

July 26, 2022 Council Meeting

The regular meeting of the Council of the City of Martinsville, Virginia was held on July 26, 2022 in Council Chambers, Municipal Building, at 7:00 PM with Mayor Kathy Lawson presiding. Other Council Members present included Danny Turner, Chad Martin, Jennifer Bowles and Tammy Pearson. Staff present included City Manager Leon Towarnicki, Public Information Officer Kendall Davis, Community Development Manager Mark McCaskill, Utilities Director Durwin Joyce, and Deputy Police Chief Rob Fincher.

Mayor Lawson called the meeting to order and welcomed everyone to the meeting. Lawson lead the pledge to the flag and invocation.

Hear an overview of the July 25, 2022 Druid Hills/Uptown neighborhood tour and meeting – City Manager Towarnicki summarized the Druid Hills and Uptown neighborhood tour and meeting. Council Member Turner spoke about property at the corner of Cherokee Court and Cherokee Trail, stating that he filed a petition with the Circuit Court to appoint a panel to look into that. This will be a long process with no solid results at the end. Turner said the City has the authority under Section 15.5-21, Ordinance 95-11 to clean this property up, however the ordinance gives discretionary authority to the City Attorney and the Building Inspector who will not do anything. Turner made a motion that a majority Council be able to waive this discretionary authority, requiring the Attorney or Inspector to have the necessary clean-up done. Mayor Lawson asked if Turner would like that added to the next agenda. Turner said he had made a motion and would like to see some action tonight. Council Member Pearson seconded the motion. Mayor Lawson explained that she didn't have enough information to make that decision. Vice Mayor Bowles said she would like the opportunity to research the implications of removing that discretionary authority, Bowles said having just heard the request today does not give her enough time to consider every angle. Turner explained what is spiteful is for the City to approve an ordinance with an "out" clause at the bottom so that the City Attorney or Inspector won't have to do anything. Turner explained that the City can clean this up and avoid a bad and potentially expensive situation. Bowles made an amendment to table the motion until the next Council meeting. Mayor Lawson would like the opportunity to review the ordinance and if there are amendments needed then she'll be happy to discuss that at the next meeting. Turner agreed to table the topic until the next meeting. Bowles requested information at the next meeting as why the issues viewed from the street could not be addressed at this same location. Turner thanked Vice Mayor Bowles for meeting with local citizens with him to discuss the kudzu concern. Bowles said she would forward the pictures she took at that location to the City Manager for follow-up.

Consider approval of a revised power purchase agreement for the City's participation in a solar energy project at the former Lynwood golf course – City Manager Towarnicki reminded Council that this was discussed at the previous Council meeting. Utilities Director Durwin Joyce introduced Garrett Cole of GDS & Associates who discussed increased prices in products, services, and power. Cole presented a PowerPoint and shared that they had

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experienced a number of supply chain and COVID disruptions causing significant project delays. They are pressed for time to purchase the property so a timely decision from Council whether to go forward with this project is vital. Council Member Turner believes that it would be in the best interest of the citizens to re-shop this program to get a better deal. Cole agreed that everyone wants the best price but unfortunately if they take it back to market to get other quotes then they could potentially lose the agreement to purchase the land. Turner does not want to take the deal that the contractor has “reneged” on and feels they are trying to get more money from the citizens. Cole reminded Turner that the City does not have the land, the opportunity to acquire the land is between the property owners and the solar company and that offer runs out in October of this year. Mayor Lawson said she thought it odd that this company could not get the materials while there are acres and acres of solar panels in Pittsylvania County; these are similar panels so she would like to know why other solar companies have access to the solar panels but our contractor does not. Joyce stated that those solar panel farms in Pittsylvania were started before COVID and did not run into the supply issues that Martinsville’s company has experienced. Cole says the City is welcome to re-shop but at that time the land may be sold to another entity and the pricing may be no lower than what is being offered to Martinsville now. Vice Mayor Bowles asked if Cole had explored other options for Martinsville. Cole confirms that they have “spot checked” pricing with other developers and it seems to be about the same as Martinsville’s original agreement. Vice Mayor Bowles said she is not comfortable voting at tonight’s meeting and requested that this discussion be pushed off until the next meeting. Cole confirmed that holding off until the next Council meeting to decide will still fall within the needed timeframe. Mayor Lawson also expressed her desire to hold off until the next Council meeting. The original agreement made in 2020 was \$45 per megawatt hour vs \$60 per megawatt hour now. Lawson explained that if they chose to re-shop the contract, then Turner is assuming that the City would have access to the property but after October, there are no guarantees. City Manager Towarnicki explained when the City advertised the RFP for the solar project originally, there were 26 proposals, many of which were unviable. Mayor Lawson requested again for the topic to be carried over to the next Council meeting. Cole said when COVID took place, there was a national supply chain challenge on the solar panels. They’ve had a delay and excessive inflation and this is the way the cost of products has moved, it’s not specific to any item or supplier. 6-12 months before and there would have not been any issues and the project would be on schedule. Vice Mayor Bowles made a motion to carry the discussion over until the next Council meeting; Council Member Martin seconded the motion. Cole stating that he does not see where the company is in default of the agreement to the City. Vice Mayor Bowles asked to close the debate/called the question. All Council Members voted in favor.

