AGENDA--CITY COUNCIL
CITY OF MARTINSVILLE, VIRGINIA

Council Chambers – Municipal Building

6:00pm CLOSED Session 7:00pm Regular Session

Tuesday November 28, 2023

6:00 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
   B. Discussion or consideration of the acquisition of real property for a public purpose or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, as authorized by Subsection 3.
   C. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business or industry's interest in locating or expanding its facilities in the community, as authorized by Subsection 5.

7:00 pm - Regular Session

Pledge to the American Flag and Invocation by Bishop Randy Martin of Bible Way Ministries.

1. Present a proclamation to the Veterans Honor Guard of Martinsville and Henry County. (5 mins)

2. Presentation by the Martinsville City Schools robotics team (the TreeHuggers). 5 mins.

3. Consider appointing the City Manager as Executive Director of the Redevelopment and Housing Authority. (5 mins)

4. Hear an update from the Danville Redevelopment and Housing Authority and discussions about potential land development. (20 mins)

5. Consider an Ordinance to adopt the City's participation in the Commercial Property Assessed Clean Energy (C-PACE) program. (10 mins)

6. Parks Improvement Planning Update. (10 mins)

7. Local Government Climate Action Plan. (10 mins)

8. Conduct a public hearing to take comments from the public on a resolution approving the revenue-sharing agreements between the Henry County Board of Supervisors, the Industrial Development Authority of Henry County, and the City of Martinsville. (10 mins)

9. Update of Aaron Mills Donation Agreement (10 mins)

10. 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, November 27, 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.

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

12. Comments by City Manager. (5 mins)

Martinsville
A CITY WITHOUT LIMITS

City Council Agenda Summary

Date: November 28, 2023

Item No: 1.

Department:

Issue: Present a proclamation to the Veterans Honor Guard of Martinsville and Henry County.

Summary It is an honor for City Council to read and present a proclamation recognizing the Veterans Honor Guard.

Attachments: Proclamation

Recommendations: No action by Council needed - the Mayor will read the Proclamation.

PROCLAMATION

VETERANS HONOR GUARD OF MARTINSVILLE AND HENRY COUNTY

WHEREAS, the Veterans Honor Guard of Martinsville and Henry County was formed in 1973 to serve fellow fallen veterans and their families by performing military rights; and

WHEREAS, originally, there were thirteen members that formed the local chapter. They performed fifteen to twenty services a year for many years. The Honor Guard began to grow, and with that, the number of services increased. The Honor Guard presently has 35 active members and has performed an average of 135 services for our fallen veterans since 2008. Unfortunately, the Guard has lost 49 members who have passed on. The Honor Guard is made up of all VSO organizations in the community, including members from American Legion Post 42 and Post 78, VFW Post 4637, and DAV Post 35, along with Chapter 60 from Smith Mountain Lake-Moneta, Amvets and Marin Corp. Legion; and

WHEREAS, in January 2009, the Veterans Honor Guard of Martinsville and Henry County obtained its Charter from the Commonwealth of Virginia. The Honor Guard was also chartered under the Department of Defense in July 2009, allowing the Honor Guard to perform military rites on behalf of the military and

WHEREAS, the Veterans Honor Guard is a non-profit organization; therefore, all funds received are through donations only. All members are veterans who volunteer their time and expenses to serve those veterans who have fallen. While the Veterans Honor Guard is chartered under the Department of Defense, it does not receive any funds from the military or the government of the services that are rendered; and

WHEREAS, the Honor Guard recognizes the Veteran of the Year Award each year for Martinsville and Henry County. The Veteran Honor Guard does flag fold for Carver, John Red, Albert Harris, and Drewery Mason schools and also in Stanleytown and the Edward Day Center.

NOW THEREFORE, I, LC Jones, Mayor of Martinsville, call upon all citizens of the City of Martinsville and upon all patriotic, civic and educational organizations to honor and recognize the members of the Veterans Honor Guard of Martinsville and Henry County, both past and present, who by their faithful and loyal service and devotion to their charge have rendered a dedicated service to our community and the citizens within it.

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LC Jones, Mayor

Martinsville
A CITY WITHOUT LIMITS

City Council
Agenda Summary

Date: November 28, 2023

Item No: 2.

Department:

Issue: Presentation by the Martinsville City Schools robotics team (the TreeHuggers).

Summary: The TreeHuggers is a robotics team that consists of 4th and 5th graders. The members of the team include Emery Taylor, Wesley Walker, Hailey Turner, Symphony Phillips, Kavanny Flores, Margot Sharp, Jade Holland-Dallas, Kenneth Lucas, Katie Wall, and Adelyn McKenzie. Team coaches are Ms. Emily Harrell and Ms. Jemeisha Childress. This year the FLL (First Lego League) theme was art. The TreeHuggers had to come up with a problem and solution revolving around art. They worked together as a team and decided that our innovative project would be a TreeHugger. A Treehugger is a type of art made of recyclable water bottles that are painted to provide a different type of art that can include nature. The team surveyed citizens from the area and 72% of people stated that there was not enough exposure to art. The TreeHuggers would like to propose their innovative solution to the Martinsville City Council with hopes of implementing it in Uptown Martinsville.

Attachments: None

Recommendations: Consider approval of the implementation of the robotics team's art design.

Martinsville
A CITY WITHOUT LIMITS

City Council
Agenda Summary

Date: November 28, 2023

Item No: 3.

Department:

Issue: Consider appointing the City Manager as Executive Director of the Redevelopment and Housing Authority.

Summary: State law gives the Housing Authority the power to delegate duties to an agent of the Housing Authority, such as an Executive Director. Attached is a resolution of the Housing Authority Commissioners doing just that, providing that the City Manager shall be the Executive Director of the Housing Authority with general power to sign contracts approved by the Housing Authority and other related documents as needed.

Attachments: Resolution of the City of Martinsville Redevelopment and Housing Authority appointing the City Manager as the Executive Director

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

RESOLUTION OF THE CITY OF MARTINSVILLE REDEVELOPMENT AND HOUSING AUTHORITY APPOINTING EXECUTIVE DIRECTOR

WHEREAS, the City of Martinsville Redevelopment and Housing Authority **(the "Housing Authority")** is empowered to act in accordance with the Virginia Housing Authorities Law beginning at Code of Virginia Section 36-1 **(the "Housing Authorities Law")**; and

WHEREAS, the Housing Authorities Law provides at Virginia Code Section 36-15 that the Housing Authority may delegate to its authorized agent such powers and duties as it may deem proper.

BE IT RESOLVED BY THE COMMISSIONERS OF THE HOUSING AUTHORITY:

1. The person carrying out the duties of the City Manager of the City of Martinsville, Virginia shall be the Executive Director of the Housing Authority.

2. The Executive Director of the Authority shall have the authority to negotiate, enter into, execute, seal, and deliver such agreements and contracts on behalf of the Housing Authority as approved by the Commissioners of the Housing Authority, to execute such other documents and instruments related to or in furtherance of the same, and any of the foregoing actions taken by the City Manager of the City of Martinsville on8 behalf of the Housing Authority are hereby adopted, ratified and confirmed.

3. This Resolution shall take effect immediately.

______________________________ ______________________

LC Jones
Chairman for the Redevelopment and
Housing Authority

Date

Martinsville
A CITY WITHOUT LIMITS

City Council
Agenda Summary

Date: November 28, 2023

Item No: 4.

Department:

Issue: Hear an update from the Danville Redevelopment and Housing Authority and discussions about potential land development.

Summary

Attachments:

Recommendations:

Martinsville
A CITY WITHOUT LIMITS

City Council
Agenda Summary

Date: November 28, 2023

Item No: 5.

Department: Community Development

Issue: Consider Ordinance to adopting the City's 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 by the providers of the fund.

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. The public hearing was held on October 24, 2023.

Concerns that had been raised by some constitutional officers have been resolved to their satisfaction. The revised ordinance is presented as an attachment.

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: Proceed with the first reading for approval of the Ordinance creating a C-PACE financing program

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.

(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 is given the right under the C-PACE Act, acting by and through the Treasurer, to 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. However, as allowed by the C-PACE Act, the City elects not to enforce the C-PACE Lien, but shall 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 at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. In accordance with 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: November 28, 2023.

Recorded Vote (First Reading):

Appendix A – C-PACE Program Agreement

CITY OF MARTINSVILLE COMMERICAL 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 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, then the Program Administrator 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 that the C-PACE Lien on the Property for the benefit of Capital Provider shall continue 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.

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 is given the right under the C-PACE Act, acting by and through the Treasurer, to 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. However, as allowed by the C-PACE Act, the City has elected not to enforce the C-PACE Lien itself but shall 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 by the Capital Provider at the C-PACE Loan's closing and at the Capital Provider's expense, 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 delegated 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 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 that the Locality has delegated enforcement of the C-PACE Lien to a third party in accordance with the C-PACE Act; 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 in a form acceptable to the Program Administrator.

(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
55 West Church Street
Martinsville, Virginia 24112
Attention: City Manager

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*]

**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)

Martinsville
A CITY WITHOUT LIMITS

City Council
Agenda Summary

Meeting Date: November 28, 2023

Item No: 6.

Department: Community Development

Issue: Parks Improvement Planning Update

Summary: The City issued an RFP in the spring of 2023 for consulting services to prepare a Parks Improvement Plan utilizing ARPA funding. Site Collective, a planning and design consulting firm from Raleigh was selected to implement a parks improvement plan. Site Collaborative has been working in partnership with the City and WPPDC to create a plan for all the city parks. A number of community input sessions were held during the summer, and public surveys have yielded much interest in parks improvement. Graham Smith with Site Collaborative wishes to provide City Council with an update on their efforts thus far.

Attachments: None

Recommendations: Allow Site Collective to brief Council and the public on progress made thus far with the development of a Parks Improvement Plan.

Martinsville
A CITY WITHOUT LIMITS

City Council
Agenda Summary

Meeting Date: November 28, 2023

Item No: 7.

Department: Community Development

Issue: Local Government Climate Action Plan

Summary: The Schar School of Policy and Government at George Mason University has offered to provide leadership through the university extension service to assist Virginia cities and counties with energy and environmental assessments, mitigation and resiliency projects and facilitating applicable grants to assist with climate sustainability. GMU has internal funding, a large cohort of students, and top-notch faculty expertise in science, policy, and engineering. As their first step beyond northern Virginia, they are seeking to develop partnerships and collaboration with communities within the West Piedmont region, and specifically the City of Martinsville. Community Development staff have been working with the GMU leadership team to develop a work plan and responsibilities of a local task force that will provide input and contribute to the development of an eventual climate resiliency plan.

This initiative aligns with Virginia government commitments on climate action and clean energy, such as found in the 2020 Virginia Clean Economy Act, the Clean Energy and Community Flood Preparedness Act (directing the Commonwealth to join the Regional Greenhouse Gas Initiative), executive orders on environmental justice and community outreach, and the Transportation and Climate Initiative. This initiative also supports transitioning Virginia's local workforce into clean energy and energy efficiency jobs.

The Local Climate Change Planning Initiative by GMU has three phases. First, the initiative plans to work with local governments and communities to collect greenhouse gas emissions data to better understand each communities' baseline emissions. Then, the initiative plans to work with local government leaders and community members to develop action plans specifically designed for each community. Finally, the initiative plans to assist communities with project implementation.

