-PACE Program Agreement* means the agreement executed among the Property Owner, the City, the Treasurer and the Capital Provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program and the Property Owner's acknowledgment and consent for the City to impose a voluntary special assessment, record a C-PACE Lien Certificate against the Property Owner's Eligible Property and, if the City so determines, assign the rights to enforce the C-PACE Lien and C-PACE Lien Certificate to the Capital Provider (and if so assigned, also a consent of the Treasurer to such assignment). The C-PACE Program Agreement shall be substantially in the form attached hereto as Appendix A.

(s) *Delinquent Payment* means any C-PACE Payment that was not paid by a Property Owner in accordance with the C-PACE Documents.

(t) *Eligible Improvements* means the initial acquisition and installation of any of the following improvements made to Eligible Properties:

- (1) Energy efficiency improvements;
- (2) Water efficiency and safe drinking water improvements;
- (3) Renewable energy improvements;
- (4) Resiliency improvements;
- (5) Stormwater management improvements;
- (6) Environmental remediation improvements; and
- (7) Electric vehicle infrastructure improvements.

Eligible Improvements may be made to both existing Properties and new construction, as further prescribed in this chapter and the Program Guidelines. Eligible Improvements shall include types of authorized improvements added by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition to the elaboration on the types of Eligible Improvements provided in Sec. 25-4(a), below, a Program Administrator may include in its Program Guidelines or other administrative documentation definitions, interpretations, and examples of these categories of Eligible Improvements.

(u) *Eligible Property or Property* means all assessable commercial real estate located within the City, with all buildings located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, excluding (i) a residential dwelling with fewer than five (5) units, and (ii) a residential condominium as defined in Va. Code §55.1-2100. Exclusion of condominium

projects will be limited to residential condominium projects as defined in the 2021 amendment to the C-PACE Act effective July 1, 2021. Common areas of real estate owned by a cooperative or a property owners' association described in Va. Code Title 55.1, Subtitle IV (§55.1-1800 *et seq.*), that have a separate real property tax identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE Program.

(v) *Financing Agreement* means the written agreement, as may be amended, modified, or supplemented from time to time, between a Property Owner and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements. The Financing Agreement may contain any lawful terms agreed to by the Capital Provider and the Property Owner.

(w) *Land Records* means the Land Records of the Clerk's Office.

(x) *Lender Consent* means a written subordination agreement executed by each mortgage or deed of trust lienholder with a lien on the Property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or deed of trust liens.

(y) *Loan Amount* means the original principal amount of a C-PACE Loan.

(z) *Locality Agreement* means the Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement between Virginia Energy and the City, pursuant to which the City elects to participate in the Statewide Program. The Locality Agreement shall be substantially in the form attached hereto as Appendix B.

(aa) *Program Administrator* means the private third party retained by Virginia Energy to provide professional services to administer the Statewide Program in accordance with the requirements of the C-PACE Act, this chapter, the Locality Agreement and the Program Guidelines.

(bb) *Program Fee(s)* means the fee(s) authorized by the C-PACE Act and charged to participating Property Owners to cover the costs to design and administer the Statewide Program, including, without limitation, compensation of the Program Administrator. While Capital Providers are required to service their C-PACE Loans, if a Capital Provider does not do so and the Program Administrator assumes the servicing responsibility and charges a servicing fee, the servicing fee shall also be included among the Program Fees.

(cc) *Program Guidelines* means a comprehensive document available from the Program Administrator setting forth the procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements applicable to the governance and administration of the Statewide Program dated September 2022, as such Program Guidelines may be amended from time to time.

(dd) *Program Manager* means the City Manager, or such person designated in writing by the City Manager to (i) supervise the City's C-PACE Program and participation in the Statewide Program, (ii) act as liaison with the Program Administrator and (iii) advise the Program

Administrator as to who will sign the C-PACE Documents to which the Locality is a party on the Locality's behalf. If the employee of the City who customarily signs agreements for the Locality is not the person designated as Program Manager, then references in this Ordinance and in the C-PACE Documents to the Program Manager signing certain C-PACE Documents on behalf of the Locality shall be construed to also authorize such customary signatory for the City to execute such C-PACE Documents.

(ee) *Project* means the construction or installation of Eligible Improvements on Eligible Property.

(ff) *Property Owner* means (i) the Property Owner(s) of Eligible Property who voluntarily obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guidelines; or (ii) a successor in title to the Property Owner.

(gg) *Property Owner Certification* means a notarized certificate from Property Owner, certifying that (i) Property Owner is current on payments on Loans secured by a mortgage or deed of trust lien on the Property and on real estate tax payments, (ii) that the Property Owner is not insolvent or in bankruptcy proceedings, and (iii) that the title of the Property is not in dispute, as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the Program Administrator and Capital Provider.

(hh) *Statewide Program* means the statewide C-PACE financing program sponsored by Virginia Energy, established to provide C-PACE Loans to Property Owners in accordance with the C-PACE Act, this chapter, the Locality Agreement, the C-PACE Documents and the Program Guidelines.

(ii) *Treasurer* means the Treasurer of the City, or if the City has abolished the officer of Treasurer, the official executing the tax collection duties that would otherwise be carried out by the Treasurer.

(jj) *Useful Life* means the normal operating life of the fixed asset.

(kk) *Virginia Code or Va. Code* means the Code of Virginia of 1950, as amended.

(ll) *Virginia Energy* means the Virginia Department of Energy.

Sec. 25-3. - Effective date.

This chapter shall become effective immediately following its adoption.

ARTICLE II. - PROGRAM STRUCTURE

Sec. 25-4. - C-PACE Program; Eligible Improvements.

(a) *C-PACE Program.* The C-PACE Program shall be available throughout the City, provided that the Property Owner, the Property, the proposed Eligible Improvements, the Capital

Provider and the principal contractors all qualify for the Statewide Program. The following types of Eligible Improvements may be financed with a C-PACE Loan:

(1) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or weather-stripping), or other capital improvements or systems which result in the reduction of consumption of energy over a baseline established in accordance with the Program Guidelines;

(2) Water usage efficiency and safe drinking water improvements (e.g., recovery, purification, recycling, and other forms of water conservation), or other capital improvements or systems which result in the reduction of consumption of water over a baseline established in accordance with the Program Guidelines;

(3) Renewable energy production facilities (e.g., solar photovoltaic, fiber optic solar, solar thermal, wind, wave and/or tidal energy, biomass, combined heat and power, geothermal and fuel cells), whether attached to a building or sited on the ground, and the storage and/or distribution of the energy produced thereby, whether for use on-site or sale or export to a utility or pursuant to a power purchase agreement with a non-utility purchaser;

(4) Resiliency improvements which increase the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:

- a. Flood mitigation or the mitigation of the impacts of flooding;
- b. Inundation adaptation;
- c. Natural or nature-based features and living shorelines, as defined in Va. Code § 28.2-104.1;
- d. Enhancement of fire or wind resistance, including but not limited to reinforcement and insulation of a building envelope to reduce the impacts of excessive heat or wind;
- e. Microgrids;
- f. Energy storage; and
- g. Enhancement of the resilience capacity of a natural system, structure, or infrastructure;

(5) Stormwater management improvements that reduce onsite stormwater runoff into a stormwater system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of stormwater;

(6) Environmental remediation improvements, including but not limited to:

- a. Improvements that promote indoor air and water quality;
- b. Asbestos remediation;
- c. Lead paint removal; and
- d. Mold remediation;

(7) Soil or groundwater remediation;

(8) Electric vehicle infrastructure improvements, such as charging stations;

(9) Construction, renovation, or retrofitting of a Property directly related to the accomplishment of any purpose listed in subsections (1) – (8) above, whether such Eligible Improvement was erected or installed in or on a building or on the ground; it being the express intention of the City to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; and

(10) Any other category of improvement (i) approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the Statewide Program, in accordance with the C-PACE Act (including amendments thereto which authorize additional types of Eligible Improvements), or (ii) added by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition, a Program Administrator may include in its Program Guidelines or other administrative documentation definitions, interpretations and examples of these categories of Eligible Improvements.

(b) *Use of C-PACE Loan proceeds.* The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to Eligible Improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), program fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.

(c) *Program applications; prioritization.* The Program Administrator shall make available the Statewide Program's program application process, to provide for the review and approval of proposed Eligible Improvements and C-PACE Documents. Program applications will be processed by the Statewide Program in accordance with the eligibility requirements and procedures set forth in the Program Guidelines.

Sec. 25-5. - C-PACE Loan requirements; Program Fees; reporting; Program Administrator; Program Guidelines.

- (a) *Source of Loans.* C-PACE Loans shall be originated by Capital Providers. The City and/or its respective governmental entities shall have no obligation to originate or guarantee any C-PACE Loans.
- (b) *C-PACE Loan Amount thresholds.* The minimum Loan Amount that may be financed for each Project is fifty thousand dollars (\$50,000.00). There is no maximum aggregate amount that may be financed with respect to an Eligible Property, except as stipulated in the Program Guidelines. There shall be no limit on the total value of all C-PACE Loans issued under the C-PACE Program.
- (c) *C-PACE Loan Refinancing or Reimbursement.* The Program Administrator may approve a Loan application submitted within two (2) years of the City's issuance of a certificate of occupancy or other evidence that the Eligible Improvements comply substantially with the plans and specifications previously approved by the City and that such Loan may refinance or reimburse the Property Owner for the total costs of such Eligible Improvements.
- (d) *C-PACE Loan interest.* The interest rate of a C-PACE Loan shall be as set forth in the C-PACE Documents.
- (e) *C-PACE Loan Term.* The term of a C-PACE Loan shall not exceed the weighted average Useful Life of the Eligible Improvements, as determined by the Program Administrator.
- (f) *Apportionment of Costs.* All of the costs incidental to the financing, administration, collection, and/or enforcement of the C-PACE Loan shall be borne by the Property Owner.
- (g) *Financing Agreements.* Capital Providers may use their own Financing Agreements for C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this chapter, the C-PACE Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the C-PACE Act, and the C-PACE Program Agreement shall prevail.
- (h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program, Property Owner and Capital Provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for participation in the C-PACE Program. The Program Manager is authorized to approve the C-PACE Loan and execute the C-PACE Program Agreement on behalf of the City without further action by the City Council. The Treasurer is also authorized to execute the C-PACE Program Agreement without further action by the City Council. The C-PACE Program Agreement shall be binding upon the parties thereto and their respective successors and assigns until the C-PACE Loan is paid in full. The Program Administrator may modify the C-PACE Program Agreement as necessary to further the Statewide Program's purpose and to encourage Program participation, so long as such modifications do not conflict with the Program Guidelines, this chapter, the Locality Agreement, or the C-PACE Act.
- (i) *Repayment of C-PACE Loan; collection of C-PACE Payments.* C-PACE Loans will be repaid by the Property Owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment Payment Schedule, the C-PACE Documents and Program Guidelines. The Capital Provider shall be responsible, subject to and in accordance with the

terms of the C-PACE Program Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a Capital Provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator. Nothing herein shall prevent the Capital Provider or the Program Administrator from directly billing and collecting the C-PACE Payments from the Property Owner to the extent permitted by the C-PACE Act or other applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default thereunder is governed by Section 25-6(e).

(j) *C-PACE Loan Assumed.* A party which acquires a Property which is subject to a C-PACE Lien, whether it obtained ownership of the Property voluntarily or involuntarily, becomes the Property Owner under the C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay all remaining unpaid C-PACE Payments which are due and which accrue during such successor Property Owner's period of ownership. Only the current C-PACE Payment and any Delinquent Payments, together with any penalties, fees and costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

(k) *Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided that the Capital Provider shall (i) notify the Property Owner and the Program Administrator of the transfer prior to the billing date of the next C-PACE Payment due (and within thirty (30) days if the C-PACE Loan is serviced by the Program Administrator), (ii) record a C-PACE Assignment (CP) among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the Property Owner, the City, and the Program Administrator. Recordation of the C-PACE Assignment (CP) shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the C-PACE Documents.

(l) *Program Fees.* The Statewide Program is self-financed through the Program Fees charged to participating Property Owners, together with any funds budgeted by the General Assembly to support the Statewide Program. The Program Fees are established to cover the actual and reasonable costs to design and administer the Statewide Program, including the compensation of a third-party Program Administrator. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fees may be changed by the Program Administrator from time to time and shall only apply to C-PACE Loans executed after the date the revised fees are adopted.

(m) *Locality Agreement.* The City shall opt into the Statewide Program by entering into the Locality Agreement, adopting the Statewide Program as the City's own C-PACE Program. In accordance with the C-PACE Act, opting into the C-PACE Program shall not require the City to conduct a competitive procurement process. The Program Manager is authorized to execute the Locality Agreement on behalf of the City without further action by the City Council.

(n) *Program Guidelines.* The Program Administrator, under the direction of and in consultation with Virginia Energy, has designed the Program Guidelines to create an open,

competitive and efficient C-PACE Program. The Program Administrator may modify the Program Guidelines from time to time, provided such amendments are (i) consistent with the C-PACE Act and (ii) approved by Virginia Energy before taking effect.

(o) *Indemnification.* The Program Administrator shall indemnify, defend and hold the City harmless against any claim brought against the City or any liability imposed on the City as a result of any action or omission to act by the Program Administrator.

Sec. 25-6. - Levy of assessment; recordation; priority; amendment; enforcement and collection costs.

(a) *Levy of voluntary special assessment lien.* Each C-PACE Loan made under the C-PACE Program shall be secured by a voluntary special assessment lien (i.e., a C-PACE Lien) levied by the City against each Property benefitting from the Eligible Improvements financed by such C-PACE Loan. The C-PACE Lien shall be in the Loan Amount but shall secure not only the principal of the C-PACE Loan, but also all interest, delinquent interest, late fees, penalties, Program Fees and collection costs (including attorneys' fees and costs) payable in connection therewith.

(b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien shall be evidenced by a C-PACE Lien Certificate in the Loan Amount but shall also expressly state that it also secures all interest, delinquent interest, late fees, other types of fees, penalties, and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit. The Program Manager is hereby authorized to, and shall promptly, execute the C-PACE Lien Certificate on behalf of the City and deliver it to the Capital Provider, without any further action by the City Council. Upon the full execution of the C-PACE Documents and funding of the C-PACE Loan, the Capital Provider shall cause the recordation of the C-PACE Lien Certificate in the Land Records.

