

MEMORANDUM

TO: City Council

FROM: Alfred D. Lott
City Manager

SUBJECT: Approval of a Memorandum of Understanding Amending the Northern Array Solar Power Purchase Agreement Between the City of Bowie and Tesla Energy Operations, Inc. – Resolution R-5-20

DATE: January 06, 2020

On January 5, 2015, the City Council approved Resolution R-8-15 to piggyback on a Montgomery County contract with Tesla Energy Operations, Inc. (f/k/a SolarCity Corporation¹) (“Tesla”) to enter into two Power Purchase Agreements (“PPA”) between the City of Bowie (“City”) and Tesla to install two Solar Arrays (herein “Northern Array and Southern Array”) on the City owned Entzian Property located at 18509 Central Avenue, Mitchellville, Md.

Each PPA was designed to qualify for aggregate net energy metering² (“ANEM”) as authorized under Section 20.50.10.07 of the Code of Maryland Regulations. Although, the systems would be interconnected to the electrical grid and feed directly into it, the City would continue to receive its electricity from the grid and offset its utility bills through ANEM on a kilowatt-hour-for-kilowatt-hour based on the electricity generated by the two systems. Each system was designed to generate 3,069,000 kilowatt-hour (“kWh”) in renewable energy per contract year. The PPAs were intended to reduce the City’s electricity costs and achieve the reduction of conventional centralized electricity generation serving City facilities by meeting 20% of those buildings’ electricity demand with distributed, renewable energy generation by 2022.

Due to various reasons, neither arrays have been built. Most recently, Tesla raised concerns about P.G. County’s code provision requiring the installation of non-combustible base under and around solar arrays, and the qualification of the arrays for ANEM. Therefore, to move this project ahead, the City and Tesla have negotiated a Memorandum of Understanding (“MOU”) amending the PPA for the Northern Array. The City and Tesla have agreed to move forward with the installation of the Northern Array pending BGE interconnection application, and the City’s cooperation and support of Tesla in seeking relief from the County’s requirement of the use of non-combustible base under and around

¹ On November 21, 2017, SolarCity Corp. and Tesla, Inc. merged to form one company under the legal name of Tesla, Inc. Notwithstanding, all agreements entered into by SolarCity Corp. will continue to be honored by Tesla, Inc. and will continue to be under the name SolarCity Corp, a wholly owned subsidiary of Tesla, Inc.

² Net energy metering means measurement of the difference between the electricity that is supplied by an electric company and electricity that is generated by an eligible customer-generator and fed back into the electric grid over the eligible customers generators billing cycle as defined by 2013 MD Code §7-306.

the array. The City and Tesla have also agreed to suspend performance of the PPA applicable to the Southern Array for up to three years from the effective date.

Staff Recommendation

The staff recommends the Council approval of Resolution R-05-20, the Memorandum of Understanding amending the Northern Array Solar Power Purchase Agreement. The staff recommends the approval of this resolution because the MOU will advance the construction of the Northern Array which will have positive environmental impacts and economic benefits, will reduce the carbon footprint of the City by a considerable amount, and will further support Resolution R-45-14, "Expand the Use of Renewable Energy Generation within Bowie, Partnering with the Maryland Energy Administration, and Creating a Policy Concerning Renewable Energy Generation."

ADL/mb

**RESOLUTION
OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
APPROVING A MEMORANDUM OF UNDERSTANDING AMENDING THE
NORTHERN ARRAY SOLAR POWER PURCHASE AGREEMENT BETWEEN THE
CITY OF BOWIE AND TESLA ENERGY OPERATIONS, INC.**

WHEREAS, the City of Bowie (hereafter designated “City”) is the owner of a parcel of land consisting of approximately 121 acres located at 18509 Central Avenue, Mitchellville, Maryland 20716; and

WHEREAS, on January 5, 2015 the City approved Resolution R-8-15 to piggyback on a Montgomery County contract with Tesla Energy Operations, Inc. (f/k/a SolarCity Corporation) (“Tesla”) to enter into two Solar Power Purchase Agreements (herein designated “PPAs”) to install two solar arrays on this property; and

WHEREAS, each system described in the PPAs was designed to qualify for aggregate net energy metering (“ANEM”) as authorized under Section 20.50.10.07 of the Code of Maryland Regulations; and