Attachments: Memorandum of Agreement, Martinsville-GMU Partnership Work Plan, Task Force Member Descriptions

Recommendations: Authorize the City Manager or her designee to enter into the Memorandum of Agreement with George Mason University

MEMORANDUM OF AGREEMENT

By and between

GEORGE MASON UNIVERSITY

And

City of Martinsville, Virginia

THIS MEMORANDUM OF AGREEMENT (“Agreement”), dated this November 30, 2023, (the “Effective Date”), is made by and between George Mason University (the “University”), a public institution of higher education and agency of the Commonwealth of Virginia, and City of Martinsville, Virginia (“Organization”), a body politic and corporate of the Commonwealth of Virginia. The University and Organization are referred to individually as “Party” and collectively as “Parties.”

WHEREAS, Organization has adopted the 2009 Comprehensive Plan, (last amended July 27, 2021), which includes recommendations for the City of Martinsville to enhance utilities, public health, natural resources, and multi-modal transportation, as well as resilience commitments as specified in the Community Resilience and Hazard Mitigation Resolution (adopted April 27, 2021); and

WHEREAS, the University’s College of Science Virginia Climate Center, the Institute for a Sustainable Earth, , along with other University departments and affiliated research centers, maintains expertise in local climate change and sustainability planning and coordination efforts, to include, but not limited to, expertise in modeling of greenhouse gas emissions, evaluation of climate change risk factors, development of climate and sustainability plans, policies, and strategies, and climate change communication strategies; and

WHEREAS, the University desires to collaborate with and assist Organization in facilitating the development and implementing of a sustainability plan; and

WHEREAS, the Parties wish to set forth the terms and conditions of a mutually beneficial affiliation;

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and benefits hereunder and other good and valuable consideration, the Parties mutually agree to all of the following:

1. <u>Term and Termination.</u> This Agreement shall be for a period of three (3) years from the Effective Date. Either Party has the right to terminate this Agreement without cause upon 90 days’ prior written notice to the other Party.

2. Duties of Organization. Organization shall:

    a. Devote staff time to effort,
    b. Devote physical space for in-person meetings,
    c. Engage in community outreach, with assistance of the University,
    d. Promote project, with assistance of the University,
    e. Conduct data collection, with assistance of the University,
    f. Provide staff and physical space for meetings with public,
    g. Conduct inventory review, with assistance of the University,
    h. Work with the University to develop climate change and sustainability planning,
    i. Provide Mason student internships and fellowships, which will be the focus of a separate agreement.

3. Duties of University. University shall:

    a. Assist in the development of vulnerability and risk assessment,
    b. Assist in the development of greenhouse gas inventory,
    c. Audit Organization's existing policies, plans, and programs,
    d. Assist in the development of climate change, sustainability, adaptation, and resiliency strategies,
    e. Assist in identification and prioritization of strategies,
    f. Assist in the development of an implementation road map,
    g. Assist in the development of final plan, materials, and strategies,
    h. Assist with project implementation.

4. General.

    a. Notice. Any notice required by this Agreement shall be in writing and shall be deemed given when sent, postage prepaid, through the United States Postal Service by certified mail, return receipt, or when sent by nationally recognized overnight delivery service, or personally served upon the appropriate Party.

To: Domestic MOU Administrator
Office of the Provost – Academic Affairs
George Mason University
4400 University Drive, MS 1D9
Fairfax, VA 22030

To: Keith Holland
Director of Community Development, Building, and Zoning Department
City of Martinsville
P.O. Box 1112
55 West Church Street
Martinsville, VA 24112

b. Applicable Law; Venue. This Agreement shall be construed, governed and interpreted by and in accordance with the laws of the Commonwealth of Virginia. Any litigation with respect to this Agreement shall be brought before a court of competent jurisdiction in the Commonwealth of Virginia. Organization agrees that it shall at all times comply with all applicable federal and state laws and regulations.

c. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter herein and supersedes all prior oral or written agreements with respect to the subject matter herein. This Agreement can be modified or amended only by a writing signed by all of the Parties.

d. Severability. Should any portion of this Agreement be declared invalid or unenforceable for any reason, such portion is deemed severable from the Agreement and the remainder of this Agreement shall remain fully valid and enforceable.

e. Waiver. The failure of a Party to enforce any provision in this Agreement shall not be deemed a waiver of such right.

f. Assignment. Neither Party shall assign or otherwise transfer its rights or delegate its obligations under this Agreement without the prior written consent of the other Party. Any attempted assignment, transfer or delegation without such consent shall be void. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

g. Independent Contractors. The relationship of the Parties to each other is solely that of independent contractors. No Party shall be considered an employee, agent, partner or fiduciary of the other except for such purposes as may be specifically enumerated herein, nor shall anything contained in this Agreement be construed to create any partnership or joint venture between the Parties. The University does not sponsor, endorse, or make any express or implied warranties for Organization.

h. Publicity. Except as specifically provided for herein, Organization shall not use, in its external advertising, marketing programs, or promotional efforts, any data, name, insignia, trademarks, pictures or other representation of the University or its employees except on the specific written authorization in advance by the University. The University must receive all requests for authorization in writing no later than ten (10) days in advance of the use date.

i. Use of Trademarks. Organization shall not use the name or any trademark of the University without prior written permission of the University, no less than ten (10) days in advance of such use.

j. Image. Neither Party shall not take any action or inaction, which may be detrimental to the image or reputation of the other Party.

k. Nondiscrimination. Both parties to this Agreement agree to not discriminate on any basis prohibited under state or federal law.

l. Force Majeure. Neither Party shall be responsible for any delay or failure in performance resulting from any cause beyond its control, including, without limitation, war, terrorism, strikes, civil disturbances, national or regional health emergencies (including outbreaks, epidemics, and pandemics, regardless of whether such health emergency existed as of the Effective Date of this Agreement), and acts of God.

m. Sovereign Immunity. Nothing in this Agreement shall be deemed a waiver of the sovereign immunity of the Commonwealth of Virginia or the Organization.

n. Authorized Signatures. The signatory for each Party certifies that he or she is an authorized agent to sign on behalf such Party.

o. Conflicts of Interest. No employee of the University may receive compensation from Organization unless authorized by the University in writing.

p. Third-Party Beneficiaries. No third party is entitled to rely on any of the representations, warranties and agreements of the Parties contained in this Agreement. No Party assumes any liability to any third party because of any reliance on the representations, warranties and agreements of the Parties contained in this Agreement.

q. Remedies. If either Party breaches this Agreement, in addition to any other rights or remedies, the non-breaching Party may terminate this Agreement without prior notice.

r. Liability.
   (1) To the extent allowed by the laws of the Commonwealth of Virginia, the University shall be responsible for the ordinary negligent acts or omissions of its agents and employees causing harm to persons not a party to this Agreement. To the extent allowed by the laws of the Commonwealth of Virginia, Organization shall be responsible for the ordinary negligent acts or omissions of its agents and employees causing harm to persons not a party to this Agreement. Nothing herein shall (i) be deemed a waiver of the sovereign immunity of the Commonwealth of Virginia or the Organization, (ii) require University to indemnify, defend, or hold harmless Organization for claims brought against Organization or (iii) required Organization to indemnify, defend or hold harmless University for claims brought against the University. Each

Party shall promptly notify the other Party of any claim or action brought in connection with this Agreement.

(2) Limitation of Liability. Neither Party shall not be liable for incidental, consequential, indirect, or specific damages including, without limitation, lost business profits or revenue. This limitation is a critical element of the Parties' bargained-for consideration and will be effective even in the event a Party is informed in advance of the possibility of such damages.

Please initial:

______/______ Electronic Transactions. If this paragraph is initialed by both Parties, to the fullest extent permitted by Code of Virginia, Title 59.1, Chapter 42.1, the Parties do hereby expressly authorize and consent to the use of electronic signatures as an additional method of signing and/or initialing this Agreement and agree electronic signatures (for example, the delivery of a PDF copy of the signature of either party via facsimile or electronic mail or signing electronically by utilizing an electronic signature service) are the same as manual executed handwritten signatures for the purposes of validity, enforceability and admissibility.

WITNESS the following signatures of the Parties:

George Mason University:

By: ____________________________

Name: Janette Kenner Muir
Title: Vice Provost, Academic Affairs

Date: __________________________

City of Martinsville, Virginia:

By: ____________________________

Name: Aretha Ferrell-Benavides
Title: City Manager

Date: __________________________

GMU-Martinsville City Partnership
Workplan (Draft v4)

Contents

Purpose and Background

George Mason University (Mason) is working with local governments throughout Virginia to conserve energy, save money, and enhance Virginia's resiliency for all. Mason will assist the City of Martinsville in three core areas: model greenhouse gas emissions and risk factors for the community; develop energy and resiliency action plans; and assist with implementing actions. As such, Mason is organized across three teams: adaptation, mitigation, and community engagement. These three teams will work with Martinsville to advance the goals and objectives of the project.

Goals and Objectives

1. Conduct long-term hazard mitigation modeling and prioritization assistance:
    a. Collaborate with Martinsville City staff to better understand current hazard mitigation planning, infrastructure, and priorities;
    b. Conduct preliminary climate modeling and cursory risk assessment;
    c. Co-develop and conduct future modeling (flooding, heat, and/or drought) projections that expand maximum thresholds to better identify future risks;
    d. Assist Martinsville City staff with risk and action prioritization.
2. Conduct community-wide modeling of energy emission and facilitate development of an energy action plan:
    a. Collaborate with Martinsville City staff to collect data on community emissions;
    b. Create a community greenhouse gas inventory;
    c. Facilitate the development of an energy action plan;
    d. Achieve formal adoption of energy plan and assist with implementation.
3. Assist in facilitating community engagement between Martinsville City staff, community task force members, and additional municipal partners:
    a. Collaborate with the city's relevant departments and public information staff to ensure partnership coordination, effective communication, timeliness, and success;
    b. Coordinate public engagement and public announcements as appropriate;
    c. Facilitate f learning from other municipal partners.

Team Responsibilities

GMU Adaptation Team will assist in:

- Assisting Martinsville City's understanding of vulnerabilities and risks through a cursory assessment and co-development of long-term modeling;
- Reviewing Martinsville's existing policies, plans, and programs, including the work of the Alliance for National and Community Resilience (ANCR);
- Collaborating with community stakeholders and identified areas for capacity building.

GMU Mitigation Team will assist in:

- Developing a greenhouse gas inventory;
- Facilitating and developing an energy action plan strategy, which will serve as a roadmap for project implementation and grant solicitation;
- Developing a resource library as ongoing reference and support for the energy action plan;
- Implementing the action plan through student internships.

GMU Community Engagement will assist in:

- Organizing community organizations and individual stakeholders to leverage full civic engagement and expertise, and enhance implementation;
- Exploring lasting educational partnerships between George Mason University and the City of Martinsville.

City of Martinsville will assist in:

- Identifying staff as points of contact with Mason;
- Facilitating data collection for the emissions inventory and risk hazard profile;
- Identifying an equitable task force;
- Providing physical space for in-person task force meetings;
- Promoting the project and partnership in coordination with Mason;
- Providing Mason students with the learning experience to work with local practitioners.

<u>Project Phases</u>

Phase 1 | August – December 2023

(a): Adaptation Co-Development and Cursory Risk Assessment

Mason will begin co-developing future climate model risks and strategies with City staff and community partners. In the beginning of this work, Mason will review the City's existing hazard/risk assessments and adaptation efforts and complete a cursory risk assessment by the end of 2023.

- Mason Lead: Amanda O'Connor

(b): Modeling of Greenhouse Gas Emissions

Mason will collect information and data on energy-related emissions for the City of Martinsville. This data will be used in a modeling exercise to produce the city's inventory of emissions. The inventory is used to establish goals, educate the community task force, and identify specific actions for the energy plan. The City of Martinsville will assist Mason in this collection effort. The City of Martinsville will determine what specific emissions targets (if any) they intend to meet in order to help forecast and plan for phase II task force efforts.