(c) *Priority.* The C-PACE Lien shall have the same priority as a real property tax lien against real property, except that it shall have priority over any previously recorded mortgage or deed of trust lien on the Property only if prior to the recording of the C-PACE Lien, (i) Property Owner has obtained a written Lender Consent, in a form and substance acceptable to the holder of such prior mortgage or deed of trust in its sole and exclusive discretion, executed by such lienholder and recorded with the C-PACE Lien Certificate in the Land Records; and (ii) prior to the recording of the C-PACE Lien Certificate, Property Owner has delivered an executed Property Owner Certification to the City in connection with the C-PACE Loan closing. Only the current C-PACE Payment and any Delinquent Payments shall constitute a first lien on the Property. The C-PACE Lien shall run with the land and that portion of the C-PACE Lien under the C-PACE Program Agreement that has not yet become due shall not be eliminated by foreclosure of a real property tax lien.

(d) *Amendment of lien.* Upon written request by a Capital Provider in accordance with the Program Guidelines, the Program Manager, without any further action by the City Council, shall join with the Capital Provider and the Property Owner in executing a C-PACE Amendment of

the C-PACE Loan and the C-PACE Lien after the closing of a C-PACE Loan. The C-PACE Amendment shall be recorded in the Land Records.

(e) *Enforcement and collection costs.* In the event of Property Owner's default under the terms of the C-PACE Documents, the City, acting by and through the Treasurer, may enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. Va. Code Sec. 58.1-3965.1 shall be applied to the sale of any Property to enforce a C-PACE Lien to collect Delinquent Payments. If the City elects not to enforce the C-PACE Lien, which election shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City, acting by and through the Treasurer, shall, within fifteen (15) days of the City's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Treasurer, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the City and its Treasurer, shall have the status of "Special Counsel to the City and its Treasurer" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Va. Code Secs. 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government and/or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The City, on its behalf and on behalf of the Treasurer, waives its right to the optional bond described in Va. Code Sec. 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975.

Sec. 25-7. - Role of the City; limitation of liability.

Property Owners and Capital Providers participate in the C-PACE Program and the Statewide Program at their own risk. By executing the C-PACE Documents, including the C-PACE Program Agreement, or by otherwise participating in the C-PACE Program and the Statewide Program, the Property Owner, Capital Provider, contractor, or other party or participant acknowledge and agree, for the benefit of the City and as a condition of participation in the C-PACE Program and the Statewide Program, that: (i) the City undertakes no obligations under the C-PACE Program and the Statewide Program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Property Owner, the City has no obligation to use City funds to make C-PACE Payments to any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Property Owner and Capital Provider; (iii) no C-PACE Loan, C-PACE Payment, C-PACE Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall be backed by the credit of the City, the Commonwealth, or its political subdivisions, including, without limitation, City taxes or other City funds; (iv) no C-PACE Loan, C-PACE Payment, C-PACE Lien or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction; (v) the City has not made any representations or warranties, financial or otherwise, concerning a Property Owner, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the City makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any C-PACE Document, or any assignment or amendment thereof; (vii) the City assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; (viii) each Property Owner or Capital Provider shall, upon request, provide the City with any information associated with a Project or a C-PACE Loan that is reasonably necessary to confirm that the Project or C-PACE Loan satisfies the requirements of the Program Guidelines; and (ix) each Property Owner, Capital Provider, or other participant under the C-PACE Program, shall comply with all applicable requirements of the Program Guidelines.

Sec. 25-8. - Severability.

As provided by Section 1-4 of the Code of the City, the provisions of this chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid, or that the application of any part of the chapter or provision to any person or circumstance is invalid, the remaining provisions of this chapter shall not be affected by that decision and continue in full force and effect.

First Reading: October 24, 2023.

Recorded Vote (First Reading):

Appendix A – C-PACE Program Agreement

CITY OF MARTINSVILLE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the “Agreement”) is made and entered into as of the date it is fully executed (the “Effective Date”), by and among the **CITY OF MARTINSVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “City”); the **TREASURER OF THE CITY** (the “Treasurer”); _____, a [state of organization] [type of business entity] (the “Property Owner”); and _____, a [state of organization] [type of business entity] (the “Capital Provider”), and their respective successors and assigns (collectively, the “Parties”).

RECITALS:

WHEREAS, §15.2-958.3 of the Virginia Code (the “C-PACE Act”), authorizes the creation of a statewide Commercial Property Assessed Clean Energy (“C-PACE”) Program (the “Statewide Program”), sponsored by Virginia Energy and managed by the Virginia PACE Authority, its selected program administrator (the “Program Administrator”), and authorizes Virginia localities to opt into the Statewide Program instead of establishing a stand-alone C-PACE Program for the locality; and

WHEREAS, the Statewide Program facilitates Capital Providers making C-PACE Loans to Property Owners to enable the Property Owners to make Eligible Improvements to Eligible Properties; and

WHEREAS, each C-PACE Loan is secured by a Property Owner’s voluntary grant of a C-PACE Lien on an Eligible Property to the locality in which the Eligible Property is located; and

WHEREAS, the City has determined to enable Property Owners to obtain C-PACE Loans for Eligible Improvements located on Eligible Properties in the City by causing the City to opt into the Statewide Program, adopting the Statewide Program as the City’s own C-PACE Program, and to implement such determination, the Council of the City has adopted Chapter 25 of the Code of Ordinances of the City (the “Ordinance”); and

WHEREAS, pursuant to the C-PACE Act, the Ordinance, a Locality Agreement between Virginia Energy and the City and the Program Guidelines, the Parties are required to enter into a written agreement specifying the terms and conditions for participating in the Statewide Program;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and to implement the purposes of the C-PACE Act and the Ordinance, the Parties hereby agree as follows:

Section 1 - Definitions.

Unless otherwise defined herein, capitalized terms in this Agreement shall have the meanings given them in the Ordinance.

Section 2 – Representations and Covenants.

(a) Property Owner represents and covenants that it is the fee simple record owner of the Eligible Property more particularly described in Exhibit A hereto (the “Property”).

(b) Property Owner represents and covenants that (i) it has applied to participate in the Statewide Program, (ii) the Program Administrator has given notice to the City of its approval of Property Owner’s application for C-PACE financing and (iii) desires to obtain a C-PACE Loan to construct or install certain Eligible Improvements on the Property.

(c) Property Owner represents and covenants that it has entered or will enter into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. The Assessment Payment Schedule for the C-PACE Loan is set forth in Exhibit B hereto. Property Owner and Capital Provider acknowledge and agree that the Financing Agreement shall include only those costs and fees (including Program Fees) for which a C-PACE Lien may be imposed under the C-PACE Act and the Ordinance.

(d) The Parties acknowledge and agree that should Property Owner default on the C-PACE Loan, the City, acting through its Treasurer, may enforce the C-PACE Lien for the benefit of Capital Provider according to the C-PACE Documents, the C-PACE Act, the Locality Agreement and the Ordinance. If the City, acting through its Treasurer, determines not to enforce the C-PACE Lien, which determination shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner’s default under the terms of the C-PACE Documents, then the City shall, within fifteen (15) days of the City’s determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan’s closing, regardless of whether the C-PACE Loan is then in default.

(e) Property Owner and Capital Provider confirm that they have obtained Lender Consents for each deed of trust or mortgage lien against the Property.

Section 3 – Program Terms and Conditions.

(a) C-PACE Loan. The Capital Provider will provide financing for the Property Owner’s Eligible Improvements in accordance with the C-PACE Documents.

(b) Program Fee(s): Property Owner agrees that Program Fee(s) will be [paid directly by Property Owner to the Program Administrator][deducted from C-PACE Loan proceeds at funding and remitted by Capital Provider to the Program Administrator][deducted from C-PACE Payments and remitted by Capital Provider to the Program Administrator] in accordance with the C-PACE Documents and the Program Guidelines and in the amount of \$_____, as follows:

(c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to Property Owner under the Program, Property Owner hereby requests and authorizes the City to levy a C-PACE Lien against the Property in the Loan Amount, together with all interest, delinquent interest, late fees, other types of fees, penalties and collection costs (including attorneys' fees and costs) payable in connection therewith. To evidence the C-PACE Lien, Property Owner requests that the City execute a C-PACE Lien Certificate that will be recorded in the Land Records of the City, which C-PACE Lien Certificate shall state that it secures both the Loan Amount and also all interest, delinquent interest, late fees, other types of fees, penalties, Program Fees and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit.

(d) C-PACE Payments. The C-PACE Loan is due and payable to the Capital Provider [or the City for the benefit of the Capital Provider] as set forth in the Assessment Payment Schedule and remitted as follows: _____

Once the C-PACE Loan, including all accrued interest (both current and delinquent), late fees, other types of fees, penalties, collection costs and Program Fees, has been satisfied and paid in full, Capital Provider and the City, acting at the request and direction of Capital Provider (which shall certify such payment in full to the City), shall execute a joint release of the C-PACE Lien Certificate, and the Capital Provider shall record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the City.

(e) Remittance of C-PACE Payments to Capital Provider: The C-PACE Loan shall be serviced by the Capital Provider, and Property Owner's C-PACE Payments shall be paid directly to its Capital Provider. The foregoing notwithstanding, if for any reason Property Owner's C-PACE Payments are payable to the Program Administrator or the City or its Treasurer, then the party receiving such C-PACE Payments shall remit all such payments to the Capital Provider within thirty (30) days of receipt, subject, if applicable, to the deduction and remittance of the Program Fees to the Program Administrator as set forth in Section 3(b), above, the C-PACE Documents and the Program Guidelines.

(f) Maintenance of Assessment. The City agrees to maintain and continue the C-PACE Lien on the Property for the benefit of Capital Provider until the C-PACE Loan, including all

principal, interest, fees, other types of fees, penalties, collection costs and Program Fees and other sums due, is paid in full.

(g) Assignment. Capital Provider shall have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider by the execution, delivery and recordation of a C-PACE Assignment (CP) in the Land Records, provided all of the following conditions are met:

- (1) The C-PACE Assignment (CP) is made pursuant to the requirements of the Ordinance and the Program Guidelines;
- (2) The Program Administrator and Property Owner are notified in writing of the assignment or transfer and provided the address where future C-PACE Payments should be mailed, either at closing, if the assignment occurs then, or at least thirty (30) days before the next Payment is due according to the Assessment Payment Schedule; and
- (3) The assignee or transferee, by operation of the C-PACE Assignment (CP) or otherwise, assumes Capital Provider's obligations under the C-PACE Documents.
- (4) If for any reason C-PACE Payments are being paid to the City or its Treasurer, neither of them shall be obligated to remit C-PACE Payments to a new Capital Provider to which the C-PACE Loan is being assigned until a recorded copy of the C-PACE Assignment (CP) has been provided to the City and its Treasurer at the following address[es]:

City :

Treasurer:

Upon written notice to the Program Administrator and Property Owner of an assignment or transfer of the right to receive the C-PACE Payments that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under the C-PACE Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C-PACE Lien that does not meet all of these conditions is void.

(h) Lien Priority and Enforcement. Pursuant to the C-PACE Act, the Ordinance and the Program Guidelines:

- (1) Delinquent Payments on the C-PACE Loan will incur interest and penalties

as set forth in the C-PACE Documents.

- (2) The C-PACE Lien, together with any penalties and interest thereon:
 - (i) has the same priority status as a lien for City real estate taxes;
 - (ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the Land Records until the financing secured by the C-PACE Lien and any penalties and interest are paid in full;
 - (iii) shall run with the land, and notwithstanding Va. Code Sec. 58.1-3967, any portion of the C-PACE Lien that has not yet become due under the C-PACE Documents is not eliminated by the foreclosure of: (i) a City property tax lien, or (ii) the lien for any past due portion of the C-PACE Loan.
 - (iv) In the event of a sale or transfer of the Property by Property Owner, the obligation for the C-PACE Lien and Property Owner's obligations under the C-PACE Documents will be assumed by and transferred to the succeeding owner.
- (3) In the event of Property Owner's default under the terms of the C-PACE Documents, the City, acting by and through the Treasurer, may enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. Va. Code Sec. 58.1-3965.1 shall be applied to the sale of any Property to enforce a C-PACE Lien to collect Delinquent Payments. Capital Provider agrees to cooperate with the City and its Treasurer in its enforcement of the C-PACE Lien by providing all necessary documents and information concerning the delinquent C-PACE Loan as requested by the City Attorney's Office. If the City, acting through its Treasurer, determines not to enforce the C-PACE Lien itself, which determination shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City, acting by and through the Treasurer, shall, within fifteen (15) days of the City's determination not to enforce the C-PACE lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in

the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Treasurer, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the City and its Treasurer, shall have the status of "Special Counsel to the City and its Treasurer" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Va. Code Secs. 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The City, on its behalf and on behalf of the Treasurer, waives its right to require such legal counsel to post the optional bond described in Va. Code Sec. 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975.

(4) In a bill in equity for sale of a Property to collect Delinquent Payments, the City will be entitled to recover the Delinquent Payments, late fees, other types of fees, penalties, Program Fees, interest due, and the costs and expenses of collection, including attorney's fees and costs, all as set forth in the C-PACE Documents.

(i) Property Owner's Waiver of Certain Defenses; Confession of Judgment: By executing this Agreement, Property Owner acknowledges and agrees as follows:

- (1) After the C-PACE Lien Certificate is recorded, Property Owner waives the right to contest the Lien on the basis that the improvements funded with the C-PACE Loan are not Eligible Improvements;
- (2) Property Owner waives all defenses, affirmative or otherwise, to any enforcement or collection action brought as a result of Property Owner's default in the payment of the C-PACE Payments due pursuant to the C-PACE Documents;
- (3) To the extent permitted by the Financing Agreement, Property Owner

waives all defenses to the imposition of personal liability for corporate officers as permitted under Section 58.1-3965(F) of the Virginia Code;

- (4) Property Owner shall provide a confession of judgment if requested by the Capital Provider.

(j) Written Contract Required by the C-PACE Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by §15.2-958.3(A)(7) of the C-PACE Act.

