

County Council of Howard County, Maryland

2022 Legislative Session

Legislative Day No. **11**

Resolution No. 109-2022

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 certain entities that will provide renewable energy to the County pursuant to a certain Renewable Energy Power Purchase Agreement to abate certain County personal property tax.

Introduced and read first time _____, 2022.

By order _____
Michelle Harrod, Administrator

Read for a second time at a public hearing on _____, 2022.

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 _____, 2022.

Certified By _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2022

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**, the County has established policies to support the implementation of
2 renewal energy projects located in Howard County; and

3
4 **WHEREAS**, in April of 2020, the County Council passed Council Bill No. 10-2020 that
5 approved a Renewable Energy Power Purchase Agreement between the County and KDC Solar
6 Maryland, LLC for the purchase of electric power for a term of up to thirty years (the “Project”);
7 and

8
9 **WHEREAS**, pursuant to the Renewable Energy Power Purchase Agreement, the
10 following Solar Facilities (collectively, the “Solar Facilities”) will generate Renewable Energy to
11 be credited against the County’s costs for electricity across all County facilities via net metering
12 and virtual net metering:

- 13 1. KDC Solar 50 LLC
- 14 2. KDC Solar DC LLC
- 15 3. KDC Solar WLF LLC
- 16 4. KDC Solar SPS LLC
- 17 5. KDC Solar ECL LLC
- 18 6. KDC Solar ECL Dorsey Run SPS LLC
- 19 7. KDC Solar Gateway LLC
- 20 8. KDC Solar Gateway Chestnut Hills WPS LLC
- 21 9. KDC Solar HC LLC
- 22 10. KDC Solar TC Little Patuxent WWTP LLC
- 23 11. KDC Solar TC Blandair Park LLC
- 24 12. KDC Solar TC George Howard LLC
- 25 13. KDC Solar CV Ascend One LLC
- 26 14. KDC Solar CV Central MD Regional Transit LLC
- 27 15. KDC Solar CV O’Donnell Property LLC
- 28 16. KDC Solar CV Animal Control LLC
- 29 17. KDC Solar CV Cedar Lane Park LLC; and

1 **WHEREAS**, under the Renewable Energy Power Purchase Agreement, the Solar
2 Facilities may make payments in lieu of any County personal property taxes pursuant to Section
3 7-514 of the Tax-Property Article of the Annotated Code of Maryland; and

4
5 **WHEREAS**, the Solar Facilities have demonstrated to the County that an agreement for
6 payments in lieu of personal property taxes is necessary to make the Project economically
7 feasible; and

8
9 **WHEREAS**, in order to enable the Solar Facilities to provide the solar generation of
10 electricity to meet the County’s goals in compliance with the Renewable Energy Power Purchase
11 Agreement, it is in the interest of the County to accept payments in lieu of County personal
12 property taxes subject to the terms and conditions of the Payment in Lieu of Taxes Agreement
13 (the “PILOT Agreement”) attached to this Resolution as “Exhibit 1”.

14
15 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
16 Maryland this ____ day of _____, 2022, that:

- 17 (1) In accordance with Section 7-514 of the Tax-Property Article of the Annotated Code of
18 Maryland, the County shall abate all County future personal property taxes for the Solar
19 Facilities subject to the terms and conditions of the Payment in Lieu of Taxes Agreement
20 (the “PILOT Agreement”) attached to this Resolution as “Exhibit 1”.
- 21 (2) The County Executive is hereby authorized to execute and deliver the PILOT Agreement
22 in the name and on behalf of the County in substantially the form attached.
- 23 (3) The County Executive, prior to execution and delivery of the PILOT Agreement, may
24 make such changes or modifications to the PILOT Agreement as he deems appropriate in
25 order to accomplish the purpose of the transactions authorized by this Resolution,
26 provided that such changes or modifications shall be within the scope of the transactions
27 authorized by this Resolution; and the execution of the PILOT Agreement by the County
28 Executive shall be conclusive evidence of the approval by the County Executive of all
29 changes or modifications to the PILOT Agreement, and the PILOT Agreement shall
30 thereupon become binding upon the County in accordance with its terms.