- Mason Lead: Joel Hicks

(c): Development of a Community Task Force and Public Engagement

Mason will identify categories of key stakeholders to be considered for the community task force which will meet in Phase II. The City of Martinsville will identify, contact, and invite key stakeholders to be part of the task force. Mason may conduct interviews with task force members to ascertain their level of expertise, understanding, and background. The number of task force members should not exceed 10 (Appendix B). Additionally, public announcements and other promotional efforts to raise community awareness will be co-developed between Mason and the City of Martinsville.

- Mason Lead: Elliot Meyer

Phase 2 | January – June, 2024

(a): Adaptation Co-Development of Long-term Climate Modeling

Mason will provide cursory risk assessment and relevant information to the task force for their consideration. The co-development of future climate model and strategies with City staff and community partners is expected to expand.

- Mason Lead: Amanda O'Connor

(b): Community Task Force Meetings

Mason will host a series of task force meetings, most likely four meetings, in or near the City of Martinsville. In the first two meetings, Mason will educate the task force about Phase I modeling and potential mitigation (energy saving) strategies. In the second two meetings, Mason will facilitate discussion among task force members to reach consensus on specific action recommendations. The meetings may include a combination of face-to-face and virtual meetings. The meetings may also be combined with other nearby municipalities. If combined, Mason will use break-out rooms to work with each municipality on consensus building. The City of Martinsville will identify key government employees that have responsibility for energy areas under discussion and request their participation in task force meetings.

- Mason Team Lead: Paul Bubbosh

(c): Draft of Energy Action Plan and Formal Adoption

Mason will deliver a draft energy action plan which reflects the task force findings. The City of Martinsville will review and make necessary changes, and if appropriate, issue a final version of the plan to the public.

- Mason Team Lead: Paul Bubbosh

Phase 3 | June – December, 2024

(a): Student Internships and Fellowships

Mason will identify potential students who are interested in internships with the City of Martinsville specific to the energy action plan. The City of Martinsville will identify areas of need for student internships. Upon completion of a student internship agreement, students will be available to assist the City of Martinsville in implementing the energy action plan.

- Mason Team Lead: TBD
- Martinsville Team Lead: TBD

Appendix A

George Mason University, Virginia Climate Center
https://www.vaclimate.gmu.edu/

Team Adaptation

Dr. James "Jim" Kinter, Principal Investigator and VCC Director
jkinter@gmu.edu | (703) 993-5700

Dr. Luis Ortiz, Principal Investigator
lortizur@gmu.edu

Dr. Celso Ferreira, Principal Investigator
cferrei3@gmu.edu | (703) 993-1782

Amanda O'Connor, Project Manager
aoconn2@gmu.edu | (909) 801-1240

Team Mitigation

Dr. Joel Hicks, Principal Investigator
jhicks19@gmu.edu

Paul Bubbosh, Principal Investigator
pbubbosh@gmu.edu

Jared Weaver, Graduate Research Assistant
jweave2@gmu.edu

George Schyler, Undergraduate Research Assistant

Jordan Davis, Undergraduate Research Assistant

Community Engagement

Leah Nichols, Principal Investigator, ISE Director
lnicho5@gmu.edu | (703) 993-5445

Elliot Meyer, Community Engagement Specialist
dmeyer20@gmu.edu | (703) 268-6024

City of Martinsville
https://www.martinsville-va.gov/

Aretha Ferrell-Benavides, City Manager

Kris Bridges, Building and Zoning Director

Keith Holland, Community Development Director

Durwin Joyce, Martinsville Electric Director

Appendix B

Task Force Development

The task force is comprised of city staff and community volunteers who will work with Mason Teams to develop an energy and resiliency action plan. The Community Engagement Team will work with the city staff to identify potential community members to serve on the task force. Potential representatives include:

- Municipality staff aligned with energy and resiliency responsibilities
- Utility or other energy
- Higher education – community college, vocational, 4H, Extension
- Economic development, downtown revitalization association, chamber of commerce, or business representative
- Faith-based leader or community advocate
- Public health expert or EMS official
- Community based organization representative

Task Force Volunteer Description and Roles

The task force will work with Mason Teams to develop recommendations in an energy and resilience action plan for the community. The task force is designed to bring together multiple perspectives to enhance the dialogue and achieve recommendations that better reflect the community. The exact number of task force members will differ per municipality.

Potential representatives might include:

1. **Local government staff**
   a. Role**:** As participating members of the task force, the municipality staff play a critical role in the group. They provide a pragmatic voice to different options for the community and their perspective can give a "reality check" to the feasibility or cost-effectiveness of ideas.
   b. Ideally: the staff member has experience with energy and resiliency projects or has experience facilitating community members for official business.
2. **Utility or other energy representatives**
   a. Role: A utility or energy representative provides logistical, technical, and cost-benefit insights to the different energy efficiency strategies for the community. The representative should be able to speak well to considerations like reliability of service, as well as serve as a liaison between the community and the utility company.
   b. Ideally: the representative understands the specific grid and service of the locality.
3. **Economic development, downtown revitalization association, chamber of commerce, or business representative**
   a. Role: Individuals from the business community should be able to speak to their own professional experiences, as well represent the broader community economic development priorities and challenges. Ideally, these individuals can understand how different energy efficiency strategies could impact commerce, attract investment, and enhance economic development, without being a burden on small businesses.
   b. Ideally: the representative is familiar with higher level economic development principles, connected with the broader business community, or has specific insight into a core aspect of the energy efficiency plan (housing, architecture, electrical transmission, transportation).
4. **Local higher education (community college, university, vocational, 4H, Extension)**
   a. Role: A representative from a local higher education institution will play a key role in helping align different energy efficiency priorities with advancing different core community development goals. In particular, involving local higher ed. or other types of educators in energy efficiency programs offer an invaluable STEM-based learning opportunity and career advancement for local students. Many federal and state grants also require a higher education partner.
   b. Ideally: the representative has a community development background and experience building community programs or partnerships.
5. **Public health expert or EMS official**
   a. Role: Local EMS or public health experts provide a critical role by discussing energy efficiency priorities based on the community's risks, hazards, emergency response, and/or public health priorities. Priorities for energy efficiency goals should always

incorporate the needs of first responders and support of the community's critical services.

   b. Ideally: the official understands the regional or local hazard mitigation plans, EMS priorities, or healthcare system.

6. **Faith-based leader or community advocate**
   a. Role: Local faith leaders have a deep understanding of their congregations, as well as the daily challenges facing a community's most vulnerable populations. Their role is to assist the task force in selecting energy efficiency priorities that best serve the community's most underserved families and individuals.
   b. Ideally: these leaders have experience with ministries that work with local low-income housing, basic living expenses, food insecurity, and shelters.
7. **Other community-based organizations**
   a. Role: Other community-based organizations is a broad category to encompass the many different kinds of advocacy organizations or people that have valuable knowledge to offer the task force.
   b. Ideally: These members represent community groups that advocate for improvements in quality of life, housing, weatherization, transportation/alternative transit, public spaces, environmentalism, air quality, or clean energy.

Martinsville
A CITY WITHOUT LIMITS

City Council
Agenda Summary

Date: November 28, 2023

Item No: 8.

Department:

Issue: Conduct a public hearing to take comments from the public on a resolution approving the revenue sharing agreements between the Henry County Board of Supervisors, the Industrial Development Authority of Henry County, and the City of Martinsville.

Summary The revenue sharing agreements are (1) an amended and restated revenue sharing agreement for Patriot Centre expansion concerning approximately 1206 acres in Henry County commonly known as the "Bryant Property" and (2) an amended and restated revenue sharing agreement for Commonwealth Crossing Business Centre, an industrial site near US Highway 220 at the Virginia-North Carolina border, including an addendum to this agreement setting forth specific terms for a portion of this property known as Lot 2. The purpose of the revenue-sharing agreements is to equitably share future revenue from the development of the subject properties between the City, the County, and the Martinsville-Henry County Economic Development Corporation.

Attachments: (1) Joint resolution of Henry County and the City of Martinsville referring the proposed amended and restated revenue sharing agreements between Henry County, the City of Martinsville and Industrial Development Authority of Henry County to the Commission on Local Government for review. (2) Amended and Restated revenue sharing agreements for Commonwealth Crossing Business Centre and Patriot Centre expansion. (3) First Addendum to amended and restated revenue sharing agreement for Commonwealth Crossing Business Centre. (4) Report on the City of Martinsville-Henry County Revenue Sharing Agreements.

Recommendations: Conduct a public hearing then Council will consider approval of the revised revenue-sharing agreements.

RESOLUTION APPROVING AMENDED AND RESTATED REVENUE SHARING AGREEMENTS BETWEEN HENRY COUNTY, THE CITY OF MARTINSVILLE AND INDUSTRIAL DEVELOPMENT AUTHORITY OF HENRY COUNTY

WHEREAS, Henry County, Virginia **(the "County")** and the City of Martinsville, Virginia **(the "City")** have a history of cooperation in promoting regional economic development, including administration of a joint enterprise zone program and mutual support of and cooperation with the Martinsville-Henry County Economic Development Corporation **(the "EDC")**; and

WHEREAS, the EDC is a public-private partnership among County, the City and the Harvest Foundation of the Piedmont with the goals of creating jobs in the City and the County and expanding the tax base in the County and the City, including support and development of local industry; and

WHEREAS, in 2007, the City, the County and the Industrial Development Authority of Henry County, Virginia (**the "IDA"**) approved a Revenue Sharing Agreement related to two separate industrial and business sites in the County **(the "Original Agreement")**, specifically the subject of the Patriot Centre Agreement (as defined below) and the subject of the Commonwealth Crossing Agreement (as defined below); and

WHEREAS, the City and the County determined to separate the Original Agreement into two separate agreements, each agreement to relate to its respective industrial and business park property and to modify the Commonwealth Crossing Agreement to provide partial funding to the EDC; and

WHEREAS, the two separate agreements are the Amended and Restated Revenue Sharing Agreement for Patriot Centre Expansion **(the "Patriot Centre Agreement")** and the Amended and Restated Revenue Sharing Agreement for Commonwealth Crossing Business Centre, as modified by the First Addendum to Amended and Restated Revenue Sharing Agreement for Commonwealth Crossing Business Centre **(the "Commonwealth Crossing Agreement" and, together with the Patriot Centre Agreement, the "Agreements")**, which were preliminarily approved by the parties on July 11, 2023 and referred to the Virginia Commission on Local Government **(the "Commission")** for review as required by law; and

WHEREAS, the Commission has recommended final approval of the Agreements and made its findings in November, 2023 as follows:

- The Agreements enable the EDC to grade Lot 2 of Commonwealth Crossing, making the site shovel-ready for a new company to operate.
- The Agreements provide long-term, stable revenue for the EDC, allowing them to continue economic development efforts in the region.
- The Agreements provide a return on investment for the City and County and expands their tax bases, allowing them to provide needed services without over-burdening residents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARTINSVILLE, VIRGINIA THAT:

1. The Agreements are approved in substantially the forms presented to this meeting, and the City Manager is authorized to execute the Agreements, and all City employees are authorized to work with the County, the County's IDA, the EDC and the Harvest Foundation in development and marketing of the Commonwealth Crossing and Patriot Centre properties.

2. This Resolution shall take effect immediately.

Adopted by the City Council of the City this 28th day of November, 2023.