(k) Transfer of C-PACE Funded Improvements. Property Owner agrees that all Improvements purchased, constructed, or installed through financing obtained pursuant to the C-PACE Program shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property; provided, however, that if Improvements become obsolete or the Property Owner otherwise determines they need to be replaced with other Improvements of equal or greater value, such Improvements may be removed and other Improvements of equal or greater value installed.

(l) No Cost to City. No provision of this Agreement requires the City to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(m) Term of the Agreement. The term of this Agreement shall commence upon the Effective Date and shall be in full force and effect until the C-PACE Loan has been irrevocably paid in full.

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Property Owner, or any right or remedy of the Capital Provider or the City, Property Owner agrees to indemnify and hold harmless the Capital Provider and the City, their respective council members, directors, officers, employees, agents, subsidiaries, and affiliates (each, an "Indemnified Party"), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether created by statute or common law, including all costs and expenses, including attorneys' fees, arising from or associated with this C-PACE Loan transaction. This section shall survive the expiration of the Term of this Agreement.

Section 5 - Miscellaneous Provisions.

(a) Construction. This Agreement is to be construed in accordance with and with reference to the C-PACE Act, the Ordinance, the Locality Agreement and the Program Guidelines.

(b) Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.

(c) Severability. If the C-PACE Act, the Ordinance, the Locality Agreement or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the City or Capital Provider, Property Owner agrees to continue to make the C-PACE Payments required under the C-PACE Documents and agrees to execute any and all documentation to perfect and enforce the C-PACE Loan as required by the City or Capital Provider. The invalidity of any clause, provision, or section of this Agreement shall not affect any remaining clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. Electronically transmitted and digitally signed signatures shall have the same force and effect as, and shall be treated as, a “wet ink” original signature.

(e) Notices. All notices, requests, consents and other communications (collectively, “Notices”) shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

If to the City:

[Address]

If to the Property Owner:

[Address]

If to the Capital Provider:

[Address]

If to the Program Administrator:

[Address]

Notice by e-mail under this paragraph is only permitted if each party listed above has furnished its respective e-mail address as part of its notice address above. By doing so, each such party agrees, for itself and its successors and assigns, to supply to each of the other Parties any replacement e-mail address within two (2) business days of its adoption, by a permitted means other than e-mail. All Notices are effective when received.

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the Parties.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In any action, in equity or at law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the City City].

(h) Successors and Assigns. This Agreement is binding upon and made for the benefit of the Property Owner, the Capital Provider, the City and its Treasurer, and their respective successors and permitted assigns.

(i) Entire Agreement. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement.

(j) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the City , its Treasurer, the Property Owner and the Capital Provider have each caused this Agreement to be executed on the date(s) entered below:

CITY OF MARTINSVILLE, VIRGINIA

By: _____
Name: _____
Title: _____
Date: _____

TREASURER OF CITY

By: _____
Name: _____
Title: _____
Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

[PROPERTY OWNER’S SIGNATURE PAGE TO C-PACE PROGRAM AGREEMENT]

PROPERTY OWNER:

[insert Property Owner’s name]

By: _____

Name: _____

Title: _____

Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

[CAPITAL PROVIDER'S SIGNATURE PAGE TO C-PACE PROGRAM AGREEMENT]

CAPITAL PROVIDER:

[insert Capital Provider's name]

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A
Property Description

Exhibit B
Assessment Payment Schedule

Appendix B – Locality Agreement

VIRGINIA ENERGY – LOCALITY COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20__, between the City of Martinsville, Virginia, a political subdivision of the Commonwealth of Virginia (the “Locality”), and the Virginia Department of Energy (“Virginia Energy”), a public agency of the Commonwealth of Virginia.

RECITALS

1. Pursuant to § 15.2-958.3. of the Code of Virginia, entitled “Financing clean energy, resiliency, and stormwater management programs” (“C-PACE Act”), Locality has exercised its right to authorize contracts to provide C-PACE loans through the adoption of a C-PACE ordinance (“Ordinance”), attached hereto as Exhibit B-1.
2. Pursuant to the C-PACE Act and Ordinance, Locality has agreed to opt into the statewide C-PACE loan program sponsored by Virginia Energy (“Virginia C-PACE Program”) and administered by a competitively selected private program administrator (“Program Administrator”). The current Program Administrator and its contact information are set forth on Exhibit B-2 attached hereto.
3. The Virginia C-PACE Program provides the Locality with a uniform process for the application, approval, closing and servicing of C-PACE loans and with outreach and training support to promote the program to property owners. A Locality participating in the Virginia C-PACE Program agrees to adopt the set of legal and administrative documents and to abide by the requirements of the statewide C-PACE Program Guidelines (“Program Guidelines”) attached hereto as Exhibit B-3.

NOW THEREFORE, to implement the local C-PACE Ordinance, the Locality hereby opts into the Virginia C-PACE Program sponsored by Virginia Energy and managed and operated by Virginia Energy’s Program Administrator, on the terms set forth hereinbelow and in accordance with the program design detailed in the Program Guidelines.

ARTICLE 1

(a) **Term.** The term of this Agreement shall commence upon the date the last party executes the Agreement. This Agreement shall remain in full force and effect until either Virginia Energy terminates the Virginia C-PACE Program, or the Locality opts out of the Virginia C-PACE Program. Either party may terminate this Agreement at any time upon ninety (90) days’ advance written notice to the other party, provided that the collection of C-PACE Lien payments for C-PACE loans made prior to the termination date shall continue until all C-PACE Lien payments (including the interest, penalties, and fees thereon) have been collected and all such C-PACE loans have been paid in full.

(b) Servicing of C-PACE Loans. C-PACE Loans shall be serviced by their respective Capital Provider, in accordance with the Ordinance and the Program Guidelines.

(c) Enforcement of C-PACE Liens. The Locality has agreed to delegate enforcement of the C-PACE Lien to a third party in accordance with the C-PACE Act, the obligations of which are described in the Ordinance and the Program Guidelines.

(d) Cooperation in Operating C-PACE Program. The Locality shall cooperate with the Program Administrator in the latter's operation of the C-PACE Program in the Locality. This cooperation shall include, but not be limited to the Locality:

(i) designating (A) an employee of the Locality to serve as Program Manager, and if the Program Manager wishes to delegate some or all of the duties assigned to the Program Manager, identifying the Program Manager's designee and promptly communicating the contact information for the Program Manager and any designee to the Program Administrator and (B) which employee(s) of the Locality will sign documents requiring the Locality's signature for C-PACE Loan closings;

(ii) complying with the review and other periods of time prescribed for the Locality to take a required action specified in the Program Guidelines;

(iii) taking reasonable steps to procure the timely participation of the Locality's Treasurer (or comparable official if the Locality has abolished the office of Treasurer or the Locality's Treasurer is not responsible for the collection of real property taxes) in the processes and procedures described in the Program Guidelines and the Ordinance as involving the Treasurer, it being understood that such processes and procedures are based on the collection of C-PACE Payments in the same manner as real property taxes; and

(iv) in the discretion of the Locality, providing reasonable assistance in jointly promoting the Locality's C-PACE Program to lenders, contractors and businesses located in, or considering locating in, the Locality.

ARTICLE 2

MISCELLANEOUS PROVISIONS

(a) Model Ordinance. The Locality represents and warrants to Virginia Energy and its Program Administrator that the Ordinance substantially conforms to model ordinance adopted by the Program Administrator for use in the Virginia C-PACE Program and furnished to the Locality.

(b) Non-Assignability. The Locality may not assign or transfer its rights or obligations under this Agreement without prior written consent of Virginia Energy; provided, however, that this paragraph shall not be construed to apply to, or restrict, the assignment of C-PACE Liens in accordance with the Locality's Ordinance and related C-PACE Documents.

(c) Locality Acknowledgments. The Locality acknowledges and agrees that: (i) Virginia Energy has employed the Program Administrator to carry out Virginia Energy's

obligations under this Agreement and the Virginia C-PACE Program generally; (ii) if Virginia Energy replaces the Program Administrator listed on Exhibit B-2, then the successor Program Administrator will succeed to the rights, duties and obligations of the Program Administrator, except to the extent specified in Virginia Energy's agreements with such Program Administrators; (iii) for purposes of this Agreement and the Locality's C-PACE program, the Program Administrator shall speak and act for Virginia Energy and that any notices required under the terms of this Agreement to be sent to Virginia Energy shall also be sent to the Program Administrator; (iv) the Program Administrator is made a third party beneficiary of this Agreement, and by accepting the benefits of such status, shall be deemed to have covenanted with the Locality to adhere to and comply with its obligations under the Program Guidelines in administering the Locality's C-PACE Program; and (v) the Program Administrator is entitled to be paid by Property Owners (the Locality having no liability therefor) the Program Fees set forth from time in the Program Guidelines.

(d) Non-waiver; Amendment. Any waiver of any provision of this Agreement must be in writing and mutually agreed to by Virginia Energy and the Locality. Except for a specific provision of this Agreement which is amended, this Agreement shall remain in full force and effect after such amendment and is subject to the same laws, obligations, conditions, provisions, rules, and regulations as it was before the amendment.

(e) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(f) Counterparts; Scanned and Digital Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. Scanned signatures (e.g., a "PDF" document) and digital signatures (e.g., DocuSign) shall have the same force, effect and validity as an original signature.

(g) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, hand delivered, or overnight delivery service, to the parties, as follows:

If to the Locality:

City of Martinsville, Virginia
[INSERT STREET ADDRESS]
Martinsville, Virginia [ZIP CODE]
Attention: _____

If to Virginia Energy:

817 Washington Building
1100 Bank Street
Richmond, Virginia 23219
Attention: Energy Efficiency and Financing Programs Manager

With a copy to the Program Administrator at the address on Exhibit B-2.

Any party may change its notice address by providing the new notice address to the other parties in accordance with this paragraph (g).

(h) Jurisdiction and Venue. This Agreement shall be construed, interpreted, and enforced according to the laws of the Commonwealth of Virginia. Any claim brought in connection with this Agreement must be brought in the Circuit Court of the City of Richmond and the parties consent to its jurisdiction.

(i) Definitions and Captions. Capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Ordinance attached hereto in Exhibit B-1. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement, and do not affect its meaning or construction.

(j) Integration. This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(k) No Joint Venture, etc. Nothing in this Agreement, and no act of the Locality, Virginia Energy or the Program Administrator, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Locality and Virginia Energy.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the Locality and Virginia Energy have each caused this Agreement to be executed and delivered as of the date set forth above:

**CITY OF MARTINSVILLE,
VIRGINIA**

By: _____

Name: _____

Title : _____

Date: _____

[Remainder of the page intentionally left blank; Signature pages continue]

[VIRGINIA ENERGY – LOCALITY AGREEMENT
SIGNATURE PAGE FOR VIRGINIA DEPARTMENT OF ENERGY]

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENERGY**

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B-1

COPY OF LOCALITY ORDINANCE

(See attached)

EXHIBIT B-2

NAME AND ADDRESS OF PROGRAM ADMINISTRATOR

Virginia PACE Authority
c/o Gather Newport News
700 Tech Center Pkwy, Suite 200
Newport News, VA 23606

Attention: Abigail C. Johnson
Executive Director
Tel: 757-603-3555
abby@virginiapace.com

EXHIBIT B-3

PROGRAM GUIDELINES

(See attached)

Date: October 24, 2023

Item No: 8.

Department: City Manager

Issue: Conduct a public hearing and consider action as the Land Bank Authority and City Council in support of a development project to be located on the western half of the Armory property.

Summary: In October 2022, the property located at 315 W. Commonwealth Boulevard formerly used as the Armory was deeded to the City after the property was declared as surplus by the state. A number of inquiries have been made since that time regarding potential use of the property and this past April, a request for proposals was issued seeking development options.

Several proposals were received and after review, the recommendation is being made to proceed with a proposal from Kayak Hotels, LLC for development of the western half of the property (formerly used as the Armory motor pool lot). The western half consists of approximately 3.5 acres and appears to be well-suited for the proposed hotel development.

A Contract of Sale and a Development Agreement have been prepared. A resolution approving the Real Estate Contract of Sale and Development Agreement are attached for action by both the Industrial Development Authority and City Council.

Attachments: Resolution

Recommendations: Consider approval of resolution

Council Members
LC Jones, Mayor
Aaron Rawls, Vice-Mayor
Kathy Lawson
Tammy Pearson
Lawrence E. Mitchell, Jr.



City Manager
Aretha R. Ferrell-Benavides

Clerk of Council
Karen Roberts

RESOLUTION
APPROVING REAL ESTATE CONTRACT OF SALE
AND DEVELOPMENT AGREEMENT

WHEREAS, the City Council (**the "Council"**) of the City of Martinsville, Virginia (**the "City"**) has previously expressed its support for the development of a hotel project (**the "Hotel Project"**) by Kayak Hotels, LLC (**the "LLC"**) on certain property commonly referred to as the western half of the National Guard Armory property that is identified as tax map parcel # 21 (01) 00 /01A, with a street address of 351 West Commonwealth Blvd, Martinsville, VA 24112 (**the "Property"**) for the purposes of promoting economic development in the City; and

WHEREAS, there has been presented to Council a Contract of Sale (**the "Contract of Sale"**) by and between the City, the Industrial Development Authority of the City of Martinsville, Virginia (**the "IDA"**) and the LLC constituting an agreement for the City to convey the Property to the IDA for nominal consideration as authorized by Code of Virginia Section 15.2-953 and for the IDA to convey the Property to the LLC for nominal consideration as authorized by Code of Virginia Section 15.2-4905; and

WHEREAS, there has been presented to Council a Development Agreement (**the "Development Agreement"**) between the City and the LLC for the LLC to develop the Property for commercial use as a hotel (**the "Project"**) and for the City to support the Project.

NOW, THEREFORE, BE IT RESOLVED, that the Council hereby approves the Contract of Sale and the Development Agreement and hereby authorizes the Mayor of the City and the City Manager, or either of them, to execute the Contract of Sale and the Development Agreement, each in substantially the form presented to this meeting with such changes as may be approved by the person executing the same after consultation with counsel for the City; and

BE IT FURTHER RESOLVED that the employees and agents of the City are authorized to take such other actions as necessary or appropriate to carry out the terms of the Contract of Sale and the Development Agreement, and that this Resolution will take effect immediately.