Project: PPA Personal Property -
Howard County Solar
Projects

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this “**PILOT Agreement**”) is made this ___ day of _____, 2022, by and between **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the “**County**”) and the companies listed on Exhibit A hereto, with offices at 1340 Smith Avenue, Baltimore, Maryland 2109 (collectively the “**Owners**”, and each an “**Owner**”).

RECITALS

A. The County has established a policy to obtain 20 percent of the electricity for local government operations with distributed, renewal energy generation by 2024. On June 7, 2019 the County issued a Request for Proposals No. 16-2019 for Solar Equipment and Energy Services (“**RFP**”). KDC Solar LLC (the “**Proposer**”) submitted a response to the RFP on July 24, 2019 and was awarded the contract (Agreement PA-18-2020) to provide renewable energy (“**Renewable Energy**”) to the County over a term of up to thirty (30) years .

B. The Owners are or will be the owners of certain personal property located in the County that will be used to generate and deliver Renewable Energy to the County (“**Renewable Energy Equipment**”), as detailed in that certain Renewable Energy Power Purchase Agreement, entered into between the County and the Proposer’s affiliate, KDC Solar Maryland LLC (“**KDC**”), as of May 20, 2020, and any amendments thereto (the “**PPA**”) and which is incorporated herein by reference. Each Owner is the lessee or licensee of real property in the County, as described in Exhibit A attached hereto, (collectively, the “**Properties**” and each a “**Property**”).

C. Each Owner is an affiliate of KDC and KDC created each Owner for the purpose of owning the Renewable Energy Equipment to be located on the Properties.

D. The Owners are developing and constructing solar photovoltaic Renewable Energy facilities in Howard County to deliver Renewable Energy to the County on County owned property and private properties. The Projects (defined below), at full buildout, and subject to the terms of the PPA, are expected to generate a total of approximately 29+ MW DC and shall include approximately 18+ MW DC ground-mounted facilities at non-County owned sites and approximately 6+ MW DC at County-owned sites. All electricity generated from the Projects will be sold to the County pursuant to the PPA. Exhibit A also details on which Property each Project is expected to be built and the electric generation capacity of each. The facilities described in Exhibit A are collectively referred to herein as the “**Projects**” and each individually as the “**Project**”.

E. The PPA provides that County and KDC will enter into a payment in lieu of taxes agreement pursuant to Section 7-514 of the Tax-Property Article of the *Annotated Code of*

Maryland (the “Act”). The Act authorizes the County to agree to such payment in lieu of taxes as follows:

(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. This PILOT Agreement shall commence on the date when signed by all parties hereto (the “Execution Date”). The abatement of County Personal Property Taxes shall become effective on a per-Project basis when (1) the specific equipment is installed on the Property; (2) the respective Owner files its personal property tax return with the Maryland State Department of Assessment and Taxation; and (3) such Owner notifies the County that its Project is operational (the “Per-Project Effective Date”) in accordance with the PPA.

G. The County Council of Howard County, Maryland approved this PILOT Agreement by Resolution (CR__-2022), dated _____, 2022, a copy of which is attached hereto as Exhibit “B”.

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 Personal Property Taxes for Renewable Energy Equipment.

(a) From the Per-Project Effective Date and continuing for the term of this PILOT Agreement, any Personal Property Taxes imposed on the Owners, based on an assessment of the personal property at the Projects, shall be abated or waived as they become due pursuant to terms of this PILOT Agreement.

(b) The Owners will be required to submit all required personal property tax returns to the Maryland State Department of Assessment and Taxation. Thereafter, the

personal property tax abatement shall be applied by the County.

- (c) In lieu of payment of the Personal Property Taxes on the equipment at the Project, the Owner shall pay to the County \$10 each year for the term of this PILOT Agreement.