JOINT RESOLUTION OF HENRY COUNTY AND THE CITY OF MARTINSVILLE REFERRING THE PROPOSED AMENDED AND RESTATED REVENUE SHARING AGREEMENTS BETWEEN HENRY COUNTY, THE CITY OF MARTINSVILLE AND INDUSTRIAL DEVELOPMENT AUTHORITY OF HENRY COUNTY TO THE COMMISSION ON LOCAL GOVERNMENTFOR REVIEW

WHEREAS, Henry County, Virginia **(the "County")** and the City of Martinsville, Virginia **(the "City")** have a history of cooperation in promoting regional economic development, including administration of a joint enterprise zone program and mutual support of and cooperation with the Martinsville-Henry County Economic Development Corporation **(the "EDC")**; and

WHEREAS, the EDC is a public-private partnership among County, the City and the Harvest Foundation of the Piedmont with the goals of creating jobs in the City and the County and expanding the tax base in the County and the City, including support and development of local industry; and

WHEREAS, on or about September 25, 2007, the City, the County and the Industrial Development Authority of Henry County, Virginia **(the "IDA")** entered into a Revenue Sharing Agreement related to two separate industrial and business sites in the County **(the "Original Agreement")**, specifically the subject of the Patriot Centre Agreement (as defined below) and the subject of the Commonwealth Crossing Agreement (as defined below); and

WHEREAS, the City and the County have determined it is appropriate to separate the Original Agreement into two separate agreements, each agreement to relate to its respective industrial and business park property and to modify the Commonwealth Crossing Agreement to provide partial funding to the EDC; and

WHEREAS, the two separate agreements are the Amended and Restated Revenue Sharing Agreement for Patriot Centre Expansion **(the "Patriot Centre Agreement")** and the Amended and Restated Revenue Sharing Agreement for Commonwealth Crossing Business Centre, as modified by the First Addendum to Amended and Restated Revenue Sharing Agreement for Commonwealth Crossing Business Centre **(the "Commonwealth Crossing Agreement" and, together with the Patriot Centre Agreement, the "Agreements")**; copies of the Patriot Centre Agreement and the Commonwealth Crossing Agreement, including the First Addendum thereto, are attached to this Resolution; and

WHEREAS, on July 11, 2023, the City Council of the City, the Board of Supervisors of the County and the Board of Directors of the IDA held a joint meeting and each body voted to approve the Agreements; and

WHEREAS, Code of Virginia §15.2-1301 provides that economic growth sharing agreements such as the Agreements shall be referred to the Virginia Commission on Local Government **(the "Commission")** for review and the making of findings as to the probable effect of such agreements on the people residing in the area affected by the agreements; and

WHEREAS, 1 VAC50-20-382 requires that referral of such agreements to the Commission shall be accompanied by resolutions, joint or separate, of the governing bodies of the localities that are parties to the proposed agreements requesting that the Commission review the agreement, stating the parties' intention to adopt the agreement, and providing certain information to the Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF HENRY COUNTY, VIRGINIA AND THE CITY COUNCIL OF THE CITY OF MARTINSVILLE, VIRGINIA THAT:

1. The County and the City each (a) request that the Commission review the Agreements and issue its findings in accordance with the requirements of Code of Virginia§ 15.2-1301 and (b) state their intention to adopt the Agreements in final form subsequent to the Commission's review.

2. The County Administrator, the City Manager and the County's and City's attorneys are authorized and directed to refer the Agreements, together with all necessary data and materials, to the Commission and to take all other actions as may be required to accomplish the Commission's review of the Agreements.

3. The County designates the following individual as the County's contact persons for communications with the Commission regarding the review of the Agreements:

   Dale Wagoner, County Administrator. Henry County, Virginia

   Physical Address:

   3300 Kings Mountain Road
   Martinsville, VA 24112

   Mailing Address:

   P.O. Box 7
   Collinsville, VA 24078

   Phone: 276-634-4601

   Email address: dwagoner@co.henry.va.us

4. The City designates the following individual as the City's contact person for communications with the Commission regarding the review of the Agreement:

   Glen Adams, Interim City Manager, City of Martinsville, Virginia

   P.O. Box 1112
   55 W Church Street, Room 216
   Martinsville, VA 24112

   Phone: 206-403-5182

   Email: gadams@ci.martinsville.va.us

Adopted by the Board of Supervisors of the County this 22nd day of August, 2023.

CERTIFICATE

The undersigned Clerk of the Board of Supervisors of Henry County, Virginia hereby certifies that the foregoing constitutes a true and correct copy of a Joint Resolution of Henry County and the City of Martinsville Requesting that the Commission on Local Government Review Proposed Amended and Restated Revenue Sharing Agreements between Henry County, the City of Martinsville and Industrial Development Authority of Henry County, adopted by the Board of Supervisors at a meeting held on August 22, 2023.

Date: August 22, 2023

[SEAL]

Dale Wagoner

Clerk of the Board of Supervisors
Henry County, Virginia

Adopted by the City Council of the City this 22nd day of August, 2023.

CERTIFICATE

The undersigned Clerk of the City Council of the City of Martinsville, Virginia hereby certifies that the foregoing constitutes a true and correct copy of a Joint Resolution of Henry County and the City of Martinsville Requesting that the Commission on Local Government Review Proposed Amended and Restated Revenue Sharing Agreements between Henry County, the City of Martinsville and Industrial Development Authority of Henry County, adopted by the City Council at a meeting held on August 22, 2023.

Date: 8\22, 2023

[SEAL]

Karen B Roberts

Clerk of the City Council
City of Martinsville, Virginia

AMENDED AND RESTATED
REVENUE SHARING AGREEMENT FOR
PATRIOT CENTRE EXPANSION

(Commonly known as the “Bryant Property”)

This Agreement is made and entered into this ____ day of _________________, 2023, and executed in quintuplicate originals (each executed copy constituting and original) by and between the County of Henry, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”), the City of Martinsville, Virginia, a municipal corporation of the Commonwealth of Virginia (the “City”), and the Industrial Development Authority of Henry County, a political subdivision of the Commonwealth of Virginia (the “Henry County IDA”).

WHEREAS, the parties to this Agreement previously entered into a Revenue Sharing Agreement dated September 25, 2007 (the “Original Agreement”), pursuant to Virginia Code Section 15.2-1301 (1950), as amended, provided for the sharing of certain revenue between the two localities; and,

WHEREAS, the Original Agreement related to two (2) separate industrial and business sites in Henry County, namely the Patriot Centre Expansion (Commonly known as the “Bryant Property”) in Collinsville Magisterial District and Commonwealth Crossing Business Centre in Ridgeway Magisterial District; and,

WHEREAS, the parties have determined that it would be appropriate to separate the Original Agreement into two (2) separate Agreements, each relating solely to one of specific sites identified above; and,

WHEREAS, the County and the City have determined that the economic growth and development of the region and the comfort, convenience, and welfare of their citizens require the development of industrial and business facilities; and,

WHEREAS, the County and the City have recognized that regional cooperation in industrial and business development will increase the opportunities for the localities to achieve a greater degree of economic stability; and,

WHEREAS, the County and the City have agreed that this Agreement will modify and supersede the Original Agreement as it relates to the joint development of industrial and business facilities in the County's Patriot Centre described in the attached Schedule "A"; and,

WHEREAS, the Patriot Centre Expansion will continue to be owned by the Henry County IDA; and,

NOW THEREFORE, in consideration of the mutual obligations and covenants set forth herein, the parties agree as follows:

1. The Henry County IDA agrees to use funds transferred to it pursuant to this Agreement to develop the Patriot Centre Expansion for industrial and business facilities as directed by the County and the City.
2. This Agreement does not obligate the City to expend any of its own funds to support the development of Patriot Centre Expansion; however, payment shall be made after the County is reimbursed for land, infrastructure costs, and operating expenses in excess of grant funds and after repayment of any cash incentives that may be paid by the County.
3. The parties agree that the County will be responsible for the marketing and the sale of sites within Patriot Centre Expansion.
4. The County agrees that when a business locates in Patriot Centre Expansion the County will pay to the City one-third of all revenues generated by the real estate, personal property, machinery and tools, and consumer utility taxes collected by the County from the business located on such site.
5. If the County sells more than 5% of the combined acreage within Patriot Centre Expansion to a non- taxpaying entity, the County must obtain the City's approval. While the City will not withhold its approval unreasonably, under certain circumstances the City may condition its approval upon the County compensating the City for the loss of revenues the City otherwise would have received if a taxpaying business had purchased the site.
6. The County's obligation to make any payments to the City pursuant to this Agreement shall be subject to the annual appropriation of sufficient funds by the County Board of Supervisors.
7. The County shall pay any portion of tax revenues due to the City within sixty (60) days of receipt.

8. This Agreement shall be binding upon and inure to the benefit of the County and the City, and each of the future governing bodies of the County and the City, and upon any successor to either the County or the City.
9. The parts and provisions of this Agreement are severable. If any part or provision shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.
10. The parties acknowledge that this Agreement incorporates all terms and conditions agreed to between them, and further agree that the Agreement may be amended, modified or supplemented, in whole or in part, by mutual consent of the County and the City, by a written document of equal formality and dignity duly executed by the authorized representatives of the County and the City.
11. The parties agree that, in accordance with Virginia Code Section 15.2-1301 A. (1950), as amended, each party to this Agreement shall, on or before March 1 of each year, provide a written report to each other party to this Agreement describing for the previous fiscal year (i) the amount of money transferred by such party to other parties to this Agreement and (ii) the use that such party made of such funds received under this Agreement.

WITNESS the following signatures and seals.

COUNTY OF HENRY, VIRGINIA,
a political Subdivision of the Commonwealth of Virginia

By: ___________________________________

Its: ___________________________________

CITY OF MARTINSVILLE, VIRGINIA,
a municipal Corporation of the Commonwealth of Virginia

By: ___________________________________

Its: ___________________________________

INDUSTRIAL DEVELOPMENT AUTHORITY OF HENRY COUNTY,
a political Subdivision of the Commonwealth of Virginia

By: ___________________________________

Its: ___________________________________

Approved as to form:

____
County Attorney

Approved as to form:

____
City Attorney

SCHEDULE A

A certain parcel of land lying in the Collinsville Magisterial District (formerly known as Martinsville) of Henry County and consisting of 1,206 acres, more or less, all as shown on a "Plat of Survey for Clayton C. Bryant Sr." dated August 9, 2006 and being the same property conveyed to Seller by deed dated May 9, 2006 and of record in the Henry County Circuit Court Clerk's Office as Instrument Number 060003051.

AMENDED AND RESTATED REVENUE SHARING AGREEMENT FOR COMMONWEALTH CROSSING BUSINESS CENTRE

This Agreement is made and entered into this ____ day of _________________, 2023, and executed in quintuplicate originals (each executed copy constituting an original) by and between the County of Henry, Virginia, a political subdivision of the Commonwealth of Virginia (the "County"), the City of Martinsville, Virginia, a municipal corporation of the Commonwealth of Virginia (the "City"), and the Industrial Development Authority of Henry County, a political subdivision of the Commonwealth of Virginia (the "Henry County IDA").