LC Jones, Mayor

CONTRACT OF SALE

THIS CONTRACT OF SALE (“**Contract**”), made this ____ day of ____, 2023 (the “Effective Date”), between and among the **CITY OF MARTINSVILLE, VIRGINIA**, a body politic and corporate of the Commonwealth of Virginia (the “**City**”), the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF MARTINSVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“**Seller**”), and **KAYAK HOTELS, LLC**, a Virginia limited liability company (“**Buyer**”).

RECITALS:

WHEREAS, the City is authorized pursuant to Section 15.2-953(B) of the *Code of Virginia* of 1950, as amended (the “**Virginia Code**”), to make donations of property to the Seller for the purposes of promoting economic development, and the Seller is authorized pursuant to Section 15.2-4905(12) of the Virginia Code, to accept such contributions from the City and pursuant to Section 15.2-4905(6) of the Virginia Code to sell, donate and convey its properties for the purposes of promoting economic development in the Commonwealth of Virginia; and

WHEREAS, the City, the Seller and the Buyer desire to accomplish a conveyance of the Property (as defined below) in accordance with the terms and conditions hereinafter set forth.

AGREEMENT:

WITNESSETH, that City hereby agrees to bargain, sell, and convey to Seller, and the Seller hereby agrees to purchase from the City, for the purchase price of one dollar and 00/100 cents (\$1.00), the following property (the “**Property**”), to wit:

Property Address: Western half 351 W. Commonwealth Blvd, Martinsville, VA 24112

Property Parcel ID: Map # 21 (01) 00 /01A (part of)

Property Description: Western portion, former National Guard Armory, as further described on Exhibit A hereto.

Seller further hereby agrees to bargain, sell, and convey the Property to Buyer, and the Buyer hereby agrees to purchase the Property from the Seller, for the purchase price of one dollar and 00/100 cents (\$1.00), the Property. The conveyance of the Property from the Seller to the Buyer shall immediately follow the conveyance of the Property from the City to the Seller.

Buyer further agrees to construct a hotel and related facilities on the Property, including not less than 70 guest rooms in the hotel (the “**Hotel Project**”).

Buyer's purchase price for the Property shall be for the sum of one dollar and 00/100 cents (\$1.00) to be paid to Seller. The Buyer shall place into escrow with the Seller's agent a deposit of one dollar and 00/100 cents (\$1.00) (the “**Deposit**”) upon execution of this Contract. The purchase price for the Property set forth herein is substantially less than the

value of the Property, to promote the purposes for which the Seller is organized, and in consideration of the agreements, promises, covenants, and conditions set forth in this Contract.

The Buyer shall have ninety (90) days from the Effective Date to perform necessary due diligence (**the “Due Diligence Period”**) and to determine that the Property is suitable for Buyer’s intended use as the Hotel Project. The Due Diligence Period may be extended for an additional ninety (90) days by Buyer by providing notice to City and Seller prior to the end of the initial Due Diligence Period. The initial due Diligence Period may also be extended for an additional ninety (90) days by Seller, if Seller needs additional time to fulfill Seller’s obligations under this Contract, by Seller providing Notice to Buyer prior to the end of the initial Due Diligence Period. The results of said Due Diligence Period are to be satisfactory to Buyer at the Buyer’s sole discretion; otherwise, the Deposit shall be refunded in full.

During the Due Diligence Period, Buyer, its agents, employees, representatives and contractors, at Buyer’s sole cost and expense, may perform such tests, inspections and examinations of the Property as Buyer deems advisable, including without limitation investigations with regard to title, physical condition, environmental matters, matters of survey, flood plain, utilities availability, zoning and building code and other applicable governmental requirements, financing requirements, and development requirements (**the “Due Diligence Investigation”**). Buyer shall not materially damage or alter the Property while conducting the Due Diligence Investigation. City and Seller shall grant Buyer, its agents or assigns (if any) free access to the Property for such purposes.

This Contract is void if Closing does not occur on or before 12:00 p.m. on the last day of the Due Diligence Period or any extension thereof. The closing of the transaction contemplated by this Contract (**the “Closing”**) shall be at a location in the Commonwealth of Virginia selected by the Buyer, on or before 12:00 p.m. on the last day of the Due Diligence Period or any extension thereof (**the “Closing Date”**).

Seller Obligations:

- Seller has approved the transaction contemplated by this Contract pursuant to the resolutions attached hereto as Exhibit “B” and incorporated herein by reference. Seller will use its best efforts to affirmatively assist Buyer in obtaining ratification by the City of the Development Agreement in the form set forth in Exhibit “C” attached hereto and incorporated herein (**the “Development Agreement”**). Buyer and Seller agree that this Contract will not be considered fully executed nor enforceable until the Development Agreement has been executed by both Buyer and the City.
- Within 10 days (10) days of the Effective Date of this Contract, City and Seller will provide Buyer with copies of any and all reasonable Property due diligence items in Seller’s possession and requested by the Buyer. These may include, but are not limited to, surveys and plats of the Property, historic photos and plans, any building plans, any environmental studies or written communiqués with the EPA or DEQ or any other governmental agency, and any Phase 1 or Phase 2 environmental reports.

- Remediation of environmental hazards identified in any such Phase 1 or Phase 2 environmental report shall be undertaken by City and Seller.
- Within five days (5) days of the Effective Date of this Contract, City and Seller will provide Buyer all keys, codes, or other security devices, if any, used in connection with the access to the Property
- City and the Seller shall pay the fees and expenses of their legal counsel.
- Buyer represents and acknowledges that Seller has provided, at Seller's cost and expense, an American Land Title Association (“ALTA”) and topographic survey for the Site and that Buyer has agreed that such ALTA survey is acceptable to Buyer, and that Seller has assigned the survey files (digital “.dwg” files and hard copy) with all rights associated with the same and title search information to the Buyer in form acceptable to Buyer.
- City shall continue to maintain in full force and effect such casualty and liability insurance on or with respect to the Property as it maintains in the ordinary course of business, it being understood and agreed that all risk of loss with respect to the Property, except as may be caused by the acts or omissions of Buyer or its employees, agents, or contractors, shall remain with City through Closing. In the event that prior to the Closing Date, any improvements on the Property are materially damaged, destroyed, or rendered unusable by fire, casualty, or other cause, then City may, at its option, terminate this Contract and the Deposit shall be refunded to Buyer. If City does not terminate this Contract, then the parties shall proceed with the transaction contemplated herein, in which event Buyer shall be entitled to receive, as applicable, insurance proceeds so long as they are applied toward Hotel Project expenses, including any soft costs the Buyer has incurred.

Buyer Obligations:

- The Buyer shall perform necessary due diligence to determine that the Property is suitable for Buyer’s intended use as the Hotel Project.
- Buyer shall pay all fees and expenses of Buyer’s legal counsel.
- Buyer shall provide reasonably detailed status reports in writing to City and Seller every thirty (30) days during the period prior to Closing. Such reports shall describe the current status of Buyer’s Due Diligence Investigation and results as well as the status of Buyer’s efforts to obtain financing for development of the Hotel Project (**"Hotel Project Financing"**).

Buyer may assign this contract at its sole and absolute discretion to an entity created and controlled by Buyer, or otherwise under the control of Buyer, to construct the Hotel Project.

City and Seller each represents and warrants to Buyer, and Buyer represents and warrants to Seller, that each engaged no real estate broker, salesperson or other intermediary to assist in the transfer of the Property from Seller to Buyer. Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any claim arising out of a breach of the representations and warranties in this Section. The representations, warranties, and indemnification obligations set forth in this Section shall survive Closing and/or the termination of this Contract.

Buyer acknowledges and agrees that if the Buyer (a) does not commence construction of the Hotel Project within 180 days after Closing or (b) does not complete construction of the Hotel Project in accordance with this Contract and the Development Agreement by the date which is 3.5 years after Closing (**each, a "Reversion Default Event"**), all ownership, interest in, title to and right to possess any portion of the Property shall be subject to reversion by virtue of a right of entry for condition broken in favor of the City that the City may exercise if it so chooses by recording the Reversion Deed (defined below); provided however that such right must be exercised and the Reversion Deed must be recorded within 1 year after the occurrence of the Reversion Default Event. Notwithstanding the preceding sentence or anything else contained in this Contract to the contrary, (i) the foregoing time periods shall in all cases be subject to extension based upon delays caused by force majeure events and other matters beyond Buyer's reasonable control (including, without limitation, the failure of applicable governmental entities to provide any necessary building or other permits despite Buyer's diligent pursuit thereof) and (ii) City and Seller each agrees that the right of entry for condition broken will be subordinated to the rights of any mortgage lender who requests such subordination. The parties acknowledge and agree that the deed conveying the Property from City to Seller and the deed conveying the Property from Seller to Buyer shall each contain language providing for such right of entry for condition broken and that in the event of a Reversion Default Event the City may, at City's option, record the Reversion Deed (as defined below) and that the Buyer shall execute and deliver all other deeds, releases and certifications reasonably requested by the City and the Seller at no cost to the City or the Seller to convey the Property to the City. For purposes of this Contract, completion of the Hotel Project shall mean the issuance of a Certificate of Occupancy for the Hotel Project.

BUYER ACCEPTS THAT THE PROPERTY WILL CONVEY IN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS, AND THAT NEITHER CITY NOR SELLER MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO THE PROPERTY OR ANY PORTION, ASPECT, OR COMPONENT THEREOF, AND EACH EXPRESSLY DISCLAIMS THE SAME. LIKEWISE, NEITHER CITY NOR SELLER MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO ANY DOCUMENTS, REPORTS, OR MATERIALS PROVIDED OR MADE AVAILABLE TO BUYER BY CITY OR SELLER OR THEIR AGENTS, OR THE ACCURACY OF THE INFORMATION CONTAINED THEREIN, AND EXPRESSLY DISCLAIM THE SAME. THE FOREGOING DISCLAIMERS INCLUDE, BUT ARE NOT LIMITED TO, MATTERS OF TITLE, SURVEY, FINANCIAL PERFORMANCE, PHYSICAL CONDITION, ZONING, TAX STATUS OR CONSEQUENCES, FITNESS FOR A PARTICULAR PURPOSE OR USE, COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS, ACCESS TO THE PROPERTY, AND AVAILABILITY OF UTILITIES.

Buyer may terminate this Contract by giving City and Seller written notice of termination at any time prior to the expiration of the Due Diligence Period or any extension thereof, if

the results of the Due Diligence Investigation are not satisfactory to Buyer. Buyer will commence the Due Diligence Investigation forthwith upon execution of this Contract. If Buyer fails to give City and Seller such written notice of termination before the expiration of the Due Diligence Period, then, and in such event, the Buyer shall be deemed to have accepted the results of its Due Diligence Investigation and shall proceed to closing in accordance with the terms of the Contract. The Buyer may reserve the right to proceed to Closing sooner than the expiration of the Due Diligence Period provided the Due Diligence Investigation is complete.

In the event that this Contract is terminated before the Closing, City, Buyer and Seller shall have no obligations to any of the other parties to this Contract, and each party shall then be responsible for its own expenses, including, but not limited to, legal fees and expenses incurred in connection herewith.

The Property shall be conveyed at Closing first by Special Warranty Deed (**the "First Deed"**) conveying title to the Property from the City to the Seller and second by Special Warranty Deed (**the "Second Deed"**) conveying title to the Property from the Seller to the Buyer, each such deed to be duly executed and acknowledged and subject to such restrictions, covenants and easements as shall be of record. In addition to the First Deed and the Second Deed to be delivered at Closing, the following shall also be presented at Closing:

(a) Any affidavits or other document as may be required by any settlement agent, the Buyer's lender providing Hotel Project Financing, and the title insurance underwriter issuing title insurance policies for the Property without exception to the possible lien claims of mechanics, laborers and materialmen or to the rights of parties in possession;

(b) A final and agreed upon settlement statement (the **"Settlement Statement"**) describing sources and uses of all funds related to Closing which will be prepared by a settlement agent and subject to the reasonable written approval of the City, Seller and the Buyer;

(c) A certification or affidavit certifying that neither the City, the Seller nor the Buyer is a foreign person or entity (**the "FIRPTA Statement"**), and certifying the information necessary for the completion of Internal Revenue Service Form 1099-S pertaining to reporting the gross sales proceeds received by the each of the City and the Seller at the Closing;

(d) Such other documentation as a settlement agent, title insurance underwriter, the Buyer's lender providing Hotel Project Financing, the City, the Seller or the Buyer may reasonably request;

(e) Other documents as may be required by this Contract.

Seller shall pay for preparation of the First Deed and the Second Deed, and shall pay any grantor's taxes and all recording costs that are imposed thereon.

Conditions Precedent to Closing: All obligations of the City and the Seller under this Contract are subject to the fulfillment of the following conditions precedent at the Buyer's sole cost and expense. Upon the failure or non-occurrence of any of these conditions by the Closing Date, the City may, at its option, terminate this Contract. The Buyer shall provide the City and the Seller prior to Closing true and correct copies of such approvals, commitments and other documents indicating that these conditions have been fulfilled.

(a) The Buyer shall certify in writing that it has obtained all governmental permissions, permits, consents and other approvals required by law, including site plan and any other required zoning approval from the City of Martinsville, for the development of the Hotel Project at the Property.

(b) The Buyer shall close on and obtain the proceeds of the Hotel Project Financing simultaneously with the Closing under this Contract.

(c) The Buyer shall certify in writing that any environmental hazards at the Property identified in environmental studies have been properly remediated to Buyer's full satisfaction.

(d) The City and the Seller shall have caused the Property to be subdivided as a separate lot containing approximately 3.5 acres as set forth on Exhibit A attached hereto and shall have recorded an easement or easements serving the Property which permit(s) vehicular and pedestrian ingress and egress to and from the Property and Commonwealth Boulevard over the remaining portion of the Armory parent tract in the area shown on Exhibit A attached hereto as the "New 60' Access Easement for Ingress and Egress." Such easement or easements shall require the Buyer, as owner of the Property, and Buyer's successors and assigns to contribute one-half (1/2) of the maintenance costs of the easement area and other be on terms and conditions and in form and substance reasonably acceptable to Buyer and Buyer's lender. Such easement or easements shall be in a form agreed to by City, Seller and Buyer, and Buyer shall execute the same.

