

County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 15

Resolution No. 141-2021

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 the Howard County, Maryland and SunEast Friendship ANEM Solar LLC and MHGH&S, LLC for the generation of electricity on property located at 13300 Frederick Road in West Friendship, Maryland.

Introduced and read first time _____, 2021.

By order _____
Michelle Harrod, Administrator

Read for a second time at a public hearing on _____, 2021.

By order _____
Michelle Harrod, Administrator

This Resolution was read the third time and was Adopted___, Adopted with amendments___, Failed___, Withdrawn___, by the County Council on _____, 2021.

Certified By _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2021

Calvin Ball, County Executive

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**, SunEast Friendship ANEM Solar LLC is a Delaware limited liability
2 company authorized to do business in Maryland that engages in the solar generation of energy
3 (the “Facility Owner”); and
4

5 **WHEREAS**, MHGH&S, LLC, a Maryland limited liability company, (the
6 “Landowner”), owns, in fee simple, a parcel of real property in Howard County located at 13300
7 Frederick Road in West Friendship, MD 21794, totaling approximately 83.2 acres, described in
8 the deed dated May 12, 1997, recorded among the Land Records at liber 3999, folio 0580 (the
9 “Property”); and
10

11 **WHEREAS**, the County has established policies to support the implementation of
12 renewal energy projects located in Howard County; and
13

14 **WHEREAS**, the Facility Owner has entered into a Lease Agreement with the Landowner
15 for a portion of the Property and the Facility Owner is or will be the owner of certain personal
16 property located on the Property that will be used for the solar generation of electricity (the
17 “Project”); and
18

19 **WHEREAS**, under the Lease Agreement, the Facility Owner expects to use a portion of
20 the Property for the Project; and
21

22 **WHEREAS**, the Facility Owner has requested that the County permit the Facility Owner
23 to make payments in lieu of any County real and personal property taxes pursuant to Section 7-
24 514 of the Tax-Property Article of the Annotated Code of Maryland; and
25

26 **WHEREAS**, the Facility Owner has demonstrated to the County that an agreement for
27 payments in lieu of taxes is necessary to make the Project economically feasible; and
28

29 **WHEREAS**, in order to enable the Facility Owner to use the Property for the solar
30 generation of electricity and to meet the County’s goals, it is in the interest of the County to
31 accept payments in lieu of County real and personal property taxes subject to the terms and

1 conditions of the Payment in Lieu of Taxes Agreement (the “Agreement”) attached to this
2 Resolution as “Exhibit 1”.

3

4 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
5 Maryland this ____ day of _____, 2021, that:

6 (1) In accordance with Section 7-514 of the Tax-Property Article of the Annotated Code of
7 Maryland, the County shall abate all County real and personal property taxes for the
8 Property subject to the terms and conditions of the Payment in Lieu of Taxes Agreement
9 (the “Agreement”) attached to this Resolution as “Exhibit 1”.

10 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the
11 name and on behalf of the County in substantially the form attached.

12 (3) The County Executive, prior to execution and delivery of the Agreement, may make such
13 changes or modifications to the Agreement as he deems appropriate in order to
14 accomplish the purpose of the transactions authorized by this Resolution, provided that
15 such changes or modifications shall be within the scope of the transactions authorized by
16 this Resolution; and the execution of the Agreement by the County Executive shall be
17 conclusive evidence of the approval by the County Executive of all changes or
18 modifications to the Agreement, and the Agreement shall thereupon become binding
19 upon the County in accordance with its terms.

Project: Friendship Community
Solar - Howard County
Solar Project

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this “PILOT Agreement”) is made this ___ day of _____, 2021 (the “Effective Date”), by and among **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the “County”) on the one hand, and **SunEast Friendship ANEM Solar LLC**, a Delaware limited liability company authorized to do business in Maryland, with offices at 11900 Parklawn Drive, Suite 406, North Bethesda, MD 20852 (the “Facility Owner”), and **MHGH&S, L.L.C.**, a Maryland limited liability company, with its principal office at 13370 Route 114, West Friendship, MD 21794 (the “Landowner”) on the other hand. Each of the County, the Facility Owner and the Landowner are a “Party” and, collectively, the “Parties”.

RECITALS

A. The County has established policies to support the implementation of renewable energy projects located in Howard County.

B. The Facility Owner has entered into a Lease Agreement (the “Lease Agreement”) with the Landowner, the owner in fee simple of that parcel of real property in the County at 13300 Frederick Road in West Friendship, MD 21794, totaling approximately 83.2 acres, described in the deed dated May 12, 1997, liber 3999, folio 0580 (the “Property”), to lease a portion of the Property.

C. The Facility Owner is or will be the owner of certain personal property located on the Property (the “Personal Property”) that will be used for the solar generation of electricity (the “Project”).

D. The Facility Owner has requested that the County permit the Facility Owner to make payments in lieu of any County real and personal property taxes pursuant to Section 7-514 of the Tax-Property Article of the *Annotated Code of Maryland* (the “Act”). Section 7-514 of the Act authorizes the County to agree to such payment in lieu of Property Taxes, as set forth below:

(a) *Agreement with owner of facility for generation of electricity.*

(1) The governing body of a county or municipal corporation may enter into an agreement with the owner of a facility for the generation of electricity that is located or locates in the county or municipal corporation 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 or municipal corporation a specified amount each year in lieu of the payment of county or municipal corporation 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 or municipal corporation property tax for the term of the agreement.