WHEREAS, the parties to this Agreement previously entered into a Revenue Sharing Agreement dated September 25, 2007 (the "Original Agreement"), pursuant to Virginia Code Section 15.2-1301 (1950), as amended, provided for the sharing of certain revenue between the two localities; and,

WHEREAS, the Original Agreement related to two (2) separate industrial and business sites in Henry County, namely the Patriot Centre Expansion (Commonly known as the "Bryant Property") in Collinsville Magisterial District and Commonwealth Crossing Business Centre in Ridgeway Magisterial District; and,

WHEREAS, the parties have determined that it would be appropriate to separate the Original Agreement into two (2) separate Agreements, each relating solely to one of specific sites identified above; and,

WHEREAS, the County and the City have determined that the economic growth and development of the region and the comfort, convenience, and welfare of their citizens require the development of industrial and business facilities; and,

WHEREAS, the County and the City have recognized that regional cooperation in industrial and business development will increase the opportunities for the localities to achieve a greater degree of economic stability; and,

WHEREAS, the County and the City have agreed that this Agreement will modify and supersede the Original Agreement as it relates to the joint development of industrial and business facilities in the County's Commonwealth Crossing Business Centre described in the attached Schedule “A”; and,

WHEREAS, the Commonwealth Crossing Business Centre will continue to be owned by the Henry County IDA; and,

NOW THEREFORE, in consideration of the mutual obligations and covenants set forth herein, the parties agree as follows:

1. The Henry County IDA agrees to use funds transferred to it pursuant to this Agreement to develop Commonwealth Crossing Business Centre for industrial and business facilities as directed by the County and the City.
2. This Agreement does not obligate the City to expend any of its own funds to support the development of Commonwealth Crossing Business Centre; however, payment shall be made after the County is reimbursed for land , infrastructure costs, and operating expenses in excess of grant funds and after repayment of any cash incentives that may be paid by the County.
3. The parties agree that the County will be responsible for the marketing and the sale of sites within Commonwealth Crossing Business Centre.
4. The County agrees that when a business locates in Commonwealth Crossing Business Centre the County will pay to the City one-third of all revenues generated by the real estate, personal property, machinery and tools, and consumer utility taxes collected by the County from the business located on such site.
5. If the County sells more than 5% of the combined acreage within Commonwealth Crossing Business Centre to a non- taxpaying entity, the County must obtain the City's approval. While the City will not withhold its approval unreasonably, under certain circumstances, the City may condition its approval upon the County compensating the City for the loss of revenues the City otherwise would have received if a taxpaying business had purchased the site.
6. The County's obligation to make any payments to the City pursuant to this Agreement shall be subject to the annual appropriation of sufficient funds by the County Board of Supervisors.

7. The County shall pay any portion of tax revenues due to the City within sixty (60) days of receipt.
8. This Agreement shall be binding upon and inure to the benefit of the County and the City, and each of the future governing bodies of the County and the City, and upon any successor to either the County or the City.
9. The parts and provisions of this Agreement are severable. If any part or provision shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.
10. The parties acknowledge that this Agreement incorporates all terms and conditions agreed to between them, and further agree that the Agreement may be amended, modified or supplemented, in whole or in part, by mutual consent of the County and the City, by a written document of equal formality and dignity duly executed by the authorized representatives of the County and the City.
11. The parties agree that, in accordance with Virginia Code Section 15.2-1301 A. (1950), as amended, each party to this Agreement shall, on or before March 1 of each year, provide a written report to each other party to this Agreement describing for the previous fiscal year (i) the amount of money transferred by such party to other parties to this Agreement and (ii) the use that such party made of such funds received under this Agreement.

WITNESS the following signatures and seals.

COUNTY OF HENRY, VIRGINIA,
a political Subdivision of the Commonwealth of Virginia

By: ______________________________

Its: ______________________________

CITY OF MARTINSVILLE, VIRGINIA,
a municipal Corporation of the Commonwealth of Virginia

By: ______________________________

Its: ______________________________

INDUSTRIAL DEVELOPMENT AUTHORITY OF HENRY COUNTY,
a political Subdivision of the Commonwealth of Virginia

By: ______________________________

Its: ______________________________

Approved as to form:

____
County Attorney

Approved as to form:

____
City Attorney

SCHEDULE A

Parcel I: All that certain tract or parcel of land situated in the Ridgeway District of Henry County, Virginia, as shown on a Record Plat for Eugene A. Eggleston and Sarah H. Eggleston, dated November 3, 1972, prepared by Marvin E. Scearce, CLS, containing 77.82 acres, more or less and being Tax Map #71.7(000)000/0l4A.

Parcel II: All those certain tracts or parcels of land situated in the Ridgeway District of Henry County, Virginia, as shown on a survey for The Price Estate, dated October 20, 1980, surveyed Jointly by Bakkum-Deloach & Assoc. and William S. May, Jr., being known as designated on said Plat as follows:

Lots #32, #33, #34, #35, #36, #37, #38, #39, #40, #41, #42, #43, #46, #4 7, #48, #49, #50, and #56

FIRST ADDENDUM TO
AMENDED AND RESTATED REVENUE SHARING AGREEMENT
FOR COMMONWEALTH CROSSING BUSINESS CENTRE

WHEREAS, the County of Henry, Virginia (the "County"), the City of Martinsville, Virginia (the "City") and Industrial Development Authority of Henry County (the "Henry County IDA") entered into a Revenue Sharing Agreement dated September 25, 2007 (the "Original Agreement"); and

WHEREAS, the parties have this date entered into an Amended and Restated Revenue Sharing Agreement for Commonwealth Crossing Business Centre (the "Amended Agreement"); and

WHEREAS, the Amended Agreement made provision for the sharing of revenues generated from certain taxes collected by the County from businesses locating in the County's Commonwealth Crossing Business Centre; and

WHEREAS, the parties have agreed to modify the Amended Agreement as set forth hereinafter to provide partial funding to Martinsville-Henry County Economic Development Corporation (the "EDC");

WITNESSETH, that for and in consideration of obligations set forth herein, the parties agree as follows:

1. Upon the conveyance of Lot 2 located in the Commonwealth Crossing Business Centre as shown on the attached Exhibit A to a third party, the parties agree that all real estate, personal property and machinery and tools taxes collected from the business and improvements on said site shall be paid according to the following schedule:

2.

a. Year 1: One-hundred percent (100%) of collected tax revenue shall be returned to the company/landowner pursuant to Enterprise Zone incentive laws. The remainder of such tax receipts shall be disbursed in accordance with the original terms of the Amended Agreement.
b. Year 2: Fifty percent (50%) of collected tax revenue shall be returned to the company/landowner pursuant to Enterprise Zone incentive laws. Ten percent (10%) of the remaining tax revenue shall be distributed to the EDC. The remainder of such tax receipts shall be disbursed in accordance with the original terms of the Amended Agreement.
c. Year 3: Fifty percent (50%) of collected tax revenue shall be returned to the company/landowner pursuant to Enterprise Zone incentive laws. Ten percent (10%) of the remaining tax revenue shall be distributed to the EDC. The remainder of such tax receipts shall be disbursed in accordance with the original terms of the Amended Agreement.
d. Year 4: Fifty percent (50%) of collected tax revenue shall be returned to the company/landowner pursuant to Enterprise Zone incentive laws. Ten percent (10%) of the remaining tax revenue shall be distributed to the EDC. The remainder of such tax receipts shall be disbursed in accordance with the original terms of the Amended Agreement.
e. Year 5: Fifty percent (50%) of collected tax revenue shall be returned to the company/landowner pursuant to Enterprise Zone incentive laws. Ten percent (10%) of the remaining tax revenue shall be distributed to the

EDC. The remainder of such tax receipts shall be disbursed in accordance with the original terms of the Amended Agreement.

f. Years 6 through 10: All rebates due pursuant to Enterprise Zone incentive law, if any, shall be paid to the company /landowner. Ten percent (10%) of the remaining tax revenue collected shall be distributed to the EDC. The remainder of such tax receipts shall be disbursed in accordance with the original terms of the Amended Agreement.

3. At the expiration of said ten (10) year period, the parties agree to negotiate in good faith a possible extension to this Addendum.

4. Except as modified herein, the terms of the Amended Agreement shall remain in full force and effect.

In witness whereof, the parties hereto execute this Addendum as of the ___ day of _____________, 2023.

County of Henry, Virginia

By: ______________________

City of Martinsville, Virginia

By: ______________________

Industrial Development Authority of Henry County

By: ______________________

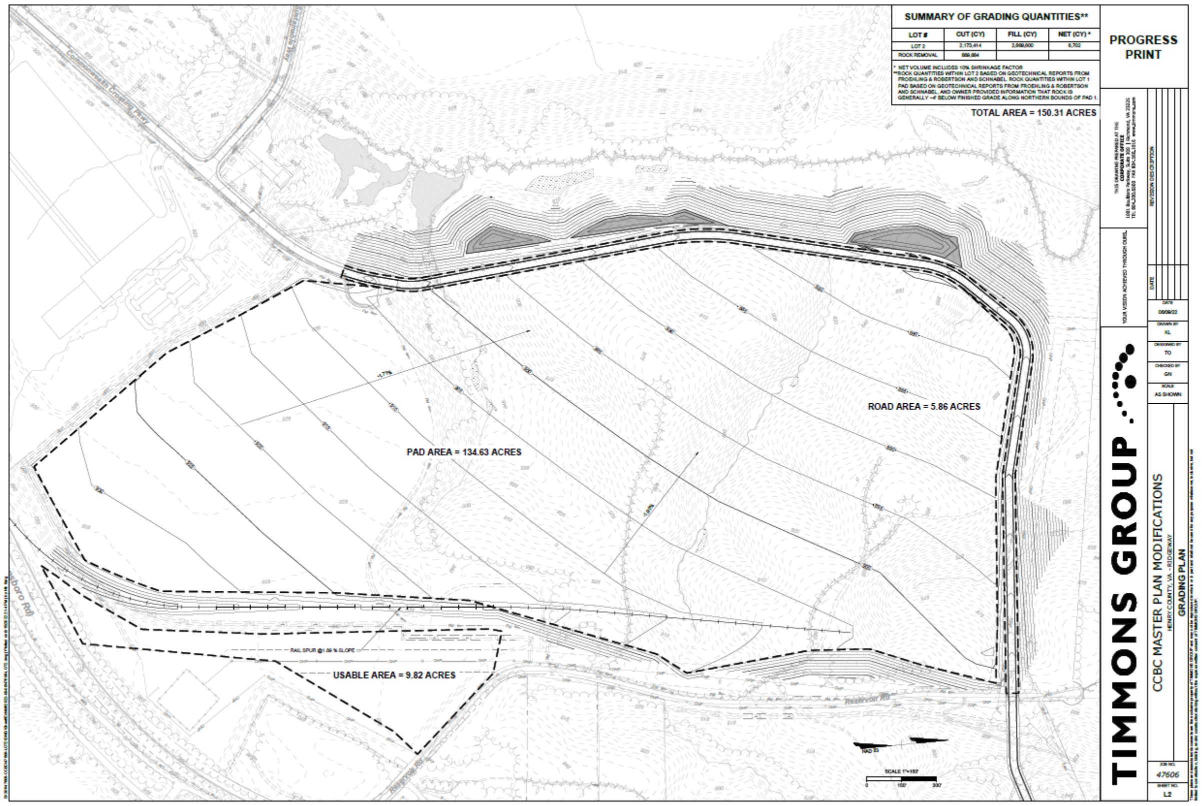
Approved as to form:

____
County Attorney

Approved as to form:

____
City Attorney

Exhibit A



SUMMARY OF GRADING QUANTITIES**
LOT # | CUT (CY) | FILL (CY) | NET (CY) *
LOT 2 | 2,173,414
ROCK REMOVAL
* NET VOLUME INCLUDES 10% SHRINKAGE FACTOR
**ROCK QUANTITIES WITHIN LOT 2 BASED ON GEOTECHNICAL REPORTS FROM FROEHLING & ROBERTSON AND SCHNABEL. ROCK QUANTITIES WITHIN LOT 1 PAD BASED ON GEOTECHNICAL REPORTS FROM FROEHLING & ROBERTSON AND SCHNABEL, AND OWNER PROVIDED INFORMATION THAT ROCK IS GENERALLY ~4' BELOW FINISHED GRADE ALONG NORTHERN BOUNDS OF PAD 1.
TOTAL AREA = 150.31 ACRES
PROGRESS PRINT
PAD AREA = 134.63 ACRES
ROAD AREA = 5.86 ACRES
USABLE AREA = 9.82 ACRES
TIMMONS GROUP
CCBC MASTER PLAN MODIFICATIONS
GRADING PLAN
47606

Report on the
City of Martinsville – Henry Country
Revenue Sharing Agreements

Commission on Local Government
Department of Housing and Community Development
Commonwealth of Virginia
www.dhcd.virginia.gov

November 2023

Table of Contents

Executive Summary

On August 28th, 2023, the Commission on Local Government (the "Commission") received a joint submission from Henry County (the "County") and the City of Martinsville (the "City") requesting that the Commission review two proposed Revenue Sharing Agreements (the "Agreements"). The proposed Agreements were developed pursuant to § 15.2-1301 of the Code of Virginia and regulations of the Commission on Local Government 1 VAC §§ 50-20-382 and 50-20-612. In accordance with the statute and regulations, the Commission is required to "investigate, analyze, and make findings of fact, as directed by law, as to the probable effect on the people residing in any area of the Commonwealth of any proposed action in that area." (§ 15.2-2903, 4.h).