(e) The Buyer, the City and the Seller shall have negotiated and agreed upon the Deed, including agreed upon language providing that, should a Reversion Default Event occur, all ownership interest in, title to and right to possess any portion of the Site shall be subject to a right of entry for condition broken in favor of the City that the City may exercise if it so chooses by recording the Reversion Deed (as defined below).

(f) The City, Buyer and the Seller shall have negotiated and agreed upon the terms and form of a reversion deed to cause the conveyance of the Property from the Buyer to the City (**the "Reversion Deed"**) if a Reversion Default Event should occur, such Reversion Deed to be duly executed by the Buyer, and notarized as appropriate, on or before the Closing Date. Execution of the Reversion Deed by the Buyer shall be deemed to constitute full and knowing approval of the terms of such Reversion Deed. Such fully executed and notarized Reversion Deed shall be held by the City until the occurrence of a Reversion Default Event that is not cured within any applicable cure period (at which time the City shall be entitled to record such deed with the Clerk of the Circuit Court of the City of Martinsville). The Buyer irrevocably constitutes and appoints Stephen V.

Durbin and N. Reid Broughton, either of whom may act, as its attorney in fact to execute, deliver, and record the Reversion Deed and such other documents as may be required to accomplish its purpose, it being stipulated that such power of attorney is coupled with an interest and is irrevocable and binding.

Remedies on Default:

(a) Buyer's Default. In the event the Buyer fails to perform any of the Buyer's pre-Closing obligations under this Contract after receiving written notice from the City and a period of not less than thirty (30) business days to cure such failure, or if such failure cannot be cured within thirty (30) business days, fails to begin to cure and diligently pursue the cure for such failure, and provided neither the City nor Seller is in default with regard to its obligations under this Contract, then the City will be entitled, as City's and Seller's sole and exclusive remedy, to terminate this Contract upon written notice to the Buyer, in which event no party will have any further rights or obligations, except as expressly provided elsewhere in this Contract.

(b) City or Seller's Default. In the event that either the City or the Seller fails to perform any of its respective material obligations under this Contract for any reason after receiving written notice from the Buyer and a period of not less than thirty (30) business days to cure such failure, or if such failure cannot be cured within thirty (30) business days, the City or the Seller, as applicable, fails to begin to cure and diligently pursue the cure for such failure, and provided the Buyer is not in default with regard to the Buyer's obligations under this Contract, then the Buyer will be entitled, as the Buyer's sole and exclusive remedy, to an action for specific performance or similar legal proceedings to compel the immediate conveyance of the Property by the City and the Seller in compliance with the terms and conditions of this Contract.

Notices: Any notice under this Contract shall be given (a) in writing delivered in person, by overnight courier service, or by certified mail, postage prepaid and return receipt requested to the parties as follows:

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

If to City, to: Aretha Ferrell-Benavides, City Manager

If to Seller, to:

c/o Aretha Ferrell-Benavides, City Manager

With a copy to: Stephen V. Durbin, Esquire

Sands Anderson PC
P.O. Box 2009
150 Peppers Ferry Road, N.E
Christiansburg, Virginia 24068-2009

If to Buyer Kayak Hotels, LLC
 12705 Wyndham West Dr.
 Glen Allen, VA 23059
 Attn: Kalpak Shah

With a copy to: Shane Frick, Esquire
 MeyerGoergen PC
 1802 Bayberry Court, Suite 200
 Richmond, VA 23226

Notice given as required above shall be effective immediately if personally delivered, delivered by electronic mail or upon receipt, and one (1) business day after being deposited with an overnight courier service and seven (7) days after mailing if mailed by certified mail.

This sale is made subject to restrictions, covenants, agreements, and easements of record and existing leases. Prior to Closing, Buyer may obtain, at its expense, an owner's title insurance commitment to issue a title insurance policy insuring Purchaser's fee simple and easement interest (if any) in the Property in the amount of the fair market value of the Property. The title insurance commitment will contain exceptions only for real estate taxes and assessments for the current calendar year which are not yet due and payable, and any other exceptions Buyer may approve in writing. If the commitment contains other exceptions not acceptable to Buyer, then Buyer shall notify City and Seller of such exceptions and City and Seller shall have the right, but not the obligation, to resolve such exceptions to the satisfaction of the Buyer. If objections to the title exceptions are not resolved by the City and the Seller within the time specified by Buyer, the Buyer shall have the right to terminate this Contract; in the event of such termination the City and the Seller shall refund the Deposit to the Buyer, but otherwise, neither Buyer on the one hand nor City and Seller on the other hand shall have any obligation to the other, and each party shall then be responsible for its own expenses, including, but not limited to, legal fees and expenses incurred in connection herewith. Risk of loss or damage to the Property shall remain with the City until final Closing is made, except that the Buyer shall have the right, at its sole discretion, to terminate this Contract at any time before Closing if the Property is substantially and/or materially damaged by an act of god or otherwise. If said casualty occurs, the City shall notify the Buyer by certified mail within ten (10) days of said occurrence, and case refund of the Deposit to the Buyer along with reimbursement for all due diligence and soft costs the Buyer has incurred, after which each party shall have no further actions against one another in any court of competent jurisdiction for any and all fees, fines, penalties, liability, or expenses of or related to zoning this Property. City and Seller shall provide possession of the Property at Closing free and clear of all leases, other tenancies, and claims of any other parties for possession of the Property or any portion

thereof. All rents, taxes, and other proratable items shall be prorated as of the Closing Date.

This Contract is a Virginia contract and represents the final understanding between Buyer, City and Seller with respect to the transaction described herein, there being no representations or agreements made by City, Seller or Buyer, except those contained in this Contract and its addendums. In addition, this Contract constitutes the entire understanding among the parties, and shall be deemed to supersede all prior written or verbal communications among the parties. This Contract may not be modified or terminated, unless in writing signed by the Buyer, City and Seller.

The representations, warranties, and indemnities of Buyer, City and Seller under this Contract shall survive Closing and delivery of the Deed or the termination of this Contract for any reason.

This Contract and the provisions hereof shall be binding upon and shall inure to the benefit of the City, Seller and Buyer and their respective heirs, executors, administrators, personal representatives, successors, and assigns. The terms, provisions, and conditions of this Contract shall, where appropriate or the context requires, survive Closing hereunder.

[remainder of page left intentionally blank]

WITNESS the following signatures and seals as of the date first above written:

CITY:

**CITY OF MARTINSVILLE,
VIRGINIA**

DATE

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, Notary Public for the Commonwealth of Virginia do hereby certify that _____, _____, who has the authority to sign on behalf of the City, CITY OF MARTINSVILLE, VIRGINIA, whose name is signed the foregoing document dated the ____ day of _____ 2023, has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this _____ day of _____, 2023.

My commission expires: _____

Registration number: _____

Notary Public

SELLER:

**INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF
MARTINSVILLE, VIRGINIA**

DATE

COMMONWEALTH OF VIRGINIA
City/County of _____, to-wit:

I, _____, Notary Public for the Commonwealth of Virginia do hereby certify that _____, _____, who has the authority to sign on behalf of the Seller, INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY MARTINSVILLE, VIRGINIA, whose name is signed the foregoing document dated the ____ day of _____ 2023, has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this _____ day of _____, 2023.

My commission expires: _____

Registration number: _____

Notary Public

BUYER:

KAYAK HOTELS, LLC _____

DATE

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, Notary Public for the Commonwealth of Virginia do hereby certify that _____, who has the authority to sign on behalf of the Buyer, KAYAK HOTELS, LLC, whose name is signed to the foregoing document dated the _____ day of _____ 2023 has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this _____ day of _____, 2023.

My commission expires: _____

Registration number: _____

Notary Public

EXHIBIT "A" TO PURCHASE CONTRACT

SURVEY/LEGAL DESCRIPTION OF PROPERTY

Beginning At A Point Marked By A City Of Martinsville Concrete Monument, Located On The South Side Of West Commonwealth Boulevard, Said Point Marks The Point Of Beginning As The Northwestern-Most Corner Of The Property Herein Conveyed; Thence Running From Said Point Of Beginning And Continuing Along The South Side Of West Commonwealth Boulevard, S88°34'49"E - 384.14' To A Iron Rod, Thence Leaving West Commonwealth Boulevard And Running Along A 60' Access Easement S1°13'21"W - 392.13' To An Iron Rod, Thence Leaving The Access Easement And Continuing With The Lands Of The Lester Group, Inc. S84°55'08"E - 388.49' To An Iron Rod, Thence N1°29'06"E - 436.11' To The Point Of Beginning, Containing 3.661 Acres.

EXHIBIT “B” TO PURCHASE CONTRACT
PASSED RESOLUTIONS

EXHIBIT “C” TO PURCHASE CONTRACT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, (the “Agreement”) made as of the _____ day of _____, 2023 (the “Effective Date”) between the **CITY OF MARTINSVILLE, VIRGINIA**, a body politic and corporate of the Commonwealth of Virginia, (“City”) and **KAYAK HOTELS, LLC**, a Virginia limited liability company (“KHG”), a Virginia corporation and/or its assigns.

RECITALS:

The City, the Industrial Development Authority of the City of Martinsville, Virginia (the “IDA”) and KHG have entered into an agreement for the City to convey MLBA to convey certain real property (the “Site”), as more particularly described in the Contract of Sale (as defined below) to the IDA, and for the IDA to convey the Site to KHG (the "Contract of Sale"), and for KHG to redevelop the Site for commercial use as a hotel (referred to herein as the “Hotel Project”) and the City desires to support the development of the Hotel Project.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the City and KHG agree as follows:

ARTICLE I KHG Obligations

Section 1.1 KHG shall develop the Site as a hotel with not less than ____ guest rooms in accordance with the provisions of the Contract of Sale and this Agreement.

Section 1.2 Within one hundred eighty (180) days after purchasing the Site, KHG shall commence construction of the Hotel Project. KHG shall complete the Hotel Project within thirty-six (36) months after commencement of construction. All costs of every kind and description associated with the Hotel Project shall be borne by KHG, except those costs to be waived or paid for by the City as more particularly described herein. In constructing the Hotel Project, KHG shall comply with all applicable laws, codes, and regulations. In the event KHG fails to commence the Hotel Project or fails to complete the Hotel Project within prescribed time periods, unless a time extension is requested and approved, said property and any improvements thereon may revert to MLBA at no cost in accordance with the terms of the Contract of Sale.

ARTICLE II City Obligations

Section 2.1 In addition to the foregoing, the City agrees to provide the following in conjunction with the redevelopment and construction of the Hotel Project:

2.1.1 As the Site is located within the local Enterprise Zone, City fees related to development of the Hotel Project, including, but not

limited to, building permits, sign permits and utility connection fees, trade permit fees, plan review fees, application fees, rezoning fees, convenience or tap fees, etc. shall be waived or rebated in accordance with the provisions of the City's enterprise zone ordinance.

- 2.1.2** The City will make all reasonable efforts to ensure that all necessary utilities sufficient for the proposed Hotel Project, including water, sewer, storm water, telecommunications, and electric utilities, are extended to the property line of the Site within a reasonable time period. The City agrees to assist KHG with regards to placing equipment, making connections, and related tasks in this regard.
- 2.1.3.** Upon issuance of the Certificate of Occupancy for the Hotel Project, the City's Enterprise Zone ordinance benefits will be applied in accordance with such ordinance and existing City guidelines.
- 2.1.4** Within 30 days of the Effective Date of this Agreement, the City shall provide pressure and flow readings at the hydrants in proximity to the Site and work to ensure that both are sufficient to provide adequate water pressure and flow to fourth floor fire sprinklers of the Hotel Project.

Section 2.2 All of the preceding obligations of the City as described in this Article II with respect to the Hotel Project shall be at the City's sole cost and expense unless otherwise noted.

ARTICLE III

Confidentiality

This Agreement, once placed on the docket for consideration by the City Council, is a public document, subject to production under the Virginia Freedom of Information Act (FOIA). The City understands and acknowledges that KHG may utilize confidential and proprietary information and data in pursuing the Hotel Project ("Confidential Information"). KHG agrees to clearly identify any information it provides to the City that KHG it deems to be Confidential and not subject to mandatory disclosure under the Virginia Freedom of Information Act or other applicable law as Confidential Information at the time it provides such information to the City. The City agrees that, except as required by law, the City will not knowingly or intentionally disclose or otherwise divulge any such confidential or proprietary information to any person, firm, governmental body or agency, or any other entity unless the request for Confidential Information is made under a provision of Local, State or Federal law. Upon receipt of such request but before transmitting any documents or information which may contain Confidential Information, the City will contact KHG to review the request for information and associated documents to determine if any Confidential Information is at risk of disclosure. If Confidential Information exists, KHG may intervene on behalf of the City and defend against disclosure of the Confidential Information. The City agrees

to cooperate in this defense and to the extent allowed by law, work to protect the Confidential Information of KHG.

ARTICLE IV

Force Majeure

In the event that any party to this Agreement (the “Delayed Party”) is delayed or prevented from performing any of its respective obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

ARTICLE V

Disclaimer of Liability

No warranties or representations have been made by the City concerning the Hotel Project, including without limitation intended, the economic, legal, or physical feasibility of the Hotel Project, or the suitability of the Site, or the merchantability, fitness or suitability of the completed Hotel Project. The City hereby disclaims any implied warranty or representation concerning the Hotel Project, including without limitation intended, those aspects described in the immediately preceding sentence.

ARTICLE VI

Notices

Any notice, demand, request, approval, consent, or other communication (collectively referred to as a Notice) concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other party at the address set forth below. Any Notice shall be given by either: (i) personal delivery including overnight courier service, in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested, in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Notice shall be delivered:

If to City, to: _____

With a copy to: Stephen V. Durbin, Esquire
Sands Anderson PC
P.O. Box 2009

150 Peppers Ferry Road, N.E
Christiansburg, Virginia 24068-2009

If to KHG to: Kayak Hotels, LLC
12705 Wyndham West Dr.
Glen Allen, VA 23059
Attn: Kalpak Shah

With a copy to: Shane Frick, Esquire
MeyerGoergen PC
1802 Bayberry Court, Suite 200
Richmond, VA 23226

Any party may change any address for the delivery of Notice to such party, by giving Notice in accordance with the provisions of this Section. The attorneys for the parties may give any Notice.

ARTICLE VII

Miscellaneous

Section 7.1 The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon the parties hereto and all persons who succeed to their respective rights and obligations.