F. The County Council of Howard County, Maryland approved the form of this PILOT Agreement by Resolution (CR__-2021), dated _____, 2021, 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, the Facility Owner, and the Landowner agree as follows:

1. Abatement of County Real Property Taxes for Solar Generation of Electricity.

- (a) From the Commercial Operations Date (as defined herein) and continuing for twenty (20) years, the County Real Property taxes imposed on the Property shall be exempted as follows:
 - (i) From the Commercial Operations Date through ten years (10) from the Commercial Operations Date, 50% of County Real Property taxes shall be exempt, upon the condition that the Landowner pay to the County \$1 per year in lieu of such exempted taxes; and
 - (ii) For years eleven (11) through twenty (20) after the Commercial Operations Date, 25% of County Real Property taxes shall be exempt, upon the condition that the Landowner pay to the County \$1 per year in lieu of such exempted taxes.
- (b) The Landowner shall continue to be obligated for, and pay to the County, the full amount of any County fire tax, front foot benefit assessment charge, ad valorem charge, and any other charges that may appear on the Property's Real Property tax bill (the "County Assessments") as they become due on the Property;
- (c) Any exemption under Section 1(a) above applicable to less than a full taxable year shall be prorated on a per diem basis;
- (d) For purposes of this Agreement "Commercial Operations Date" shall mean the

date on which the Project generates electric energy on a commercial basis, and the interconnection to the contracted local electric utility's electric grid has been authorized and is functioning in accord with all standards required by the utility.

2. Abatement of County Personal Property Taxes for Solar Generation of Electricity.

(a) From the Effective Date and continuing for a period of twenty (20) years from the Commercial Operations Date, the Personal Property taxes imposed on the Facility Owner, based on an assessment of the Personal Property located at the Project and used to generate and deliver electricity, shall be exempted as follows:

(i) From the Commercial Operations Date through ten years (10), 100% of County personal property taxes for the Personal Property shall be exempt, upon the condition that the Facility Owner pay to the County \$1 per year in lieu of such taxes; and

(ii) For years eleven (11) through twenty (20) after the Commercial Operations Date, 50% of County personal property taxes for the Personal Property shall be exempt, upon the condition that the Facility Owner pay to the County \$1 per year in lieu of such exempted taxes.

(b) The exemptions are contingent on the following:

(i) The Facility Owner must submit all required personal property tax returns to the Maryland State Department of Assessment and Taxation. The Personal Property tax abatement shall then be applied by the County.

(ii) The Facility Owner must remain in good standing with the Maryland Department of Assessments and Taxation and pay any and all other County fees and assessment, and must submit an annual report to the County by July 31 of each year that details the operations of the Facility, including the amount of electricity generated during the preceding fiscal year, which begins on July 1 and ends on June 30.

(c) The exemptions under Section 2(a) above applicable to less than a full taxable year shall be prorated on a per diem basis.

3. Representations and Warranties.

(a) The County represents and warrants to the Facility Owner that it has the authority to abate the County Real Property and Personal Property Taxes for property located in Howard County.

(b) The Landowner represents and warrants to the County that it is eligible in all

respects to enter into this PILOT Agreement.

- (c) The Facility Owner represents and warrants to the County that it is eligible in all respects to enter into this PILOT Agreement and to make payments in lieu of taxes under the Act.
- (d) The Facility Owner, will develop, construct, and provide for the operation of the Project, at full buildout, which will generate up to 2 MWAC.
- (e) The Facility 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.

4. Term of Agreement.

- (a) This Agreement shall remain in effect until the earlier to occur of:
 - (i) the expiration of twenty (20) years from the Commercial Operations Date;
 - (ii) the date on which the Landowner ceases to be the fee simple owner of the Property;
 - (iii) the date on which the Facility Owner ceases operation of the Project;
 - (iv) any default by the Landowner or Facility Owner under this PILOT Agreement, which shall include but is not limited to the failure of the Facility Owner or Landowner to pay the County for any amounts due under this PILOT Agreement;
- (b) The County may terminate this Agreement for its convenience if at any time the County determines that such termination is in the best interest of the County. In the event of such termination, any exemption applicable to less than a full taxable year shall be prorated on a per diem basis up to the date of termination.

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

6. Assignment. This Agreement may not be assigned without the prior written approval of the County, such approval not to be unreasonably withheld or delayed.

7. Entire Agreement. This PILOT Agreement represents the entire understanding and agreement of the Parties.

[Signature pages follow]

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

WITNESS/ATTEST:

FACILITY OWNER:

SunEast Friendship ANEM Solar LLC

Name:

By: _____
Name:

WITNESS/ATTEST:

LANDOWNER:

MHGH&S, L.L.C.

Name:

By: _____
Name:

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____
Calvin Ball
County Executive
Date: _____

APPROVED for Form and Legal
Sufficiency this _____ day
of _____, 202_

APPROVED by Department of Finance:

Gary W. Kuc
County Solicitor

Rafiu Ighile, Director

Reviewing Attorney:

Kristen Bowen Perry
Deputy County Solicitor

[Notaries continue on the following pages.]

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 202__, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared _____, 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 [his/her] act [on behalf of if corporate owner].

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 _____, 202__, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared _____, 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 [his/her] act [on behalf of if corporate owner].

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 _____, 2017, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **Calvin Ball**, 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. _____