FIRST AMENDMENT TO SOLAR PROJECT POWER PURCHASE AGREEMENT

This First Amendment to Solar Project Power Purchase Agreement (this “**Amendment**”) is entered into and effective on [●], 2022 (the “**Effective Date**”) by Martinsville Solar, LLC, a Delaware limited liability company (“**Seller**”) and the City of Martinsville, Virginia, a public body established under the laws of the Commonwealth of Virginia (“**Buyer**,” and together with Seller, the “**parties**”). Capitalized terms used but not defined herein have the meanings given in the Agreement (defined below).

RECITALS

- A. The parties previously entered into that certain Solar Project Power Purchase Agreement, dated July 31, 2020 (the “**Agreement**”).
- B. The parties desire, conditioned on satisfaction of the Condition Precedent (defined below), to amend the Agreement in order to change the Guaranteed Commercial Operation Date, pricing terms, termination provisions, and other terms thereof, in each case as further set forth below.

AGREEMENTS

In consideration of the mutual covenants and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Condition Precedent to Effectiveness.** The effectiveness of this Amendment is conditioned on the consummation by Martinsville Solar, LLC, Sol Customer Solutions, LLC, or an affiliate of either, prior to October 8, 2022 (the “**Land Purchase Deadline**”), of the real property purchase transaction subject of the “Option to Purchase” as defined in that certain Option to Purchase Agreement (the “**OPA**”) dated January 8, 2021 between E. I. Du Pont De Nemours and Company and Sol Customer Solutions, LLC (the “**Condition Precedent**”); provided that the Land Purchase Deadline will be automatically extended day-for-day to match any extension of the “Option Term” as defined in the OPA. If the Condition Precedent is not satisfied, then on the day following the Land Purchase Deadline, this Amendment will automatically be annulled and of no force or effect.
2. **Amendments.** In each case subject to the Condition Precedent:
 - a. **Extension of Guaranteed and Scheduled Dates.**
 - i. The definition of “Guaranteed Commercial Operation Date” in Exhibit A (*Definitions and Rules of Interpretation*) of the Agreement is amended by replacing the phrase “June 1, 2022” with the phrase “June 1, 2024”.
 - ii. Exhibit C (*Facility Milestones*) of the Agreement is amended by:
 1. replacing the phrase “Scheduled LNTP Construction: October 29, 2021” with the phrase “Scheduled LNTP Construction: October 29, 2023”;
 2. replacing the phrase “Scheduled Interconnection Facilities Completion Date: March 1, 2022” with the phrase “Scheduled Interconnection Facilities Completion Date: March 1, 2024”; and
 3. replacing the phrase “Guaranteed Commercial Operation Date: June 1, 2022” with the phrase “Guaranteed Commercial Operation Date: June 1, 2024”.

b. **Revision of Fixed Price.**

- i. Section 4.5(a) of the Agreement is amended by replacing the phrase “\$22.50/MWh” with the phrase “\$30.35/MWh”.
- ii. Section 4.5(b) of the Agreement is amended by replacing the phrase “\$45.00/MWh” with the phrase “\$60.70/MWh”.
- iii. Section 4.5(c) of the Agreement is amended by replacing the phrase “\$22.50/MWh” with the phrase “\$30.35/MWh”.

c. **“Open-Book” Pricing Adjustment.**

- i. Section 4.5 of the Agreement is amended by inserting the following as an additional paragraph at the end thereof:

“Additionally, notwithstanding any other provision of this Agreement, including without limitation this Section 4.5, beginning on the date, if any, that Seller’s actual, documented margin earned by selling the Output to Buyer under this Agreement exceeds \$377,748, the Fixed Price will be reduced to the extent necessary to pass the benefit of such excess through to Buyer, dollar-for-dollar and without markup, as determined by the Parties in their reasonable judgment, and each Party shall deliver such further assurances or amendments reasonably requested by the other Party to document such adjustment.”

