

County Council Of Howard County, Maryland

2018 Legislative Session

Legislative Day No. 1

Resolution No. 11 -2018

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION approving the terms and conditions of a Payment in Lieu of Taxes Agreement by and between Howard County, Maryland and 2800 Nixon's Farm Lane, LLC regarding the construction and operation of a solar array located on the property known as Nixon's Farm.

Introduced and read first time January 2, 2018.

By order

Jessica Feldmark
Jessica Feldmark, Administrator

Read for a second time at a public hearing on January 16, 2018.

By order

Jessica Feldmark
Jessica Feldmark, Administrator

This Resolution was read the third time and was Adopted___, Adopted with amendments , Failed___, Withdrawn___, by the County Council on February 5, 2018.

Certified By

Jessica Feldmark
Jessica Feldmark, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, 2800 Nixon’s Farm Lane, LLC, a Maryland Limited Liability Company
2 (the “Owner”), is the fee simple owner of that parcel of real property described in the deed from
3 David S. Musgrave and J. Michael Millard, Substitute Trustees, dated June 29, 2010 and
4 recorded among the Land Records of Howard County, Maryland at Liber 12565, folio 273 and
5 located in Howard County, Maryland, as more particularly described therein, and commonly
6 known as Nixon’s Farm (the “Property”); and
7

8 **WHEREAS**, the Owner, in conjunction with Bith Energy, Inc. (“Bith”), is developing
9 and constructing an alternative and renewable energy project which shall, at full buildout,
10 include a 7.5 Megawatt Alternating Current (“MWAC”) solar photovoltaic facility and a Hybrid
11 Renewable Energy System training facility dedicated specifically to green technology training
12 for youths and veterans (the “Project”) on the Property; and
13

14 **WHEREAS**, in 2014 the Owner requested that the County permit the Owner to make
15 payments in lieu of County real property taxes pursuant to Section 7-514 of the Tax-Property
16 Article of the Annotated Code of Maryland (“State law”); and
17

18 **WHEREAS**, in 2014, the County came to an agreement with the Owner as to acceptable
19 terms for a Payment in Lieu of Taxes (“PILOT”) Agreement; and
20

21 **WHEREAS**, the PILOT Agreement was approved by the County Council by passage of
22 Council Resolution No. 90-2014; and
23

24 **WHEREAS**, the necessary paperwork between the County and the Owner was never
25 finalized and the County now seeks to revise the terms of the PILOT Agreement approved by the
26 passage of CR 90-2014 to reflect the intent of that Agreement by addressing a reduction in the
27 proposed amount of renewable energy generated with a proportional reduction in the value of the
28 tax credit; and
29

1 **WHEREAS**, despite the non-finalized paperwork, the Owner, in conjunction with Bith,
2 has conducted educational sessions at the training facility and the Project is generating in excess
3 of 2.5 MWAC; and
4

5 **WHEREAS**, in order to make the Project affordable, the Owner has requested that the
6 County continue to accept the payments in lieu of taxes pursuant to State law; and
7

8 **WHEREAS**, the Owner has demonstrated to the County that an agreement for payments
9 in lieu of taxes is necessary to make the Project economically feasible; and
10

11 **WHEREAS**, in order to promote the generation of renewable energy, the County wishes
12 to accept payments in lieu of County real property taxes, subject to the terms and conditions of
13 the proposed Payment in Lieu of Taxes Agreement, substantially in the form attached to this
14 Resolution as “Exhibit 1”; and
15

16 **WHEREAS**, the primary difference between the PILOT Agreement approved by CR 90-
17 2014 and the PILOT Agreement, substantially in the form attached as Exhibit 1, involves a 25%
18 reduction in the amount of MWAC output by the Project and a congruent reduction in the value
19 of the tax exempt under the PILOT Agreement.
20

21 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
22 Maryland this 5th day of February, 2018 that:

- 23 (1) In accordance with Section 7-514 of the Tax-Property Article of the Annotated Code of
24 Maryland, the County shall accept payments in lieu of County real property taxes for the
25 Project subject to the terms and conditions of the Payment in Lieu of Taxes Agreement,
26 substantially in the form attached to this Resolution as Exhibit 1.
- 27 (2) The County Executive is authorized to execute and deliver the Agreement in the name
28 and on behalf of the County in substantially the form attached.
- 29 (3) The County Executive, prior to the execution and delivery of the Agreement, may make
30 such changes or modifications to the Agreement as he deems appropriate in order to
31 accomplish the purpose of the transactions authorized by this Resolution, provided that

1 such changes or modifications shall be within the scope of the transactions authorized by
2 this Resolution; and the execution of the Agreement by the County Executive shall be
3 conclusive evidence of the approval of the County Executive of all changes or
4 modifications to the Agreement, and the Agreement shall become binding upon the
5 County in accordance with its terms.

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this "Agreement") is made this ____ day of _____, 2018, by and between **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the "County"), and **2800 NIXON'S FARM LANE, LLC**, a Maryland Limited Liability Company (the "Owner").

RECITALS

A. The Owner is the fee simple owner of that parcel of real property described in the deed from David S. Musgrave and J. Michael Millard, Substitute Trustees, dated June 29, 2010 and recorded among the Land Records of Howard County, Maryland (the "Land Records") at Liber 12565, folio 273 and located in Howard County, Maryland, as more particularly described therein, and commonly known as "Nixon's Farm" (the "Property").

B. The Owner, in conjunction with Bith Energy, Inc. ("Bith"), is developing and constructing an alternative and renewable energy project, which shall, at full buildout, include a 7.5MWAC solar photovoltaic facility and a Hybrid Renewable Energy System (HRES) training facility dedicated specifically to green technology training for youths and veterans (the "Project"), on the Property.

C. In 2014, the Owner requested that the County permit the Owner to make payments in lieu of County real property taxes pursuant to Section 7-514 of the Tax-Property Article of the Annotated Code of Maryland (the "Act"). The Act provides, among other things, that real property may be exempt from County real property tax:

(c) (1) The governing body of a county may enter into an agreement with the owner of a facility for the generation of electricity that is located or locates in the county for a negotiated payment by the owner in lieu of taxes on the facility.

(2) An agreement for a negotiated payment in lieu of taxes under this section shall provide that, for the term specified in the agreement:

(i) The owner shall pay to the county a specified amount each year in lieu of the payment of county real and personal property tax; and

(ii) All or a specified part of the real and personal property at the facility shall be exempt from county property tax for the term of the agreement.

D. In 2014, the County came to an agreement with the Owner as to acceptable terms for a "PILOT" agreement, which was approved by the County Council of Howard County by Council Resolution 90-2014. However, the County never finalized the necessary paperwork with the Owner and now seeks revised terms to be memorialized in this final PILOT Agreement (the "PILOT Agreement").

E. As of the date of this PILOT Agreement, the Owner, in conjunction with Bith, has conducted educational sessions at the training facility and the Project is generating in excess of 2.5MWAC.

F. In order to support the full development of this sustainable energy project, the County agrees to abate County real property taxes for the Property, subject to the terms and conditions of this PILOT Agreement.

G. The County Council of Howard County, Maryland has approved this PILOT Agreement by resolution, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Owner agree as follows:

1. Abatement of County Real Property Taxes.

- (a) The abatement of real property taxes began as of July 1, 2014 (the "Effective Date").
- (b) From the Effective Date, and continuing for the term of this PILOT Agreement, Howard County real property taxes for the Property shall be abated as follows:
 - (1) For years one (1) through seven (7) from the Effective Date, all Howard County real property taxes for the Property shall be abated and the Owner shall pay to the County in lieu of such taxes, \$1 each year;
 - (2) For years eight (8) through fourteen (14) from the Effective Date, the Owner shall receive a ~~forty percent (40%)~~ thirty percent (30%) abatement of all Howard County real property taxes for the Property;
 - (3) For years fifteen (15) through twenty (20) from the Effective Date, the Owner shall receive a ~~twenty-five percent (25%)~~ twenty percent (20%) abatement of all Howard County real property taxes for the Property.
- (c) The Owner shall continue to pay to the County the full amount of any County fire tax, front-foot benefit assessment charge, ad valorem charge, personal property taxes, and any other charges on the Project (the "County Assessments") as they become due on the Property.