The filing before the Commission is the result of a joint resolution passed by the Henry County Board of Supervisors and the Martinsville City Council on August 22nd, 2023 (Appendix C). The joint resolution incudes two economic growth sharing agreements. The first agreement is an amended and restated revenue sharing agreement for the Patriot Centre Expansion, an over 1,000-acre site known locally as the "Bryant Property" ("Patriot Centre Agreement"). The second is a restated and amended revenue sharing agreement for Commonwealth Crossing, an industrial site located next to US-220 S at the Virginia/North Carolina state line with an amendment outlining specific terms for Lot 2 (Appendix E), a 200-acre undeveloped site ("Commonwealth Crossing Agreement").

The Commission's findings of fact indicate that the Agreements will support the short- and long-term economic interest of the County and City (the "Parties"), stakeholders, and citizens in areas covered by the Agreements. The Commission recommends adoption of the Agreements as the proposed changes support sustained, meaningful investments in high impact economic development projects and meet its standard of review for economic growth sharing agreements.

The report that follows is the Commission's findings of fact and recommendations on the two Agreements. First, the report will overview the proceedings of the Commission. Second, it will describe the two Agreements and related stakeholders to the Agreements. Third, it will discuss the relevant standard of review and apply that standard to the Agreement through findings of fact on each. Finally, it will present its recommendations on the Agreements.

Proceedings of the Commission

On August 28th, 2023, the Commission on Local Government (the "Commission") received a joint submission from Henry County (the "County") and the City of Martinsville (the "City") requesting that the Commission review two proposed Revenue Sharing Agreements (the "Agreements"). The proposed Agreements were developed pursuant to § 15.2-1301 of the Code of Virginia and regulations of the Commission on Local Government 1 VAC §§ 50-20-382 and 50-20-612.[1] The Agreements represent amendments and restatements of the original 2007 Revenue Sharing Agreement (the "Original Agreement") between the Parties which proposed revenue sharing provisions for both the Patriot Centre Property and the Commonwealth Crossing Property (Appendix D). These Agreements separate the Original Agreement into two separate agreements, with the Patriot Centre Agreement governing revenue sharing from development of the Patriot Center Property and the Commonwealth Crossing Agreement governing revenue sharing from development of the Commonwealth Crossing Property, and additionally, modifies the Commonwealth Crossing Agreement to provide partial funding to the Martinsville-Henry County Economic Development Corporation (the "EDC").

The Commission heard testimony from Henry County on the Agreements at its regular meeting on September 8th, 2023. Staff and Commission members interviewed representatives separately from Martinsville and the Martinsville-Henry EDC to gather additional facts for this report.

This report was adopted at the Commission's November regular meeting and sent to the Parties for their consideration. The Agreements shall not become binding on the Parties until it has been adopted by ordinance by both Parties after a public hearing following the Commission's report. [2]

[1] The submission of Items related to these regulations can be found in Appendix A.

[2] Per § 15.2-1301, both the County and the City must conduct a public hearing following the Commission's report on the Agreements. Ony then can their respective elected bodies vote to adopt the provisions of the Agreements. Additionally, the public was able to comment on the resolution currently before the Commission as it was subject to a public vote from both localities' governing bodies.

Characteristics of Regional Economic Development Entities and Proposed Area for Revenue Sharing

Regional Economic Development Entities

The County and City have cooperated for decades in mutually beneficial economic development efforts. The main stakeholders relevant to the Commission's findings on the Agreements include the Martinsville-Henry County EDC, the nonprofit Harvest Foundation of the Piedmont (the "Foundation"), and the Industrial Development Authority of Henry County (the "IDA")

Martinsville-Henry County Economic Development Corporation

The EDC was created in 2004 as a public-private partnership between the Parties and the non-profit Harvest Foundation of the Piedmont, to support and develop local industry, create new job opportunities, and expand the tax base in the Martinsville-Henry County area. The EDC combines the economic development efforts of the City and County and enhances their ability to develop and market shovel-ready sites for growing companies.

The EDC's role is to market the sites and run the day-to-day economic development activities for the Parties. Additionally, it is the primary entity involved in marketing sites within the Patriot Centre and Commonwealth Crossing industrial areas, including the future occupant of Lot 2 at Commonwealth Crossing.

The EDC's is reliant on external revenue sources to fund its operating costs and activities. Historically, the EDC's revenue included investments from the County, City, and the local Chambers of Commerce. However, the EDC's operational funding has shifted over time, and the current bulk of the EDC's operational revenue stems from the Harvest Foundation. The Foundation provides approximately $2 million per year in current operational funding in addition to funding from the County (~$500,000/FY) and City (~$100,000/FY).

Harvest Foundation of the Piedmont

The Harvest Foundation of the Piedmont was created in 2004 following the sale of the Memorial Health System (Memorial Hospital of Martinsville). The funds created by the sale seeded the establishment of the Foundation, which is intended to inspire, invest in, partner with and support community initiatives in health, education, and community vitality within the region.

As part of its process to serve as stewards of the Foundation's resources and the surrounding region, the Foundation is in the process of reducing ongoing operational funding for the EDC by 5% per year. This tapering of operational funding in favor of one-time grants for specific projects will better serve the nature of the Foundation's budgetary constraints (where the funds it has in any given year are dependent upon proceeds of the Foundation's investments).

To supplement this loss of operational revenue, the Foundation proposed to the Parties modifying the Original Agreement to provide the EDC a share of the collected revenue. To further support the development of the Agreements, the Foundation has proposed a $6 million grant following the adoption of the Agreements by the Parties. This grant will provide critical matching dollars for a state grant enabling the EDC to grade Lot 2 within the Commonwealth Crossing property, which is critical for its marketability as a potential site for businesses.

Industrial Development Authority of Henry County

The Industrial Development Authority of Henry County, Virginia (the "IDA") is a legally separate, but component unit of government of Henry County.[3] The Henry County IDA promotes economic development by assisting businesses and providing bond financing (such as through the County's Enterprise Zone Program). Additionally, the IDA owns Henry County's industrial park properties, including the Commonwealth Crossing and Patriot Center Expansion areas. The County provided ~$4.3 million from its general fund for the IDA to conduct its economic development activities in FY22.

The IDA is a mechanism by which the County owns the industrial parks. Conversely, while the land in these areas is owned by the IDA of Henry County, the EDC is the primary entity responsible for managing and marketing these sites.

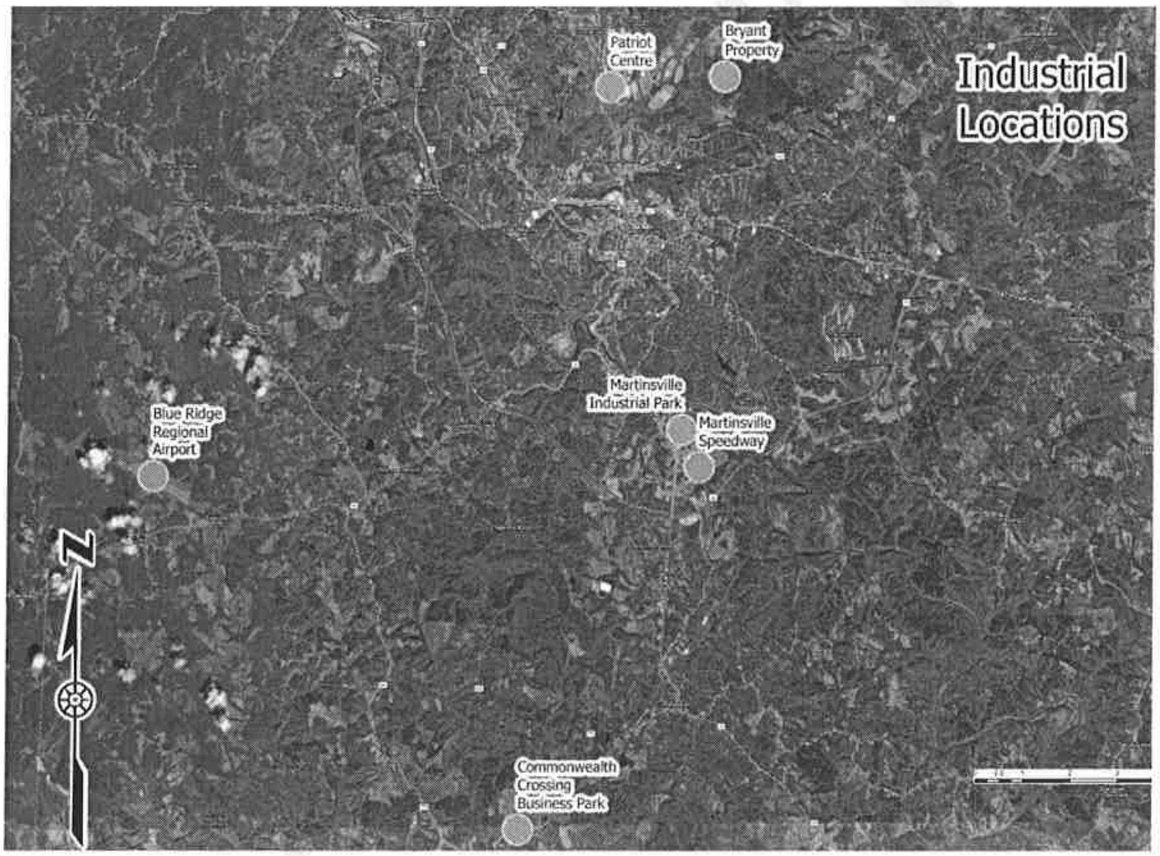
Proposed Area under the Agreements

The sites at the Patriot Center and Commonwealth Crossing are publicly owned by Henry County through its IDA. The Patriot Center is currently occupied by companies such as Eastman,

[3] The IDA is a legally separate organization; however, the Board of Supervisors of the County appoints all of the IDA's Board, and the County is legally obligated for the debts of the IDA.