WHEREAS, one PPA called for the installation of a solar photovoltaic system on the northern portion of the Entzian Property (the “Northern Array”), and one PPA called for installation of a solar photovoltaic system on the southern portion of the Entzian Property (the “Southern Array”); and

WHEREAS, both arrays would be interconnected to the electrical grid and feed directly into the electrical grid, and the City would still continue to get its electricity from the grid; and

WHEREAS, the City would offset its utility bills through ANEM on a kilowatt-hour-for-kilowatt-hour basis based on the electricity generated by the two systems; and

WHEREAS, the PPAs are intended to reduce the City’s electricity costs because the rates agreed upon in the PPAs are less than the City’s utility rates; and

WHEREAS, the installation of the Northern and Southern Arrays have been delayed for several years; and

WHEREAS, Tesla has raised concerns about (a) a Prince George’s County code provision requiring the installation of a non-combustible base (*i.e.*, gravel) under and around solar arrays, and (b) the possibility that only one of the solar energy systems contemplated by the PPAs may qualify for the ANEM due to a state regulatory question; and

WHEREAS, Tesla and the City have agreed to move forward with the installation of the Northern Array pending BGE interconnection application; and

WHEREAS, the City will cooperate and support Tesla in seeking relief from the County’s requirement of the use of the non-combustible base; and

WHEREAS, Tesla and the City have agreed to suspend performance of the PPA applicable to the Southern Array for up to three years from the Effective Date; and

WHEREAS, there is an environmental and economic benefit to the residents of the City of Bowie to install these solar arrays; and

WHEREAS, this project benefits the environment and reduces the carbon footprint of the City by a considerable amount; and

WHEREAS, the construction of the Northern Array will further support Resolution R-45-14 which states “Expand the Use of Renewable Energy Generation within Bowie, Partnering with the Maryland Energy Administration, and Creating a Policy Concerning Renewable Energy Generation.”

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bowie, Maryland, that the City Manager is hereby authorized to execute the attached memorandum of understanding to the Solar Power Purchase Agreement approving the modifications.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a meeting on January 06, 2020.

ATTEST:

THE CITY OF BOWIE, MARYLAND

Awilda Hernandez
City Clerk

Timothy J. Adams
Mayor

TESLA ENERGY OPERATIONS, INC. AND THE CITY OF BOWIE

THIS MEMORANDUM OF UNDERSTANDING is made this ____ day of _____, 2019 (the “**Effective Date**”), by and between the City of Bowie (hereinafter, “the **City**”), a Maryland municipal corporation, and Tesla Energy Operations, Inc. f/k/a SolarCity Corporation (“**Tesla**”), a Delaware corporation (each, a “**Party**” and together, the “**Parties**”).

Explanatory Background

In June 2015, Tesla Energy Operations, Inc. (f/k/a SolarCity Corporation) (“**Tesla**”) and the City of Bowie (the “**City**”) entered into two Solar Power Purchase Agreements (as amended from time to time, the “**PPAs**”), under which two separate solar photovoltaic systems were to be installed by Tesla on City-owned property located at 18509 Central Avenue, Mitchellville, Maryland (the “**Entzian Property**”). The two systems described in the PPAs were designed to qualify for aggregate net energy metering (“**ANEM**”) as authorized under Section 20.50.10.07 of the Code of Maryland Regulations (“**COMAR**”).

One PPA called for the installation of a solar photovoltaic system situated on the northern portion of the Entzian Property (the “**Northern Array**”). The other PPA called for the installation of a solar photovoltaic system of a similar size situated on the southern portion of the Entzian Property (the “**Southern Array**”). Pursuant to the PPAs, the City would purchase electricity generated by the solar energy systems from Tesla at the rate agreed upon in the PPAs.

Under the PPAs, the two systems would be interconnected to the electrical grid and feed directly into the electrical grid. The City would continue to receive its electricity from the grid, but would offset its utility bills through ANEM on a kilowatt-hour-for-kilowatt-hour basis based on the electricity generated by the two systems. For each kilowatt-hour the solar energy systems produce, the City’s utility bills would be reduced by the same number of kilowatt hours. The PPAs are intended to reduce the City’s electricity costs because the rates agreed upon in the PPAs are less than the City’s utility rates.