2. Representations and Warranties.

- (a) The Owner represents and warrants to the County that it is eligible in all respects to enter into this PILOT Agreement to make payments in lieu of taxes under the Act.
- (b) The Owner, in conjunction with Bith, will develop, construct, and provide for the operation of the alternative and renewable energy Project on the Property. The Project shall include a 7.5MWAC solar photovoltaic facility and a HRES training facility on the Property dedicated specifically to green technology training for youths and veterans.
- (c) The Owner, in conjunction with Bith, agrees that the Project shall generate 7.5MWAC of electricity by June 30, 2019 and continue to operate as a 7.5MWAC facility throughout the term of this Agreement as provided in Section 3.

- (d) On June 30, 2018, and every year thereafter while the PILOT Agreement is in effect, the Owner, in conjunction with Bith, shall provide the County with a report regarding the status of the Project and the electricity being produced by the Project.
- (e) The Owner shall continue to provide educational sessions at the HRES training facility during the duration of this Agreement and ensure that the facility is maintained as necessary.
- (f) The Owner covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

3. Term of Agreement. This Agreement shall remain in effect until the earlier to occur of:

- (a) the expiration of twenty (20) years from the Effective Date;
- (b) the date on which the Owner ceases the construction and/or operation of the Project;
- (c) on June 30, 2019 should the Project fail to produce 7.5MWAC of electricity, whereby this Agreement will be automatically terminated and the Owner will be required to repay the County the abated property taxes with respect to the Property from the Effective Date in proportion to the shortfall from the required 7.5MWAC of electricity produced, or
- (d) any default by the Owner under this PILOT Agreement, which shall include but is not limited to the failure of the Owner to pay the County for any amounts due under this PILOT Agreement.

4. State Taxes. The Owner acknowledges and agrees that it shall pay all State real property taxes due with respect to the Property.

5. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Owner and all successors and assigns of the Owner.

6. Entire Agreement. This Agreement represents the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the County and the Owner, by their duly authorized representatives have signed this Agreement as of the date first written above.

WITNESS/ATTEST:

2800 NIXON'S FARM LANE, LLC

Name:

By: _____
Name:

[SIGNATURES TO FOLLOW]

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____
Allan H. Kittleman
County Executive
Date: _____

APPROVED for Form and Legal
Sufficiency this _____ day
of _____, 2018

APPROVED by Department of Finance:

Gary W. Kuc
County Solicitor

Stanley J. Milesky, Director

Reviewing Attorney:

Kristen Bowen Perry
Assistant County Solicitor

[Notaries continue on the following page.]

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2018, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared _____, Member of 2800 Nixon's Farm Lane, LLC and [s/he] acknowledged that [s/he] executed the Payment in Lieu of Taxes Agreement for the purposes therein contained, and [s/he] further acknowledged the same to be the act of 2800 Nixon's Farm Lane, LLC.

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2018, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **Allan H. Kittleman**, the County Executive of Howard County, Maryland, and he acknowledged that he executed the Payment in Lieu of Taxes Agreement for the purposes therein contained, and further acknowledged the same to be the act of Howard County, Maryland.

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

I CERTIFY THAT:

- (a) I am an attorney admitted to practice before the Court of Appeals of Maryland; and
- (b) I prepared the foregoing Payment in Lieu of Taxes Agreement.

Kristen Bowen Perry

Exhibit A: Council Resolution No. _____

Amendment 1 to Council Resolution No. 11-2018

BY: The Chairperson at the
request of the County Executive

Legislative Day No. 2
Date: February 5, 2018

Amendment No. 1

(This amendment corrects the percentages of taxes subject to abatement pursuant to the Payment in Lieu of Taxes Agreement.)

- 1 In the Agreement, attached to the Resolution as Exhibit 1, on page 2, in section 1.(b)(2), strike
- 2 “forty percent (40%)” and substitute “thirty percent (30%)”.
- 3
- 4 In the Agreement, attached to the Resolution as Exhibit 1, on page 2, in section 1.(b)(3), strike
- 5 “twenty-five percent (25%)” and substitute “twenty percent (20%)”.

ADOPTED 2/5/18
FAILED _____
SIGNATURE Jessica Feldman