Section 7.2 This Agreement cannot be changed nor can any provision of this Agreement, or any right or remedy of any party, be waived orally. Changes and waivers can only be made in writing and the change or waiver must be signed by the party against whom the change or waiver is sought to be enforced. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

Section 7.3 This Agreement is signed by the parties as a final expression of all of the terms, covenants, and conditions of their agreement and as a complete and exclusive statement of its terms, covenants, and conditions and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.

Section 7.4 This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

Section 7.5 The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the parties.

Section 7.6 Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.

Section 7.7 This Agreement was prepared, negotiated, and delivered in the Commonwealth of Virginia. In the event of any dispute concerning or arising out of this Agreement, the laws of the Commonwealth of Virginia shall govern and control the construction and enforcement of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

CITY OF MARTINSVILLE

By: _____

Its: _____

KAYAK HOTELS, LLC

By: _____

Its: _____

Meeting Date: October 24, 2023

Item No: 9.

Department: Public Works – Traffic Control

Issue: Presentation on the study to remove signalized intersections

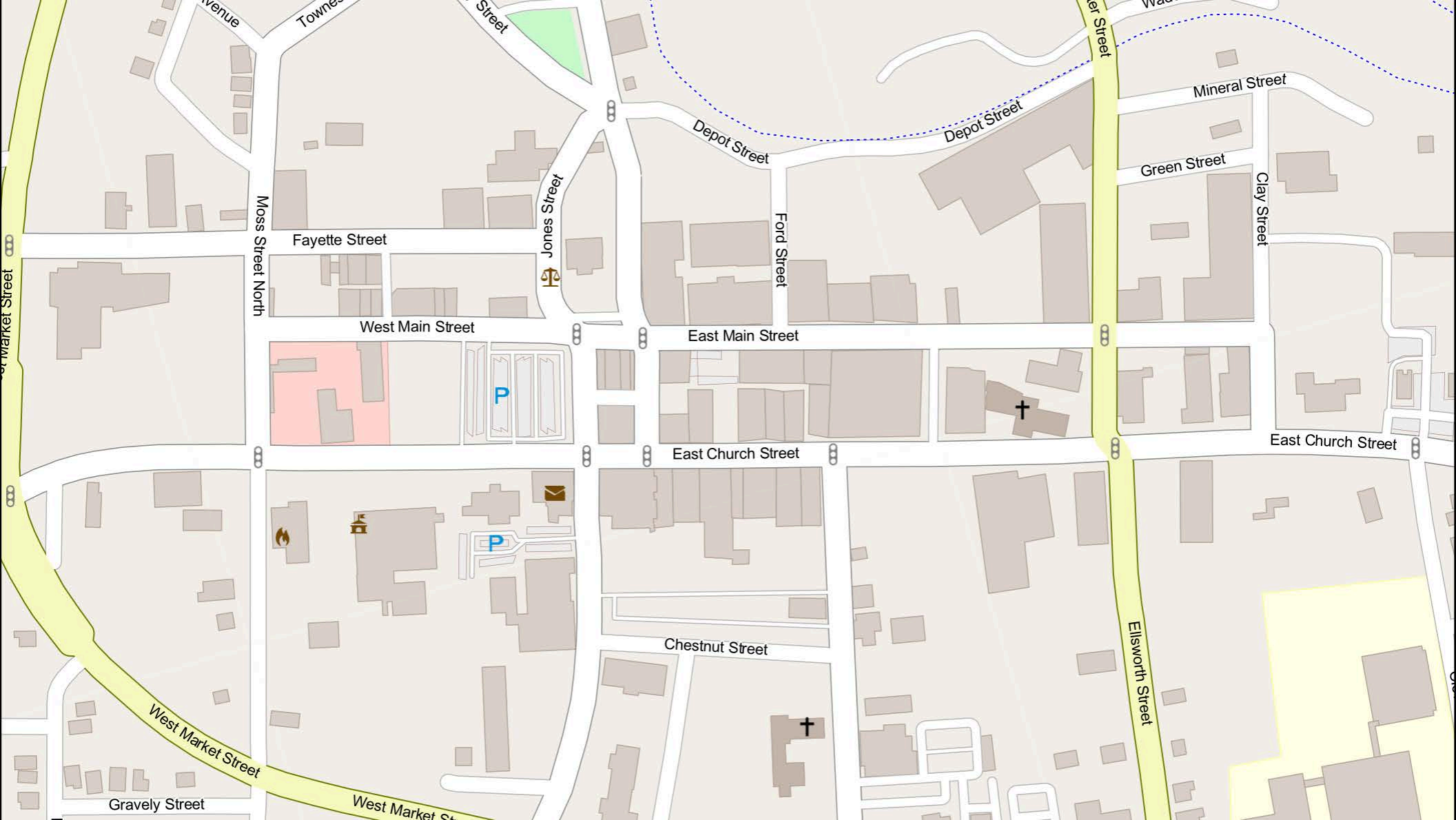
Summary: Council wishes to review the possibility of converting signalized intersections to “ALL WAY STOP SIGNS”

Attachments: Map

Recommendations:

A team of City employees discussed replacing five signalized intersections with stop signs. If council agrees to proceed with their recommendations, the team believes we should proceed in the following manner.

- For 60 days, the stop lights will flash red along with the temporarily placed stop signs.
- Thirty days prior to the change, a public notice should be placed
- Intersections include:
 - Church & Moss Streets
 - Church & Bridge Streets
 - Church & Walnut Streets
 - Church & Broad Streets
 - Main & Jones Streets
- It is our recommendation to currently leave the following intersections as is
 - East Main Street and Franklin
 - Intersection is “off-set” and has multiple leading lanes of traffic. This intersection will continue to be evaluated, but at present request to be left alone
 - East Main Street and Lester
 - Further evaluation is needed and currently should be left alone
 - Church Street and Ellsworth
 - Not recommended at this time for any change.
 - Multiple lines of traffic: 3 – 2 lanes of traffic may cause confusion and accidents. But will keep this intersection on the list for further evaluation.



Meeting Date: October 24, 2023

Item No: 10.

Department: Community Development

Issue: Hear presentation of the SDL Complaint system roll out

Summary: City Council has placed an emphasis on tracking and response to complaints and concerns from the community. The City staff has been working with Spatial Data Logistics (SDL) to develop a system for the public to submit concerns utilizing a mobile phone app. Internal users have been identified through multiple City departments and training has been underway for these users. The complaint customer portal and mobile app is open and ready to accept complaints beginning Wednesday, October 25. The SDL Portal app is available in the applicable app store for mobile devices. Citizens will need to create an account, but that personal information is not open to the public to view. All complaints require the name of the complainant, so anonymous complaints are not accepted. We will be continuing to add features over the next several weeks, with this app or desktop account being used to not just file complaints, but also receive information from different city departments, file for permits, and request inspections. Working with the Public Information Officer, we will begin using all resources available to spread the word on this service to the citizens of Martinsville. Kris Bridges will provide an overview of the system at the October 24 Council meeting.

Attachments: none

Recommendations: Encourage citizens to download the app and begin accessing the system beginning October 25, 2023

Date: October 24, 2023

Item No: 11.

Department: City Manager

Issue: Consider action as Martinsville Redevelopment and Housing Authority to approve the BB&T building Amended Contract of Sale and approval of the Development Agreement by City Council.

Summary: In June 2022, the City reissued a Request for Proposals seeking redevelopment options for the former BB&T building located at the corner of Ellsworth and East Church Streets. A proposal was submitted by JRS Realty Partners, LLC that for development of a mixed-use facility with commercial planned for the main floor level, apartments on the upper floors, and some type of public amenity at the roof top level. City staff recently met with JRS Partners to review their proposal in detail and staff supports moving ahead with the project with JRS. The Contract of Sale has been amended since that time.

Attachments: Amended Contract of Sale and Development Agreement

Recommendations: Recess as City Council and convene as the Martinsville Redevelopment and Housing Authority (motion, second, voice vote); consider approval of the Amended Contract of Sale. Recess as the Martinsville Redevelopment and Housing Authority and reconvene as City Council (motion, second, voice vote); consider approval of the Development Agreement

ONE ELLSWORTH STREET,
MARTINSVILLE, VIRGINIA
AMENDED CONTRACT OF SALE

THIS AMENDED CONTRACT OF SALE (“Contract”), made this ____ day of _____, 2023, (“Effective Date”), between **THE CITY OF MARTINSVILLE REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“Seller”), and **JRS REALTY PARTNERS, LLC**, a Virginia limited liability company (“Buyer”), and/or its assigns.

WITNESSETH, that Seller hereby agrees to bargain, sell, and convey to Buyer, and the Buyer hereby agrees to purchase from the Seller the following properties, together with all improvements thereon and appurtenances thereunto belonging (the “Property”), to wit:

<u>Property Address:</u>	1 Ellsworth Street, Martinsville, VA 24112
<u>Tax Map No.:</u>	33(03)M/01; 33(03)M/02; 33(03)M/03; 33(03)M/03A; 33(03)M/25; 33(03)M/26; 33(03)M/27; 33(03)M/28
<u>Common Description:</u>	The BB&T Building
<u>Parcel ID:</u>	000618500; 000618200; 000618000; 000785900; 000021800; 000618100; 000617900; 000618400

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

1. Purchase Price. The purchase price of the Property shall be the sum of TWENTY-FIVE THOUSAND DOLLARS and 00/100 cents (\$25,000.00). A deposit in the amount of Ten Thousand and 00/100 Dollars (\$10,000) shall be placed in escrow with Sands Anderson PC within five (5) days of full execution of this Contract.

2. Due Diligence Period. The Buyer shall have until April 15, 2024, to perform its due diligence (the “Due Diligence Period”). During the Due Diligence Period, Buyer, its agents, employees, representatives and contractors, at Buyer’s sole cost and expense, may perform such tests, inspections and examinations (the “Investigations”) of the Property as Buyer deems advisable, including (without limitation) investigations with regard to title, physical condition, environmental matters, matters of survey, flood plain, utilities availability, zoning and building code and other applicable governmental requirements, financing requirements, and development requirements. Buyer shall not damage or alter the Property while conducting its inspections, tests and studies. Buyer shall repair at its expense and be responsible for any damage to the Property caused by its Investigations. Buyer may terminate this Contract for any reason, in its sole discretion, during the Due Diligence Period, by providing written notice of termination to Seller, and if it so terminates this Contract, Buyer will be entitled to a refund of the Deposit.

3. Personal Property. Seller shall retain ownership of all personal property located on the premises, and may remove the same (but shall not be required to do so), until the Closing

Date. Upon closing, any remaining personal property shall become the property of Buyer, who may dispose of it in whatever manner Buyer determines.

4. Closing. Settlement shall be at a location selected by the Buyer, on or before 12:00p.m. on August 15, 2024 (the "Closing Date").

5. Development Agreement. Seller shall use its best efforts to assist Buyer in obtaining approval by the City Council of the City of Martinsville of the Development Agreement substantially in the form set forth in Exhibit "B" attached hereto.

6. Seller's Materials. Within thirty (30) business days of the execution of this Contract, Seller will provide Buyer with copies of any and all Property due diligence items in Seller's possession and reasonably requested by the Buyer. These include, but are not limited to, surveys and plats of the Property, historic photos and plans, any building plans, any environmental studies or written communiqués with the EPA or DEQ or any other governmental agency, any Phase 1 and/or 2 environmental reports, the title commitment or policy for the Property, and any physical inspections reports or warranties such as roof and HVAC, may be reasonable requested by Buyer.

7. Survey. The parties agree that Seller has provided to Buyer, at Seller's cost and expense, an American Land Title Association and topographic survey and assign its rights in the survey files (digital ".dwg" files and hard-copy) and title search information to the Buyer.

8. Phase 1 Report. The parties agree that Seller has provided to Buyer, at Seller's cost and expense, a current Phase 1 ESA report of the Property, including a lead and asbestos survey of the Property (the "Current Phase 1 Report").

9. Access. The parties agree that As soon as is reasonably practicable after execution of this Contract, Seller will provide Buyer copies of any keys, codes, or other security devices in its possession, if any, used to access the Property, and shall provide Buyer with access to the Property.

10. Indemnification. Buyer shall indemnify and hold harmless Seller, the City of Martinsville, and their principals, employees, agents and assigns, from any and all claims, including litigation costs and attorneys' fees, which in any way arise from access to the Property by Seller, its employees, agents, contractors, or assigns, or their acts or omissions while on the Property.

11. Remediation. Seller shall have no responsibility for repair or remediation of environmental hazards including asbestos, tanks, drums and flaking and loose lead paint on the Property, whether or not reported or recommended in the Current Phase 1 Report, which remediation shall be undertaken by Buyer. To the extent permissible under law, Seller shall assign to Buyer any grants received with respect to remediation of the Property. If assignment of such grants is not permissible, Seller shall use any such grants to pay the costs of such remediation. Seller shall apply for a Brownfields remediation grant for the site; the parties acknowledge that there is no guarantee such grant funds will be received.

12. Cooperation. Buyer shall be solely responsible for obtaining at its expense any zoning, permits, or approvals required for its use of the Property, but Seller shall provide reasonable cooperation if required. Seller agrees that, if requested by Buyer, it will be an applicant or co-applicant, as described in the Development Agreement, on any project grant applications, historic tax credit applications, or any other incentive application, and will coordinate and cooperate with Buyer to the extent necessary to accomplish the same.

13. Rezoning. Upon request of Buyer, within ninety days (90) days of the execution of this Contract, Seller shall apply to have the Property rezoned to a zoning classification approved by the Buyer, at no expense to the Buyer.

14. Insurance. Seller shall continue to maintain in full force and effect such casualty and liability insurance on or with respect to the Property as it maintains in the ordinary course of business, it being understood and agreed that all risk of loss with respect to the Property, except as may be caused by the acts or omissions of Buyer or its employees, agents, or contractors, shall remain with Seller through Closing. In the event that prior to the Closing Date, the Improvements on the Property are materially damaged, destroyed, or rendered unusable by fire, casualty, or other cause, then Seller may, at its option, terminate this Contract and the Deposit shall be refunded to Buyer. If Seller does not terminate this Contract, then the parties shall proceed with the transaction contemplated herein, in which event Buyer shall be entitled to receive, as applicable, insurance proceeds so long as they are applied toward Project expenses, including any soft costs the Buyer has incurred.