For various reasons, installation of the Northern Array and Southern Array has been delayed for several years, with contract performance deadlines being extended by agreement of the Parties. Neither array has been installed. Most recently, Tesla raised concerns about (a) a Prince George’s County code provision requiring the installation of a non-combustible base (*i.e.*, gravel) under and around solar arrays; and (b) the possibility that only one of the solar energy systems contemplated by the PPAs may qualify for ANEM due to a state regulatory question.

Agreement

In order to address the foregoing concerns relating to the performance of the PPAs, Tesla and the City hereby agree as follows:

1. Tesla will move forward in performing under the PPA for the installation of the Northern Array only and will submit a new interconnection application for the Northern Array to Baltimore Gas & Electric Company (“**BGE**”) on or before the day that falls forty-five (45) days after Effective Date. Thereafter Tesla will use its commercially reasonable efforts to advance the

interconnection application. Tesla has advised the City that it anticipates that approval of the interconnection application by BGE may take up to six months. However, the Parties acknowledge that BGE controls the timing and processing of the interconnection application.

2. With the cooperation and reasonable support of the City, Tesla shall seek relief from the County's requirement to use non-combustible base ("**Noncombustible Base Requirement**") for the Northern Array pursuant to a variance procedure or another lawful means of obtaining an exemption (or clarifying the already-exempt status) for the Northern Array. If Tesla is unable to obtain relief from the Noncombustible Base Requirement for the Northern Array, Tesla shall notify the City of any such decision by the County promptly, and within twenty-one (21) days after the County's decision, shall notify the City of any contractual modification it believes is necessary to complete the installation of the Northern Array (provided that such notice may be preliminary and may also include a forecast of potential additional changes to arise from repermitting). No change to the PPA rate or any other contractual modifications will be made except by written amendment executed by both Parties.

3. The Parties further agree to temporarily suspend Tesla's obligations (as applicable under the PPA) to meet the contract performance deadlines under the PPA applicable to the Northern Array, including the Outside Commercial Operations Date. Within fourteen (14) days after BGE makes its determination with respect to the new interconnection application, Tesla and the City shall agree to new reasonable contract performance deadlines for completion of the Northern Array. All such performance deadlines shall be memorialized by written amendment executed by both Parties.

4. Additionally, promptly after Tesla receives BGE's interconnection upgrade determination with respect to the new interconnection application for the Northern Array, Tesla shall notify the City whether it believes any other contractual modifications are necessary to complete the installation of the Northern Array, and will provide such proposed modifications within twenty-one (21) days after such BGE determination. No change to the PPA rate or any other contractual modifications will be made except by written amendment executed by both Parties.

5. (a) The Parties further agree to suspend performance of the PPA applicable to the Southern Array for up to three years from the Effective Date, while the City, with the support of Tesla with respect to providing information regarding the Projects only, seeks clarification reasonably satisfactory to both Parties, through regulatory or legislative means, that, if both the Northern the Southern Array are built as contemplated in the PPAs, both arrays will qualify for ANEM. Tesla will not take a position in contravention of the City's efforts in any communications with any member of the State legislature, whether directly in connection with the City's Project or otherwise, during the three year suspension period.

(b) If the City is able to obtain such clarification, then the Parties agree to negotiate necessary adjustments for the PPA for the Southern Array, including: (i) procedures regarding non-combustible base and related contract changes substantially similar to those in Section 2; (ii) extensions of Tesla's deadlines to accommodate the BGE interconnection process and related contract changes, substantially similar to those in Section 3 and 4; and (iii) with the satisfaction of the procedures in romanettes (i) and (ii), new deadlines for Tesla's construction of the Southern

Array. Subject to the clarification in Section 5 and the satisfaction of the procedures in this Section 5(a), Tesla will proceed with construction of the Southern Array.

(c) If the City is unable to provide reasonable assurance within three years of the Effective Date that the Northern Array and the Southern Array collectively will qualify for ANEM, then the Southern Array will not be installed and the PPA applicable to the Southern Array shall be terminated without liability to either Party.

6. Except as expressly provided in this Agreement, the PPAs are not modified by this Agreement, and terms of the PPAs remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

WITNESS:

THE CITY OF BOWIE

Awilda Hernandez, City Clerk

By: _____
Alfred Lott, City Manager

WITNESS/ATTEST:

TESLA ENERGY OPERATIONS, INC.

By: _____