d. **Elimination of Pricing Adjustment for Termination of Other Projects.**

- i. Section 4.5 of the Agreement is amended by deleting in its entirety the paragraph beginning “Notwithstanding any other provision of this Agreement, in the event (x) that certain Solar Power Purchase Agreement dated on or about the date hereof between Cunningham Solar, LLC, and Central Virginia Electric Cooperative is terminated prior to achievement of the “*Commercial Operation Date*” for any reason, or (y) that certain Solar Power Purchase Agreement dated on or about the date hereof between Midway Solar, LLC, and Central Virginia Electric Cooperative ...”.

e. **Revision of Termination Penalties.**

- i. Section 2.2 of the Agreement is amended by replacing the phrase “Eight Thousand Dollars (\$8,000)/MW AC” with the phrase “a lump sum of \$320,000”.
- ii. Section 2.3 of the Agreement is amended by replacing the phrase “Eight Thousand Dollars (\$8,000)/MW AC” with the phrase “a lump sum of \$320,000”.
- iii. Section 11.2 of the Agreement is amended by replacing the phrase “Fifty Thousand Dollars (\$50,000) per MW AC” with the phrase “a lump sum of \$656,000”.

f. **Buyer Land Purchase Option.** Article Eleven of the Agreement is amended by inserting the following as a new Section 11.9:

“11.9 **Buyer Land Purchase Option.** In the event that this Agreement is terminated wholly other than as a result of a default by Buyer, then for 180 days following such termination, Buyer may, by delivery of written notice to Seller, elect to purchase from Seller or its affiliates, as applicable, the real property subject of the “Option to Purchase” described in that certain Option to Purchase Agreement dated January 8, 2021 between E. I. Du Pont De Nemours and Company and Sol Customer Solutions, LLC at a purchase price of \$1.00 (the “**Buyer Land Purchase Option**”). If Buyer exercises the Buyer

Land Purchase Option, the Parties shall then promptly negotiate, execute, and deliver such definitive documents reasonably necessary to consummate the real property sale transaction subject of the Buyer Land Purchase Option on terms that are reasonable and customary for similar transactions regarding real property located in the Commonwealth of Virginia.”

3. **Miscellaneous.**

- a. **Continuing Effectiveness.** The parties ratify the Agreement, and the same remains in full force and effect, in each case as amended hereby.
- b. **Governing Law.** This Amendment will be governed by and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to any rules that would cause the application of the laws of another jurisdiction.
- c. **Headings.** Section headings used in this Amendment are for convenience only and of no effect.
- d. **Counterparts and Signatures.** This Amendment can be executed and delivered in multiple counterparts, by hand, facsimile, electronic signature, emailed PDF, or a combination thereof and regardless will be treated for all purposes as one original instrument with equal legal effect as a single hardcopy signed by hand by all parties.

Signatures follow.

IN WITNESS WHEREOF, this Amendment has been duly authorized and executed by the parties hereto as of the date first written above.

SELLER

MARTINSVILLE SOLAR, LLC

By: _____
Name:
Title:

BUYER

CITY OF MARTINSVILLE, VIRGINIA

By: _____
Name:
Title:

Consider approval of the consent agenda – Vice Mayor Bowles made a motion to approve the consent agenda as presented. Council Member Turner seconded the motion with all Council Member voting in favor.

BUDGET ADDITIONS FOR 7/26/2022				
ORG	OBJECT	DESCRIPTION	DEBIT	CREDIT
FY2022 - General Fund				
01101918	443110	STATE - GRANT		57,225
01216076	503127	CIR COURT - GEN PROFESSIONAL SERVICES	57,225	
		LIBRARY OF VIRGINIA GRANT		
FY2022 -School Federal Programs Funds:				
21102926	404818	PERKINS		71,383
21672607	563142	PROFESSIONAL DEVELOPMENT	7,000	
21672607	565503	TRAVEL	22,000	
21672607	565800	MISC	3,480	
21672607	566040	TECH SOFTWARE & ONLINE CONTENT	3,500	
21672607	566056	NONCAP EQUIPMENT	35,403	
		PERKINS - TITLE I		
		Total School Federal Programs Fund:	\$ 128,608	\$ 128,608

Consider adoption of a resolution authorizing the filing of an application for funding consideration of a transportation project along West Fayette Street from Ailcie Street to Pine Hall Road through the Virginia Smart Scale Funding process – Community Development Director Mark McCaskill explained the need for the resolution and explained the map and purpose of the project. McCaskill said there may be small amounts of right-of-way that would include resident properties. City Manager pointed out areas of interest on the project map. This project will not only beautify the area but will be safer for residents. Vice Mayor Bowles made a motion to adopt the resolution. Council Member Turner seconded the motion with all Council Members voting in favor.