Howmet Aerospace, Monogram Food Solutions, and Nautica. The 300 available acres at the Patriot Center (the "Bryant Property") is part of the County's long-term economic development plans. Commonwealth Crossing is a newer development that includes Press Glass, Crown Holdings, the Commonwealth Center for Advanced Training (CCAT), and the undeveloped 200-acre Lot 2. Press Glass has recently announced expanded operations (Appendix G) and the EDC has received interest from several companies to occupy Lot 2. The benefits of Commonwealth Crossing include acreage, water, an Appalachian Power substation, access to the Norfolk Southern main rail line, and access to US-220 (soon to be I-73).

Figure 1: Location of Industrial Sites in Henry Couty



Provisions of the Agreement

The City and County shared an Original Agreement for the Patriot Center and Commonwealth Crossing made in 2007 (Appendix D). This Original Agreement directed the IDA to use funds for expanding the Patriot Center (the "Bryant Property") and developing Commonwealth Crossing. The Original Agreement split tax revenues from the sites, proportional to the level of services the localities provide and their investments into developing the sites. The City of Martinsville received one-third of the revenue and Henry County received two-thirds. The terms of the agreement were identical for both the Patriot Center and Commonwealth Crossing.

The joint resolution offered by the Parties separates the Patriot Center and Commonwealth Crossing into the two Agreements, each with the same terms as the 2007 Original Agreement. In addition, those terms, the Commonwealth Crossing Agreement adds an amendment for Lot 2 which includes a tax incentive schedule for a company, funding to the EDC, and tax revenue sharing between the City and County. As displayed in Table 1, the amendment terms are as follows:

- In year 1, 100% of Lot 2's tax revenue is returned to the company according to Enterprise Zone laws.
- In years 2-5, 50% of the tax revenue is returned to the company. 10% of the remining revenue goes to the EDC (5% of total revenues), and the remaining revenue is split 2/3 to the County and 1/3 to the City (30% and 15% of total revenues, respectively).
- In years 6-10, any remaining rebates are returned to the company pursuant to Enterprise Zone laws. 10% of total revenue goes to the EDC, and the remaining revenue is split 2/3 to the County and 1/3 to the City (60% and 30% of total revenues, respectively).

The complete provisions of the agreement can be found in Appendix A.

Table 1: Table 1: Share of Total Revenue for Each Party for Commonwealth Crossing Lot 2 Amendment

Year	Lot 2 Company	EDC	County	City
Year 1	100%	0%	0%	0%
Year 2-5	50%	5%	30%	15%
Year 6-10	0%	10%	60%	30%

Standard of Review

The proposed Agreements were negotiated under § 15.2-1301, which enables any combination of counties, cities or towns to enter agreements to share in the benefits of the economic growth of their localities. However, the Commission must review these agreements and make their findings of facts and recommendations on them as to the probable effect of the action on the people residing in the affected areas.[4]

As such, the Commission reviewed the Agreements and the additional data elements necessary to make findings of fact and recommendations as to the impacts of these Agreements on the Parties, relevant stakeholders, and affected citizens in the area. In doing so, the Commission considered the specific short-term economic impacts of the Agreement. Furthermore, the Commission, as part of its' statutory intent to "ensure that all of its localities are maintained as viable communities in which their citizens can live," considered the impact of the Agreements' impact on the strength and viability of both communities as gauged by the long-term economic impacts.[5]

Outcomes

The primary outcomes of the Agreements are a return on investment for the Parties, an accelerated timeline for development at Lot 2 of Commonwealth Crossing, and a stable revenue stream for the EDC.

First, the Agreements will enable the Parties to recover their investments in site development. The updated Agreements separate the Patriot Center Expansion and Commonwealth Crossing because the latter is expected to produce revenue sooner. By separating the Patriot Center and Commonwealth Crossing Agreements, and by including a specific incentive/revenue sharing schedule for Lot 2, the localities will have greater certainty that a new company occupying Lot 2 can provide revenue in the near future.

The second outcome is an accelerated timeline for the development of Lot 2 of Commonwealth Crossing. The Agreements set into motion a Harvest Foundation grant to serve as matching funds for a state grant that will allow grading of the site to begin by April 2024. Fifty-seven (57) acres of Lot 2 are already graded, and funding as a result of the Agreements will help finish the shovel-ready pad (prominently 90 more acres). The grading is critical towards marketing the site to prospective companies who are concerned about their 'speed to market'.

Lastly, the Agreements provide a long-term, stable revenue stream for the EDC, enabling it to reduce its dependence on annual appropriations from the Parties and from the Harvest

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[4] Va. Administrative Code, 1VAC50-20-382, 2023.

[5] Va. Code Ann. § 15.2-2900 (2023).

Foundation. The Parties can use funds from the Agreement rather than continuing to draw from their general funds for economic development activities and to support the EDC. Annual revenues to the EDC will be impactful for the Harvest Foundation because it will be able to focus on other local priorities while continuing to fund the EDC through grants, which are easier to manage than annual commitments. Revenue for the EDC in this agreement will ensure that a portion of the money raised from the project is being reinvested back into more economic development activities.

Benefits and Costs for City and County

The primary benefit for the City and County in this agreement will be the quick recouperation of their investment into Commonwealth Crossing and the Patriot Center. Approximately $1.9 million has been invested to date by the City in Commonwealth Crossing.[6] Henry County has invested $7.9 million into the project. A breakdown of funding sources for Commonwealth Crossing can be found in Appendix F.

Projected revenue from Lot 2 alone will easily allow the City and County to recoup their investments. Based on a minimum $500 million capital investment into Lot 2, the Parties project about $2.5 million to the EDC over 10 years, $9.1 million to the City and $18.2 million to the County. Upper projections based on a $1.5 billion capital investment into Lot 2 are $81.9 million to the EDC, $27.3 million to the City, $54 million to the County over 10 years.[7] In addition, these revenues represent an expanded tax base for the City and County, allowing them to provide needed services without over-taxing residents.

The Commission found no immediate quantifiable costs for the City and County entering into the Agreements. However, some challenges that may come with a population influx as a result of additional jobs may include housing supply, school capacity, and the availability of services such as healthcare, public works, and social services. The Commission finds that the additional revenues generated as a result of the Agreements will effectively meet the growing needs of the community. The Parties testified that economic development in the region is not straining public services and it is part of a logical economic growth plan.

[6] Testimony from Leon Towarnicki, City of Martinsville
[7] Testimony from Mark Heath, MHCEDC

Benefits and Costs for Residents

The Parties have experienced positive growth in key areas over the last several years. According to the U.S. Census Bureau, the area has experienced 24% wage growth from 2019-2022, highest of any micro-population area in Virginia. This was in part caused by additional capital investment from Press Glass, who's expansion represents the largest single investment by a company in Henry County's history.[8]

The Agreements will enable future investment in Commonwealth Crossing in the form of additional capital and business investment. This investment coming to Lot 2 will bring additional high paying jobs to the area, benefiting current and future residents. These jobs are vital to support other businesses, retain talented young people in the region, and provide a foundation to continue a safe and vibrant community.

The Commission found no costs for residents of the City of Martinsville or Henry County. Furthermore, the public revenue from Lot 2 will also relieve residents from some of the tax burden for public services, enabling the City and County to meet the needs of schools and public works.

Allowing the Harvest Foundation flexibility to inject funding into the EDC via grants for specific projects, rather than yearly appropriation, will also have a positive impact on residents. The Harvest Foundation will be able to refocus on other community efforts such as healthcare, housing, education, and recreation, providing additional benefits for residents in the region.

Impact on Interests of the Commonwealth

While the applicable statues do not require the Commission to consider the interests of the Commonwealth in its review of revenue sharing agreements, this has been a vital consideration in the Commission's prior work on interlocal issues. The Commission's primary interests in this case are the viability of local governments and the promotion of orderly economic growth.

The Agreements promote the fiscal health of both Henry County and the City of Martinsville by allowing them to recoup their investments in recent economic development activities and through making strategic investments in their long-term economic development. Through making efforts to collaborate in economic development activities, the Parties, stakeholders and affected citizens will recoup direct and indirect benefits from such investments,

[8] Testimony from George Lyle, Henry County

and ultimately allow the localities to provide needed services without overburdening their local tax bases.

Findings of Fact and Recommendation

The Commission is authorized by Va. Code § 15.2-2903 "to investigate, analyze, and make findings of fact, as directed by law, as to the probable effect" of the proposed agreement on the people residing in that area. Accordingly, the Commission makes the following findings:

- The Agreements enable the EDC to grade Lot 2 of Commonwealth Crossing, making the site shovel-ready for a new company to operate.
- The Agreements provide long-term, stable revenue for the EDC, allowing them to continue economic development efforts in the region.
- The Agreements provide a return on investment for the City and County and expands their tax bases, allowing them to provide needed services without over-burdening residents.

The Commission's findings of fact indicate that the Agreements will support the short- and long-term economic interest of the County and City (the "Parties"), stakeholders, and citizens in areas covered by the Agreements. The Commission recommends adoption of the Agreements as the as the proposed changes support sustained, meaningful investments in high impact economic development projects and meet its standard of review for economic growth sharing agreements.

Concluding Comment

The Commission on Local Government recognizes the efforts put forth by the officials of the City of Martinsville and Henry County and the various stakeholders involved. The Commission finds that the proposed Revenue Sharing Agreements will continue the mutually beneficial arrangement of the Original Agreement and provide short- and long-term economic benefits to both localities while supporting the cooperative efforts of these localities to invest in the long-term strength and economic viability of their communities.

Respectfully submitted,

Ceasor T. Johnson, D.Min., Chair

Edwin S. Rosado, Vice Chair

Diane M. Linderman

Robert Lauterberg

Martinsville
A CITY WITHOUT LIMITS

City Council Agenda Summary

Meeting Date: November 28, 2023

Item No: 9.

Department: Community Development

Issue: Update of Aaron Mills Donation Agreement

Summary: In March 2020, City Council, acting as the Martinsville Land Bank Authority, adopted a resolution approving the donation of property at 201 & 209 Aaron Street to Aaron Street Lofts LLC for the purpose of developing affordable senior housing through Landmark Development. The transfer was contingent on receiving funds from Low Income Housing Tax Credits from Virginia Housing and Development Authority. Later that month, a national health emergency was issued due to COVID-19 and Landmark Development placed the project on hold. The project has been delayed of late due to supply chain issues but is ready to break ground in December or January. LIHTC funds have been secured and building plans have been approved.

The original donation period for construction has expired, so a new agreement needs to be approved by the Martinsville Landbank Authority. The developers have also asked for City consent to transfer the property to The Mid-Atlantic Foundation, a multi-state affordable housing non-profit group that assists developers to gain access to certain federal funds from HUD. Their request is to put a non-profit in the middle of the donation as this helps the project for tax purposes. (donations are like grants, and thus generate income, which decreases the benefits to the tax credit investor). Mid Atlantic Foundation is already a minor partner in the development, as they facilitated a loan that Aaron Street Lofts LLC received from the Federal Home Loan Bank.

How it would work is that the nonprofit receives the donation from the land bank, and then is required to immediately contribute it as partner contribution to Aaron Street Lofts, LLC – the entity which will own the apartments for the long term. These two property transfers will happen nearly simultaneously on closing day. Landmark Development has provided a letter of commitment from Mid-Atlantic Foundation to transfer the property back to Aaron Street Lofts LLC.

Landmark Development recently did the same thing in Pittsylvania County with the Southside School for an affordable housing project, as their Board of Supervisors had donated that property as well.