15. Approvals. Seller shall use good faith efforts to obtain all approvals, votes, and ordinances that are required under applicable law for the sale of municipal property, including those set forth in Virginia Code Sections 15.2-1800 et seq. and 15.2-2100 et seq, and shall also seek all approvals necessary to extend the current Uptown Martinsville historic district to include the Property.

16. Historic Tax Credit. Buyer shall act as the applicant for "Part 1 and Part 2" historic rehabilitation tax credit applications to both the Virginia Department of Historic Resources and the National Park Service. Seller shall cooperate and provide any relevant information in its possession to complete and submit those applications. Buyer shall pay the fees associated with those applications. Should the project not proceed, the intellectual property contained within those documents will remain the property of Buyer.

17. Status Reports. Buyer shall provide reasonably detailed status reports in writing to Seller every ninety (90) days until the Closing Date. Such reports shall generally describe Buyer's due diligence inspections and results as well as Buyer's efforts to obtain financing.

18. Conveyance. Seller shall convey the Property by Special Warranty Deed (the "Deed") to Buyer at Closing.

19. Closing Costs. All expenses of the Property, including but not limited to, real property taxes, rents, utility charges, annual permits and other expenses normal to ownership,

use, operation and maintenance of the Property, shall be prorated as of 11:59 PM on the Closing Date (i.e., Seller shall be responsible for all items of expense and entitled to all items of income attributable to the day of Closing). Seller shall pay (a) Seller's share of prorations; (b) state and local grantor's tax (if any); (iii) cost of Buyer's title insurance policy; (iv) the costs of the Survey; and (v) any recording charges for the Deed, including state and local recordation taxes other than the grantor's tax, as applicable. Buyer and Seller shall each pay their own legal and professional fees and fees of their consultants.

20. Title. Seller shall convey fee simple title to the Property to Seller free and clear of all liens, claims and encumbrances, except as otherwise noted herein. Notwithstanding any other provision of this Agreement, Seller shall be unconditionally obligated to cure or remove: (a) liens securing a mortgage, deed of trust and any ancillary encumbrances, including but not limited to, assignments of leases, rents or proceeds and UCC-1 financing statements; and (b) all judgment liens, other liens, attachments and any other matters evidencing monetary encumbrances (other than liens for non-delinquent property taxes). This sale is made subject to restrictions, covenants, agreements, and easements of record as of the Effective Date.

21. Assignment. Buyer may, with prior notice to Seller, assign this contract at its sole and absolute discretion to an entity created and controlled by Buyer to construct the Project, provided such entity shall be registered to conduct business in the Commonwealth of Virginia.

22. Brokers. Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller, that each engaged no real estate broker, salesperson or other intermediary to assist in the transfer of the Property from Seller to Buyer. Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any claim arising out of a breach of the representations and warranties in this Section. The representations, warranties, and indemnification obligations set forth in this Section shall survive Closing and/or the termination of this Contract.

23. AS IS; WITHOUT WARRANTY. BUYER ACCEPTS THAT THE PROPERTY WILL CONVEY IN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO THE PROPERTY OR ANY PORTION, ASPECT, OR COMPONENT THEREOF, AND EXPRESSLY DISCLAIMS THE SAME. LIKEWISE, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO ANY THIRD PARTY DOCUMENTS, REPORTS, OR MATERIALS PROVIDED OR MADE AVAILABLE TO BUYER BY SELLER OR ITS AGENTS, OR THE ACCURACY OF THE INFORMATION CONTAINED THEREIN, AND EXPRESSLY DISCLAIMS THE SAME. THE FOREGOING DISCLAIMERS OF THIRD PARTY MATERIALS INCLUDE, BUT ARE NOT LIMITED TO, THIRD PARTY MATERIALS ADDRESSING MATTERS OF TITLE, SURVEY, PHYSICAL CONDITION (INCLUDING WITHOUT LIMITATION ENVIRONMENTAL CONDITION OR PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES), ZONING, TAX STATUS OR CONSEQUENCES, FITNESS FOR A PARTICULAR PURPOSE OR USE,

COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS, ACCESS TO THE PROPERTY, AND AVAILABILITY OF UTILITIES.

24. Leases. Seller states that there are no outstanding lease or license agreements affecting all or any portion of the Property as of the Effective Date.

25. Time of the Essence. Time is of the essence of this Contract. No delays or extensions shall be permitted to Buyer unless expressly agreed to by Seller.

26. Applicable Law. This Contract is a Virginia contract, subject to interpretation and enforcement under the laws of the Commonwealth of Virginia. Any lawsuit brought for such interpretation and enforcement shall be venued in the Circuit Court of the City of Martinsville, Virginia, and each party shall bear its own costs and attorney's fees incurred therein.

27. Integration. This Contract represents the final understanding between Buyer and Seller with respect to the transaction described herein, there being no representations or agreements made between seller or Buyer with regard to the Property, except those contained in this Contract and its addendums. In addition, this Contract constitutes the entire understanding among the parties, and shall be deemed to supersede all prior written or verbal communications among the parties. This Contract may not be modified or terminated, unless in writing signed by the Buyer and Seller.

28. Survival. The representations, warranties, and indemnities of Buyer and Seller under this Contract shall survive settlement and delivery of the Deed or the termination of this Contract for one (1) year.

29. Successors and Assigns. This Contract and the provisions hereof shall be binding upon and shall inure to the benefit of the Seller and Buyer and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

WITNESS the following signatures and seals as of the date first above written:

SELLER:

**MARTINSVILLE REDEVELOPMENT
AND HOUSING AUTHORITY**

DATE

COMMONWEALTH OF VIRGINIA,
City of Martinsville, to-wit:

I, _____, Notary Public for the Commonwealth of Virginia, do hereby certify that Leon Towarnicki, Executive Director, who has the authority to sign on behalf of the Seller, MARTINSVILLE REDEVELOPMENT AND HOUSING AUTHORITY, whose name is signed the foregoing document dated the ____ day of _____, 20____, has acknowledged the same before me in my jurisdiction aforesaid.

Notary Public

My commission expires: _____

BUYER:

JRS REALTY PARTNERS, LLC

DATE

STATE OF _____,
City/County of _____, to-wit:

I, _____, Notary Public, do hereby certify that John A. Garland, Manager, who has the authority to sign on behalf of the Buyer, JRS REALTY PARTNERS, LLC, whose name is signed to the foregoing document dated the ____ day of _____, 20____, has acknowledged the same before me in my jurisdiction aforesaid.

Notary Public

My commission expires: _____

EXHIBIT "A" TO PURCHASE CONTRACT

Legal Description of Property

Parcel I: Item I: ALL that certain lot, piece or parcel of land lying in the City of Martinsville, Virginia, where the South line of Church Street forms an intersection with the East line of Ellsworth Street and being more particularly described as follows, to-wit:

BEGINNING at a point on the Southerly side of Church Street where same intersects the East line of Ellsworth Street and running from said beginning point and with the East line of Ellsworth Street, S. 14° 03' W. 276.07 feet to the Northerly line of a 20 foot alley; thence with the Northerly line of said alley, S. 75° 57' E. 120 feet to point marking the dividing line between the property herein conveyed and the property of Gertrude W. English and the J. L. English Estate; thence with said last mentioned dividing line, N. 14° 01' E. 274.17 feet to the Southerly line of Church Street; thence with the same, N. 75° 02' W. 120 feet to the point of beginning.

Item II: ALL that certain lot or parcel of real estate situated at a point on the East side of Ellsworth Street, which point of beginning is 296.07 feet from where the East line of Ellsworth Street intersects the South line of Church Street, which point of beginning is also where the East line of Ellsworth Street is intersected by the South line of a 20 foot alley and running from said beginning point and with the line of said alley, S. 75° 57' E. 205.20 feet to a point; thence S. 8° 53' W. 59.24 feet to the dividing line between the property herein conveyed and the Joe McMillon property; thence with said last mentioned dividing line, N. 77° 34' W. 205.41 feet to the East line of Ellsworth Street, and thence with the same, N. 9° 27' E. 65 feet to the point of beginning.

Item III: Also conveyed herein are any reversionary rights in the 20 foot alley leading from Ellsworth Street in an Easterly direction and which lies between Items I and II herein above described. It is the intent to convey all the right, title and interest in and to any property or rights to property owned at the designated location above and as shown on a record plat of the J. H. Spencer Estate as surveyed by W.C. Brown, C.L.S., December 7, 1954, and which is of record in the City of Martinsville Circuit Court Clerk's Office in Map Book 4, page 20.

LESS AND EXCEPT that strip or parcel of land for the street widening conveyed to the City of Martinsville, a Virginia municipal corporation, by deed dated July 12, 1973, and recorded July 19, 1973, in the Clerk's Office, Circuit Court, City of Martinsville, Virginia in Deed Book 110, page 671.

Parcel II: Item I: ALL of the hereinafter described realty together with all improvements thereon and appurtenances thereunto appertaining, which realty is situated in Martinsville City, Virginia described by metes and bounds from map of same styled, "Record Plat for Piedmont Consumer Corporation", made by Gustin et al, January 20, 1965, recorded in the Clerk's Office, Circuit Court, City of Martinsville, Virginia, and described from said map as follows:

BEGINNING at an iron stake in the Southern margin of East Church Street, which stake is S 75° 06' 40" E 176 feet from an iron stake at the Northwest corner of the lot of Piedmont Investment

Corporation, located at the intersection of the Eastern margin of Ellsworth Street and the Southern margin of Church Street, said stake being also located at the point of intersection of the dividing line between the lot of Tomford, Inc. and the realty hereby conveyed, thence with the Southern margin of East Church Street S 75° 06' 40" E 106 feet to an iron stake in the 12 foot joint alley between the property of the G.A. Brown Estate and the C.B. Keesee Trust; thence off and with the last mentioned dividing line S 11° 15' 30" W 275.16 feet to an iron stake in said dividing line; thence continuing S 10° 13.00' W 20.10 feet to an iron stake; thence N 74° 03' 17" W 89.25 feet to and iron stake in the Southern margin of a 20 foot alley; thence off and with the East line of said alley N 6° 55' 39" E 20.15 feet to an iron stake at the Southern corner of the lot of Tomford, Inc.; thence with the dividing line between the lot of Tomford, Inc., and that of the G.A. Brown Estate, N 2° 10' E 39.85 feet to an iron stake in said dividing line; thence continuing with said dividing line N 8° 58' 33" E 235.42 feet to an iron stake in the Southern margin of East Church Street, the point of beginning.

LESS AND EXCEPT that piece or parcel of land conveyed to Tomford, Inc. a Virginia corporation, by deed of exchange, dated March 20, 1965, in the Clerk's Office, Circuit Court, Martinsville, Virginia, in Deed Book 80, page 165. SUBJECT TO an easement for ingress and egress purposes as contained in instrument recorded in the aforesaid Clerk's Office in Deed Book 2, page 125, TOGETHER WITH a perpetual easement of ingress and egress extending from the rear of the above parcel in a western direction to Ellsworth Street.

Item II: THE following described property:

BEGINNING at a point on the South margin of Church Street, said point being located S 75° 06' 40" E 120 feet from the intersection of the South margin of Church Street with the East margin of Ellsworth Street, thence from said point of beginning and with Church Street S 75° 06' 40" E 56 feet to a point marking the dividing line between the property of Tomford, Inc., and G.A. Brown Estate; thence with said dividing line S 8° 58' 33" W 235.42 feet to a point; thence S 2° 10' W 39.85 feet to an iron on the Northeast corner of a 20 foot alley; thence with said alley N 75° 57' W 85 feet to a point marking the dividing line between the property of Tomford, Inc., and the property of Piedmont Investment Corporation; thence with said dividing line N 14° 02' 49" E 274.31 feet to the point of beginning.

Item III: All that certain lot or parcel of real estate situated on the South side of Church Street, in the City of Martinsville, Virginia and being more particularly described as follows:

BEGINNING at a point which is S. 75° 06' 40" E 120 feet from a point marking the intersection of the South margin of Church Street with the East margin of Ellsworth Street; thence running with the South margin of Church Street, S 75° 06' 40" E 97 feet to a point; thence off from the South margin of Church Street, S 11° 15' 30" W 294.03 feet to a point; thence N 74° 03' 17" W 24.16 feet to a point; thence N 6° 55' 39" E 20.15 feet to a point; thence N 75° 57' W 85 feet to a point; thence N 14° 02' 49" E 274.31 feet to the South margin of Church Street and the point of beginning, as shown on map of The Piedmont Consumer Corporation property prepared by J.A. Gustin & Associates on February 18, 1971.

SUBJECT TO that certain Deed of Easement and Agreement between Piedmont Investment Corporation, Piedmont Consumer Corporation, Tomford, Inc., and The School Board of the City of Martinsville, Virginia, dated March 20, 1965 and recorded in Deed Book 80, page 170.

Parcel III: Item I: All the parcel of land hereinafter described situated on the east side of Ellsworth Street in the City of Martinsville, Virginia, together with improvements thereon located and bounded and described as follows:

BEGINNING at a point in the dividing property line between the lot herein conveyed and a lot owned by Piedmont Consumer Corporation (formerly owned by English) said point also being 5.00 feet in an eastern direction along the said dividing line from the present east right-of-way line of Ellsworth Street; thence leaving said beginning point parallel with and 5.00 feet east of said right-of-way line 50 feet to a point in the dividing line between the herein conveyed lot and a lot owned by G. B. Atkins, said point also being 5.00 feet in an eastern direction along said dividing line from the present east right-of-way line of Ellsworth Street; thence said dividing line in an eastern direction 200 feet more or less to a lot owned by the City School Board (formerly the Dudley property); thence with that line in a northern direction 50 feet to the common rear corner of the lot herein conveyed and the corner of the aforesaid lot owned by Piedmont Consumer Corporation; thence with that line N 77° W 200 feet more or less to the point of beginning, and containing approximately 10,000 square feet of land. There is hereby expressly reserved a strip six feet wide and located on the south side of the lot above described, which together with a strip six feet wide and reserved from the G. B. Atkins lot shall be used as a joint twelve foot alleyway for the benefit of Piedmont Consumer Corporation and for the benefit of G. B. Atkins, or his heirs and assigns.