<i>Council Members</i> Kathy Lawson, Mayor Jennifer Bowles, Vice-Mayor Danny Turner Chad Martin Tammy Pearson	 Martinsville A CITY WITHOUT LIMITS	<i>City Manager</i> Leon E. Towarnicki <i>City Attorney</i> Eric H. Monday <i>Clerk of Council</i> Karen Roberts
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RESOLUTION

AUTHORIZING THE SUBMITTAL OF A TRANSPORTATION PROJECT FOR THE VIRGINIA SMART SCALE FUNDING PROCESS

WHEREAS, Pursuant to the Smart Scale Funding process the Virginia General Assembly has created a means of funding proposed transportation projects across the Commonwealth that is based on scoring criteria that emphasizes safety, accessibility, environmental quality and economic development (hereinafter referred to as "Smart Scale Process"); and

WHEREAS, the City of Martinsville desires to submit a local transportation project for potential funding under the Smart Scale Process; and

WHEREAS, under the requirements of Smart Scale, a resolution of support from the local governing body is required in order for the application to be considered for approval; and

WHEREAS, the Martinsville City Council supports the submittal of a local transportation project along West Fayette Street from Ailcie to Pine Hall that includes crosswalks, pedestrian improvements, sidewalk improvements, and turn lanes.

NOW, THEREFORE, BE IT RESOLVED by the City of Martinsville that the City Council hereby approves the submittal of the above-mentioned transportation project for funding under the Smart Scale Process;

AND BE IT FURTHER RESOLVED that the Martinsville City Council hereby authorizes the City Manager, or his designee to file the above application through the Smart Scale Process online portal on or before the application deadline.

DATE: _____ CITY OF MARTINSVILLE
_____ Kathy Lawson, Mayor

ATTEST:

Karen Roberts, Clerk of Council

55 West Church Street, P. O. Box 1112, Martinsville, VA 24114-1112 276-403-5180 Fax: 276-403-5280
www.martinsville-va.gov

Business from the Floor – Keith Owens of 1708 Meadowview Lane spoke to Council requesting ARPA funds to assist with the homeless in Martinsville. He shared Matthew, Chapter

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5 and how a homeless shelter can benefit the residents in Martinsville. Owens was homeless 3-1/2 years ago until someone helped him. He advises Council to speak to Grace Network, local churches, hospital staff, etc. to understand how stable housing can benefit those in recovery. Owens said homelessness in Martinsville is about to become a larger problem than they are ready to handle. He hopes that Council will consider allocating some of the ARPA funds towards a shelter to benefit those in recovery and homeless in the area and mentioned how the Armory would be a prime location. Mayor Lawson requests that Owens meet with the City Manager with his business plan so Council can get a better understanding of what they need. Council Member Turner suggested the old American Standard site currently owned by a local church. Owens said that location is on the outskirts of town; they would prefer to have the shelter closer to town since transportation would be a concern. Owens said they expect a 25% potential increase in homeless residents in the area. Council Member Martin shared that United Way does have a program but they have limited staff and funds. Owens explained there is not many options in this area although local churches do help the best they can. A homeless shelter will provide more than housing, they provide assistance in job applications, transportation, and other steps to assist residents to get back to being contributing citizens. Martin asked Owens to provide Towarnicki additional potential locations other than the Armory that may work for a shelter.

Ariel Johnson, 25 Penny Drive also spoke in favor of the housing shelter. Homeless in Martinsville is already an issue and they are limited on ways to help them. Johnson is the Patient Navigations Director with the Virginia Harm Reduction Coalition and the MidAtlantic Regional Consultant for the NASTAD. She shared with Council her first experience with opioids when a close family member overdosed when she was 10-years old. Johnson discussed the Opioid Abatement Funds and requested that Council Members consider allocating those funds to harm reduction in the community. While there have been programs and policies in place for many years, the community needs more assistance to help with opioid abuse in the community. Vice Mayor Bowles has researched harm reduction and how it is different then the traditional methods offered by the City. Bowles recommends that Johnson meet with the City Manager to share more ideas and she hopes she will partner with the Police Department and other resources in the community. Mayor Lawson stated that the Opioid funds should be used for what it was intended. Martin shared information about research on rats that he watched recently, sharing that the opposite of addiction is not abstinence, but connections.