Attachments: Donation Agreement of 201 & 209 Aaron Street from Martinsville Land Bank Authority to Aaron Street Loft, LLC and Assignment of Donation Agreement between Aaron Street Lofts LLC to The Mid-Atlantic Foundation

Recommendations: Acting as the Martinsville Land Bank Authority, approve the donation agreement to Aaron Street Lofts LLC and Consent to the transfer agreement to assign the property to The Mid-Atlantic Foundation.

DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement"), dated November _____, 2023, by and between MARTINSVILLE LAND BANK AUTHORITY, a Virginia political subdivision ("Donor"), and AARON STREET LOFTS, LLC, a North Carolina limited liability company ("Donee").

WITNESSETH:

That for and in consideration of the sum of ten dollars ($10.00), and in further consideration of the mutual promises and conditions expressed below, Donor hereby agrees to donate to Donee, subject to the terms, conditions and provisions hereinafter stated, that certain real property located in the City of Martinsville, Commonwealth of Virginia more particularly described on **Exhibit A** attached hereto and incorporated herein (the "Property").

NOW, THEREFORE, the parties hereto agree each with the other as follows:

1. Term. The term of this Agreement shall commence on the date hereof and shall continue through and until March 31, 2024.

2. Inspections. Donee shall have the right to enter upon and inspect the Property, at Donee's expense, at any reasonable time and for any purpose, at any time prior to the Closing (defined below). In connection therewith, Donee, its agents, employees or other representatives shall have the right to enter upon the Property for the purpose of making such surveys, engineering, topographical, grading, geological, environmental and other tests and measurements including, but not limited to, topographical and boundary surveys, title searches, soil tests, percolation tests and subsoil tests (collectively, "Studies"), as Donee deems necessary or advisable, without cost to Donor. Donee agrees to indemnify against and hold Donor harmless from any claims, demands, damages, losses, liabilities, suits, actions, costs and expenses, including, without limitation, reasonable attorney's fees, arising out of or in connection with or related to any entry upon the Property by Donee, or any agents, contractors, or employees of Donee. If Closing does not occur, Donee, at its own expense, shall promptly repair any damage to the Property caused by any of its Studies. Donor agrees to provide reasonable cooperation and assistance to Donee in connection with any such inspections. If the results of any such inspection shall be unsatisfactory to Donee, in Donee's reasonable discretion, then Donee shall give written notice to Donor of such objections, and, within fifteen (15) business days of Donor's receipt of such notice, Donor shall deliver to Donee written notice of Donor's intention to either (i) remediate such objectionable conditions to Donee's reasonable satisfaction or (ii) refuse to remediate such objectionable conditions. In the event that the Donor refuses to remediate such objectionable conditions or, after notifying Donee of its intention to do so, fails to timely and satisfactorily remediate such conditions, then Donee, in its sole discretion, shall have the option of terminating this Agreement at any time prior to Closing by giving written notice to Donor.

3. Donor's Representations and Warranties. Donor makes the following representations and warranties which are limited to the best of its knowledge (including only the direct knowledge of the undersigned) and true as of this date and, except as caused by any act or omission of Donee, shall remain true at Closing:

(a) There are no parties presently in possession of any portion of the Property, and at Closing, possession of the Property will be delivered to Donee free and clear of any rights of any parties in possession;

(b) There is no pending, nor to the best knowledge of Donor, threatened, litigation or administrative proceeding by or against Donor which could adversely affect title to the Property or any part thereof, or the ability of Donor to perform any of its obligations hereunder;

(c) Donor has received no written notice of any pending action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof. Donor shall, promptly upon receiving any such notice, give Donee written notice thereof;

(d) Donor has received no written notice of any action, suit or proceeding pending or threatened in writing against, by or affecting Donor's right to transfer the Property or the title of the Property;

(e) At Closing, Donor shall terminate, and be responsible for any payments due with respect thereto, all its contracts affecting the Property, unless Donee agrees to assume any such contracts; and

(f) There are no unwritten or unrecorded leases, easements, licenses, or agreements of any kind or nature which grant any rights whatsoever to any individual(s) or entity(ies) with respect to the Property.

4. Donation. Donee, subject to (a) completion of and satisfactory results from such inspections relating to the Property as it deems necessary in its full and absolute discretion, (b) receipt of such financing as Donee deems sufficient, in its sole discretion, to finance the rehabilitation of the site (collectively, the "Donation Conditions"), agrees to accept the donation of the Property from Donor on the terms and conditions set forth herein. Notwithstanding anything to the contrary herein, in no event shall any attempted donation of the Property to Donee be effective unless and until all of the Donation Conditions have been satisfied to Donee's satisfaction, in its sole discretion, or such Donation Conditions have been waived by Donee, and Donee has expressly consented in writing its acceptance of the donation of the Property, which consent must be included within the Deed to Donee prior to recordation. If Donee accepts the donation of the Property, the condition of the Property shall be conveyed to Donee as-is, where-is and with all faults.

5. Abatement of Environmental Conditions After Donation. Upon Donee's acceptance of transfer of title, neither Donee, nor any assignee of Donee nor any subsequent purchaser or title holder of the property shall have any claims against Donor of any kind, nature or description arising from or on account of any condition of the land, subsurface waters or structures thereon or substances on such land, subsurface waters, structures or debris on such land or in the air in or on or above such property. Donor shall not be responsible for or required to pay for abatement, removal, remediation or treatment of any condition of the property caused or occasioned by the presence of any controlled or prohibited substances including environmentally hazardous materials or debris on the premises.

6. Closing Date. Closing (the "Closing") on the donation of the Property shall be on the business date selected by Donee, not more than sixty (60) days following the end of the Term.

7. Title. Donor shall deliver to Donee at Closing a special warranty deed in recordable form with all required excise stamps affixed conveying marketable, fee simple title, free and clear of all liens and encumbrances, save and except only easements and restrictions of record. Except as consented to by Donee, Donor shall do nothing hereafter which impairs such title to the Property.

8. Closing Costs. At Closing, Donee shall pay all closing costs relating to the donation of the Property to Donee, other than the cost of the deed preparation, any costs associated with clearing the title to the Property of any liens, and any counsel fees for counsel employed or retained by Donor. Donee shall pay for the title examination, title insurance policy, survey, recording fees, for any counsel fees Donee incurs in the transaction, and for any other due diligence desired by Donee. General and special real estate taxes, assessments and other state, county or city taxes affecting the Property shall be prorated as of the date of Closing based upon the amount of the most recent ascertainable taxes for the Property.

9. Closing Documents. At Closing, Donor will execute, acknowledge and deliver to Donee a special warranty deed with applicable tax exemptions noted thereon conveying title as hereinbefore required, and will deliver a lien and possession affidavit in form and content satisfactory to Donee's title insurance company, evidence satisfactory to Donee's title insurance company of the authorization of the donation by the Donor and the authority and power of the individual(s) executing the deed on behalf of Donor, and such other papers and documents as may be reasonably requested by Donee or its title insurance company in connection with the completion of the Closing, including any evidence of the status and capacity of the Donor and the authority of the person or persons who are executing the various documents on behalf of the Donor in connection with the sale of the Property.

10. Possession. Possession of the Property shall be delivered to Donee at Closing.

11. Notices. Any notice or other communications hereunder shall be in writing and shall be deemed to have been given (unless otherwise set forth herein), if delivered in person, deposited with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested, to the other party at the following addresses, or to such other address as shall be later provided in writing by one party to the other:

As to Donor:

City Manager
City of Martinsville
55 W. Church Street
Martinsville, VA 24112

As to Donee:

Aaron Street Lofts, LLC
401 E 4th Street, Suite 203
Winston Salem, NC 27101
Attn: Vice President

12. Entire Agreement. This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all the parties. Any and all references herein to the Donor or Donee shall be deemed to include their respective successors or permitted assigns.

13. Assignment. The rights of Donee hereunder may be assigned at any time by Donee. The rights of Donor may not be assigned without the prior written consent of Donee.

14. Authority. Donor represents and warrants that Donor has full power and authority to enter into this Agreement and to perform all of its obligations hereunder, and that its acts hereunder and as contemplated have been duly authorized by all requisite municipal action.

15. Governing Law. This Agreement shall be governed in all respects by and construed under the laws of the Commonwealth of Virginia.

16. Failure to Close. In the event Donor wrongfully fails to consummate the Closing and donate the Property as provided herein, Donee shall be entitled to seek enforcement of this Agreement by specific performance.

17. Miscellaneous. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition. This Agreement constitutes the entire agreement of the parties which incorporates and supersedes all prior written and oral understandings. This Agreement shall be binding upon, and inure to the benefit of, the parties, their heirs, executors, personal representatives, nominees, successors or assigns.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

[SEPARATE SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Donor and Donee, intending to be legally bound, have executed this Agreement as of the day and year first above written.

DONOR:

MARTINSVILLE LAND BANK AUTHORITY,
a Virginia political subdivision

By: ________________________________
Name:
Title: Executive Director

DONEE:

AARON STREET LOFTS, LLC, a North Carolina limited liability company

By: Aaron Street Lofts MM, LLC, Managing Member

By: Landmark Asset Services, Inc., Managing Member

By: ________________________________
Name: Samuel J. Sari
Title: Vice President

EXHIBIT A

All that certain lot or parcel of land, together with any improvements thereon, situated on the Northeast side of Aaron Street, on the Southeast side of Broad Street, and on the Southwest side of the Norfolk and Southern Railway, lying and being in the City of Martinsville, Virginia, and more particularly described as follows:

"Tract 1A-R" containing 3.449 acres and "Tract 1A-S" containing 2.907 acres, as shown on Plat of Survey entitled "L & H Enterprises of Virginia, Inc.," prepared by Terry A. Waller, LLS, dated July 19, 1993, and recorded in the Clerk's Office of the Circuit Court for the City of Martinsville, Virginia, in Map Book 21, page 194 and Map Book 22, page 104; and

Being in all respects the same lots or parcels of land conveyed to Jeb Stuart Auction Services, LLC, from C & S Property Management Company, Inc., a Virginia Corporation, by deed dated February 5, 2014, of record in the Martinsville Circuit Court Clerk's Office as Instrument Number LR1400139. Specific reference is hereby made to the aforesaid deed and plat for a more particular description of the property herein conveyed.

ASSIGNMENT OF DONATION AGREEMENT

FOR VALUE RECEIVED, Aaron Street Lofts, LLC, a North Carolina limited liability company ("Assignor") hereby assigns to The Mid-Atlantic Foundation, a North Carolina nonprofit corporation ("Assignee") all of its right, title, and interest in and to that certain Donation Agreement dated November ____, 2023 by and between Assignor and the Martinsville Land Bank Authority, a Virginia political subdivision (the "Authority") relating to an agreement by the Authority to donate certain real property located in Martinsville, Virginia (the "Property"), such assignment to be effective as of __________________, 2023. In consideration of the assignment effectuated hereby, the Assignee agrees to contribute the Property to Assignor as a capital contribution immediately following the donation of the Property by the Authority to the Assignee.

ASSIGNOR:

AARON STREET LOFTS, LLC

By: Aaron Street Lofts MM, LLC, Managing Member

By: Landmark Asset Services, Inc., Managing Member

By: ______________________________________
Samuel J. Sari, Vice President

ASSIGNEE:

THE MID-ATLANTIC FOUNDATION

By: ____________________________________
David Weil, President

CONSENTED TO:

MARTINSVILLE LAND BANK AUTHORITY

By: ______________________________________
Name: ____________________________________
Title: Executive Director