It is expressly understood that the City of Martinsville, Virginia retain a strip of land 5.00 feet wide, parallel with and adjacent to the present east right-of-way line of Ellsworth Street, and located between the dividing property line of the property above conveyed and property belonging to Piedmont Consumer Corporation to the dividing line between the above conveyed property and property owned by G. B. Atkins. The said strip of land is for the express purpose of increasing the right of way of Ellsworth Street for future improvements thereon.

Item II: Parcel Two: ALL that certain lot or parcel of land, with appurtenance thereunto appertaining, situated on the East side of Ellsworth Street in the City of Martinsville, Virginia, and being more particularly bounded and described as follows, to-wit:

BEGINNING at iron spike set in pavement in the East margin of Ellsworth Street at the southwest corner of the lot now or formerly owned by Piedmont Consumer Corporation; thence with its line, S 78° 57' 55" E 205.68 feet to an iron in the rear line in a tier of lots; thence with said rear line, S 9° 34' W 50 feet to an iron at the northeast corner of the lot now or formerly owned by Mary Harris Adkins, et als; thence with their line partially with a fence, N 78° 57' 55" W 205.58 feet to an iron rod in the East margin of Ellsworth Street; thence with the East margin of Ellsworth Street, N 9° 27' East 50 feet to the point of beginning, all as shown on Plat of Survey for The First National Bank of Martinsville and Henry County, prepared April 24, 1974, by J.A. Gustin & Associates, C.E., which map is recorded in the Clerk's Office, Circuit Court, City of Martinsville, Virginia, in Map Book 12, page 167, to which map reference is hereby made for a more particular description of the property hereby conveyed.

Reference is also had to a deed wherein the 12-foot alley formerly existed on the northern side of the property herein conveyed was closed which is recorded in the Clerk's Office, Circuit Court, City of Martinsville, Virginia, in Deed Book 92, page 292.

LESS AND EXCEPT the following parcel of land conveyed by The First National Bank of Martinsville and Henry County to the City of Martinsville, Virginia, a municipal corporation, by deed of exchange dated June 26, 1974, and recorded on July 9, 1974, in the Clerk's Office, Circuit Court, City of Martinsville, Virginia, in Deed Book 113, page 857:

ALL that parcel of land lying and being in the City of Martinsville, Virginia, and being as shown on a map showing the existing east right-of-way line and also the proposed east right-of-way line of Ellsworth Street as prepared by the City of Martinsville's Engineering Division dated June 3, 1974 and being more particularly described as follows:

BEGINNING at a point in the existing east right-of-way line of Ellsworth Street and being on the dividing property line between the lot herein conveyed and a lot now or formerly owned Mary Harris Adkins, et als; thence three (3) feet in an eastern direction along the dividing line to a point; thence along the proposed east right-of-way, said line being parallel with and three (3) feet east of the existing east right-of-way line fifty (50) feet to a point in the dividing line between the lot herein conveyed and the lot now or formerly owned by Piedmont Consumer Corporation, thence in a western direction three (3) feet to the existing right-of-way line; thence along the existing right-of-way line in a southern direction fifty (50) feet to the point of beginning and containing approximately one hundred fifty square feet of land.

Parcel VI: A certain lot or parcel of land lying on the East side of Ellsworth Street in the City of Martinsville, Virginia, bounded and described as follows, to-wit:

BEGINNING at a stake on the East side of the new street referred to in deed from L. S. Thomas and others to Mary A. Thomas, 65 feet from the southwest corner of the lot sold by T.G. Burch to J. H. Spencer; thence off South 74 degrees 45 minutes East 200 feet to a stake; thence South 12 degrees 30 minutes West 60 feet to a stake; thence North 76 degrees West 200 feet to a stake on said new street; and with the same North 12 degrees 30 minutes East 65 feet to the beginning.

AND BEING a portion of the same lots or parcels of land conveyed to Martinsville Redevelopment and Housing Authority, a Virginia political subdivision, from Truist Bank, a North Carolina banking corporation, successor in interest to Piedmont Trust Bank, by deed dated December 29, 2020, of record in the Martinsville Circuit Court Clerk's Office as instrument number LR202100009.

EXHIBIT “B” TO PURCHASE CONTRACT
ONE ELLSWORTH STREET
MARTINSVILLE, VIRGINIA

Development Agreement

THIS DEVELOPMENT AGREEMENT, (the “Agreement”) made as of the ____ day of _____, 20____, (the “Effective Date”) between the **CITY OF MARTINSVILLE**, a municipality in the Commonwealth of Virginia (“City”), and **JRS REALTY PARTNERS, LLC**, a Virginia limited liability company (“Developer”), and/or its assigns.

RECITALS:

- A.** The Martinsville Redevelopment and Housing Authority (“MRHA”) has acquired for redevelopment certain real property and improvements located thereon situated at 1 Ellsworth Street, Martinsville, Virginia 24112, currently known as the BB&T Building (the “Site”).
- B.** MRHA desires to redevelop the Site for residential and commercial uses (referred to herein as the “Project”) and wishes that Developer serve as the developer for the project.
- C.** As a condition of its proposal to redevelop the Site, Developer desires that the City provide certain services or other deliverables as described in this Agreement.
- D.** The City desires to provide the services and other deliverables described in this Agreement to facilitate the redevelopment of the Site by Developer.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the City and Developer agree as follows:

Redevelopment of the property shall be conducted in accordance with sections 3 and 4 of the “BB&T Building Revitalization Project Proposed, 1 Ellsworth Street Martinsville, Virginia” dated August 25, 2022, and incorporated herein as if fully set forth. To the extent the text thereof deviates from the text of this Development Agreement, the text of the Development Agreement shall govern.

ARTICLE I
Developer Obligations

- 1.** Developer shall redevelop the Site in accordance with the provisions of this Agreement (the “Project”). The redevelopment shall be conducted in compliance with the Virginia Department of Historic Resources and the National Park Service approvals of the “Part 1 and Part 2” historic rehabilitation tax credit applications, and with the Secretary of the Interior’s Standards for Rehabilitation.
- 2.** Within sixty (60) days after purchasing the Site, Developer shall commence construction of the Project. Developer shall complete the Project within twenty-four (24) months after _____ commencement of construction. All costs of every kind and description associated with

the Project shall be borne by Developer, except those costs to be waived or paid for by the City as more particularly described herein. In constructing the Project, Developer shall comply with all applicable laws, codes, and regulations.

3. Developer shall develop the Site as a mixed-used commercial and residential building, as follows:
 - A. At least one commercial, office, food and/or beverage service, or retail space open to the general public shall be installed on the main/first floor.
 - B. Common area and amenity space (for residents only in such areas of the building as Developer determines).
 - C. Developer shall install a commercial food and beverage service located on the roof and open to the general public.
 - D. Any substantial deviation from the requirements of this Section 3 shall be jointly approved by the parties.
4. Developer shall be responsible for marketing and leasing the residential and commercial units at the Site.
5. Developer shall continue to lease space for the telecommunications towers on the roof of the Site, in existence at the execution of this Agreement, to the City and its successors and assigns, said lease shall be free of charge, shall be perpetual, and the City shall have the right to sublease space on the towers to any third party. The City shall be given unrestricted access to the roof for construction, maintenance and replacement of any such towers. Alternatively, the City shall have the sole and exclusive right to discontinue use of said telecommunications towers, and to remove them.
6. Buyer, or its successors or assigns, shall at all times relevant hereto maintain its corporate status and registration to conduct business in the Commonwealth of Virginia.

ARTICLE II

City Obligations

1. In addition to the foregoing, the City agrees to provide the following in conjunction with the redevelopment and Construction of the Site by Developer:
2. The City will assist Developer in seeking incentive capital from the Virginia Main Street Program comprising feasibility analysis funds, downtown improvement funds or CDBG funds, if such funds are available.
3. The City agrees to act as a conduit for any additional funds that may be available to the project, such as those from the Industrial Revitalization Fund, but that must be procured by a not-for-profit entity or municipality. This may be accomplished via a City-related entity such as an economic development and/or redevelopment authority.

4. As the Site is located within the local Enterprise Zone, the City will waive or rebate any and all city-issued fees related to the project, including, but not limited to, all building permits, sign permits and utility connection fees, trade permit fees, plan review fees, application fees, rezoning fees, convenience or tap fees, etc.
5. The City shall, for a period of ten years after sale to Developer, abate all real estate taxes in excess of the amount owed annually upon the date of closing.
6. The City will ensure that all necessary utilities sufficient for the proposed redeveloped use of the Site - including water, sewer, storm water, telecommunications, and electric - are extended to the property line of the Site. The City agrees to assist Developer with regards to placing equipment, making connections, etc.
7. The City will provide any necessary sidewalk improvements, including any to allow ADA access over those existing or proposed sidewalks. ADA accessibility into the Site itself shall remain the sole responsibility of Developer.
8. The City will provide any necessary curb or gutter improvements.
9. The City will provide any necessary streetlight improvements, should they be required.
10. If the Site needs to be rezoned, the City will initiate a change of that zoning within the first 30 days of this Agreement to accommodate the proposed development and approve such zoning in 90 days.
11. All water service and sewer taps, including those for operation of the sprinkler, are considered to be complete, operational and serviceable (generally 'grandfathered'). No new taps shall be required of the Developer, nor new vaults, meters or any other piece of infrastructure or equipment. If at any time before a CO is granted on the building the project come under the purview or control of a water authority, or should the local applicable Water Authority or municipality, reviewing official or the Developer's civil engineer determine any of the existing infrastructure to be obsolete, or required in any way to be upgraded, or if any fee shall be imposed, these costs and fees shall be paid by the City. This includes, but is not limited to, tap fees, connection fees, convenience fees, taxes, vaults, flow meters, service meters, sewer flow meters, door fees, etc. Water shall also be billed as it is used in occupied space, and not on any minimum billing 'floor', or minimum amount per unit.
12. Within 30 days of this signed Agreement, the City shall provide pressure and flow readings at the hydrants in proximity to the building and ensure that both are adequate for the developer's end goals of providing adequate water pressure and flow to fire sprinklers.
13. Abatement of asbestos on the property shall be conducted by Developer, but reimbursed by the City in an amount not to exceed \$400,000.00. Removal of all HVAC and electrical components on the property shall be conducted by Developer, but reimbursed by the City in an amount not to exceed \$300,000.00. City shall retain all HVAC and electrical components removed from the site.

14. All of the preceding obligations of the City as described in this Article II with respect to the Project shall be provided to Developer free of cost unless otherwise noted.

ARTICLE III

Failure to Perform

If Developer does not develop the property within the 36 months set forth herein, or any mutually agreed upon extensions, the City shall have the right to terminate this Development Agreement and acquire the property and any improvements thereto at the Developer's cost of acquisition as set forth in the Contract of Sale. This right of reacquisition shall be subordinated to any security interests recorded against the Site by any entities providing capital investment, loan or other financing for the Project.

ARTICLE IV

Confidentiality

The parties to this Agreement shall hold in confidence all information contained in the Agreement or related in any way to the development or marketing of the Site, including without limitation, any information related to the rental rate of units or incentive packages offered to prospective lessees.

ARTICLE V

Liens

Developer shall bear all liability for or obligation as result of any material, materialmen's, or similar lien, which arises in connection with the Project arising from the failure of Developer to remit to the party claiming such lien moneys paid to Developer which were earmarked or otherwise allocated for disbursement to the party claiming such lien. In the event that any party hereto receives actual notice of any such lien, the party receiving such notice shall give the other parties prompt notice of such lien.

ARTICLE VI

Force Majeure

In the event that any party to this Agreement (the "Delayed Party") is delayed or prevented from performing any of its respective obligations under this Agreement by reason of governmental order strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, factors related to COVID-19 (including without limitation, contractor availability, governmental shutdowns or reduced availability, increased safety or health protocols, unavailability of materials, or other moratoria), or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such

delay or prevention. [If the period of delay as a result of the force majeure event exceeds 180 days, Developer may at its option declare this Agreement null and void and there shall be no further liability on the part of either party to the other except as expressly provided in the Agreement.] For purposes of this provision, a “moratoria” means any statute, regulation, ordinance, legislation, order, judgment, ruling or decree of any governmental authority or of any court enacted, adopted, issued, entered or pending which would (i) have a material adverse effect on the value of the Site or the tenants of the Site, (ii) prohibit the transaction contemplated hereby, or (iii) have a material adverse effect on Developer’s ability to operate and manage the Site.

ARTICLE VII

Disclaimer of Liability

No warranties or representations have been made by the City concerning the Project, including without limitation intended, the economic, legal, or physical feasibility of Project, or the suitability of the Site, or the merchantability, fitness or suitability of the completed Project. The City hereby disclaims any implied warranty or representation concerning the Project, including without limitation intended, those aspects described in the immediately preceding sentence.

ARTICLE VIII

Notices

Any notice, demand, request, approval, consent, or other communication (collectively referred to as a Notice) concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other party at the address set forth below. Any Notice shall be given by either: (i) personal delivery, in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested, in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any party may change any address for the delivery of Notice to such party, by giving Notice in accordance with the provisions of this Section. The attorneys for the parties may give any Notice.

ARTICLE IX

Miscellaneous

1. The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon the parties hereto and all persons who succeed to their respective rights and obligations. The parties may seek injunctive relief to compel the performance of any provision herein.
2. This Agreement cannot be changed nor can any provision of this Agreement, or any right or remedy of any party, be waived orally. Changes and waivers can only be made in writing and the change or waiver must be signed by both parties. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.
3. This Agreement is signed by the parties as a final expression of all of the terms, covenants,

and conditions of their agreement and as a complete and exclusive statement of its terms, covenants, and conditions and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.

4. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.
5. The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the parties.
6. Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.
7. This Agreement was prepared, negotiated, and delivered in the Commonwealth of Virginia. In the event of any dispute concerning or arising out of this Agreement, the laws of the Commonwealth of Virginia shall govern and control the construction and enforcement of this Agreement. Any cause of action brought for such interpretation and enforcement shall be venued in the Circuit Court of the City of Martinsville, Virginia, and each party shall bear its own costs and attorney's fees incurred therein.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

CITY OF MARTINSVILLE

By: _____

Its: _____

JRS REALTY PARTNERS, LLC

By: _____

Its: _____