Mike Sanguedolce, 708 Starling Avenue spoke to Council about the truck traffic on Starling Avenue. He has information from VDOT with requirements on how to proceed in having the truck route moved. Those requirements include a public hearing hosted by the governing body and the transcript of that hearing provided to VDOT along with a formal request to VDOT requesting a traffic study. Mayor Lawson explained that the City Manager has had conversations with the VDOT engineer about this concern. Council Member Martin made a motion to set a public hearing for the August 23 Council meeting. City Manager Towarnicki

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explained that there may not be time to advertise a public hearing in that time frame. Towarnicki explained that he understands that Sanguedolce is requesting an alternate truck route which would include signage in the County and the City, however there are so many connecting streets to Starling, he's not sure if there is a way to eliminate all truck traffic. Sanguedolce requests a public hearing to request the VDOT study. Lawson encouraged Sanguedolce to meet with City Manager Towarnicki to discuss that further.

Comments by City Council – Council Member Pearson thanked the Chamber of Commerce for providing Uptown Restaurant Week coupons which she feels strongly helped the restaurants uptown. She gets asked regularly what is there to do in Martinsville, she suggests residents visit visitmartinsville.com; she counted 15 events left to do just in July. Council Member Martin received a call from a citizen voicing concern about a traffic stop. Deputy Police Chief Fincher meet with Martin and this citizen and shared the bodycam video which he feels helped to open this citizen's eyes to his behavior. Martin thanked the Police Department for opening their doors to meet with residents about their concerns. Council Member Turner shared that the Detroit Tigers will be retiring local resident Lou Whitaker's jersey on August 6 in Detroit. Next Wednesday around 8:30am Turner is meeting with the Housing Director and his associates from Richmond who will visit Martinsville to discuss housing in the area and how funds can be utilized in the area. Vice Mayor Bowles is excited to see the results from Turner's city tour and thanked Turner for talking to a concerned home owner in the City. If any members of clergy would like to offer invocation prior to a Council meeting to please reach out to Kendall Davis. The 988 mental health crisis hotline has launched. Bowles was tagged in a Facebook post about the traffic stop and she is thankful for body cameras and officers that do the right thing. Bowles applauds the City Police Department. Bowles asked Towarnicki what would be the cost of installing 30-minute parking signs and questioned if the City does not have the staff to enforce the 2-hour parking now, how will we enforce the parking meters. Mayor Lawson had a message for uptown merchants who violate the 2-hour parking, unless they see results then business owners may soon see meters back uptown. Parking in those areas are for customer convenience, not for business owners. The Property Maintenance department is behind due to lack of staff but they are currently working through the list of concerns with the older reports taking priority. The Mustangs' last home game is Thursday, she encourages residents to come out and support the team. Residents should expect to see a higher electric portion of their utility bill because of higher temperatures; anyone having issues paying those bills can contact Utility Billing about payment options. Lawson reminds residents that the tax-free weekend is August 5-7.

Comments by the City Manager – City Manager Towarnicki stated that it was discussed previously about the City's power outage notification system. The City is switching over to a new company and our employees have been working with staff to implement that. There is a mass notification feature that can be used in the City for power outages, meeting notifications, public events, etc. that will include a sign-up process. Towarnicki said while they spent several

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meetings discussing and approving the scooters in the City, unfortunately he's received notice that those scooters have been delayed indefinitely. The VML Conference is October 2-4 in Richmond, registration is now open for that for any Council Members planning to attend. Towarnicki has met with David Dickerson and will be sending emails out soon with potential dates for Strategic Planning sessions. Blue Ridge Regional Library submitted a request previously requesting the City and County fund a pay increase for library staff. The City approved half of the request on the condition that Henry County and Patrick County approved their part. The Henry County Board of Supervisors approved their full request earlier today. The question back to City Council is whether to approve the full funding since Patrick County has not made a decision yet. Council Member Turner made a motion to fully-fund the City's share of the library pay raise by amending the original motion and awarding the other half of \$6571. Council Member Martin seconded the motion with all Council Members voting in favor. Council hopes that Patrick County will honor their share of the request as well.

There being no further business, Vice Mayor Bowles made a motion to adjourn at 9:10pm.

Karen Roberts, Clerk of Council

Kathy Lawson, Mayor