2. Representations and Warranties.

- (a) The County represents and warrants to the Owner that it has the authority to enter into this PILOT Agreement.
- (b) The Owners represent and warrant 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.
- (c) The Owners will develop, construct, and provide for the operation of the Projects pursuant to the terms and requirements of the PPA. The Projects, at full buildout, subject to the terms of the PPA, will include a total of approximately 29+ MW DC and shall include approximately 18 MW DC ground-mounted facilities at privately-owned sites and approximately 6+ MW DC at County-owned sites.
- (d) The Owners covenant and agree that they will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.
- (e) On April 30, 2023, and every year thereafter the PILOT Agreement is in effect, the Owners shall provide the County with a report regarding the status of the Projects and the electricity being produced by the Projects and detailing the Renewable Energy Equipment Personal Property Tax, including the Owner's State personal property tax return.
- (f) By May 30, 2023, and every year thereafter the PILOT Agreement is in effect, the County Office of Community Sustainability will certify to the Department of Finance that the Owner is complying with the PPA and is providing the County with Renewable Energy and that the Owner's Renewable Energy Equipment Personal Property Tax may be abated pursuant to this PILOT Agreement.

4. Term of Agreement. This Agreement shall remain in effect as to each Owner until the earlier to occur of:

- (a) the expiration of thirty (30) years from the Effective Date;
- (b) the date on which the Owner ceases the construction and/or operation of its respective Project;
- (c) the date the County declares a default and terminates the application of the PPA to a particular Owner and Project; and

(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.

5. State Taxes. The Owners acknowledge and agree that they shall pay all State real property taxes due with respect to the Property.

6. Successors and Assigns. This PILOT Agreement shall be binding upon, and shall inure to the benefit of, the Owners and all successors and assigns of the Owners.

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

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

KDC Solar CV Ascend One LLC, a Delaware limited liability

By: _____
Name:
Title: Authorized Signatory

KDC Solar CV Central MD Regional Transit LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

KDC Solar CV O'Donnell Property LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

KDC Solar CV Animal Control LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

KDC Solar CV Cedar Lane Park LLC, a Delaware limited liability company

By: _____
Name:

Title: Authorized Signatory

KDC Solar TC Little Patuxent WWTP LLC, a Delaware limited liability company

By: _____

Name:

Title: Authorized Signatory

KDC Solar TC Blandair Park LLC, a Delaware limited liability company

By: _____

Name:

Title: Authorized Signatory

KDC Solar TC George Howard LLC, a Delaware limited liability company

By: _____

Name:

Title: Authorized Signatory

KDC Solar HC LLC, a Delaware limited liability company

By: _____

Name:

Title: Authorized Signatory

KDC Solar DC LLC, a Delaware limited liability company

By: _____

Name:

Title: Authorized Signatory

KDC Solar WLF LLC, a Delaware limited liability company

By: _____

Name:

Title: Authorized Signatory

Title: Authorized Signatory

KDC Solar SPS LLC, a Delaware limited liability company

By: _____

Name:
Title: Authorized Signatory

KDC Solar ECL LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

KDC Solar ECL Dorsey Run SPS LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

KDC Solar Gateway LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

KDC Solar Gateway Chestnut Hills WPS LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

KDC Solar 50 LLC, a Delaware limited liability company

By: _____
Name:
Title: Authorized Signatory

[SIGNATURES CONTINUED ON NEXT PAGE]

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____
Calvin Ball
County Executive
Date: _____

APPROVED for Form and Legal
Sufficiency this _____ day
of _____, 2022

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 page.]

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 [his/her] act [on behalf of _____].

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 **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: Properties and Projects

Exhibit B: Council Resolution No. _____

EXHIBIT “A”

Properties and Projects

1. KDC Solar CV Ascend One LLC (“Clear View I”) is developing a 2.917 MW DC, 2.0 MW AC virtual net-metered ground mounted, fixed tilt project on a private site located at 13370 Route 144, West Friendship, MD 21794 (“Clear View I Project”).
2. KDC Solar CV Central MD Regional Transit LLC (“Clear View II”) is developing a 2.368 MW DC, 2.0 MW AC virtual net-metered ground mounted, fixed tilt project on a private site located at 13370 Route 144, West Friendship, MD 21794 (“Clear View II Project”).
3. KDC Solar CV O'Donnell Property LLC (“Clear View III”) is developing a 2.322 MW DC, 2.0 MW AC virtual net-metered ground mounted, fixed tilt project on a private site located at 13370 Route 144, West Friendship, MD 21794 (“Clear View III Project”).
4. KDC Solar CV Animal Control LLC (“Clear View IV”), is developing a 2.460 MW DC, 2.0 MW AC virtual net-metered ground mounted, fixed tilt project on a private site located at 13370 Route 144, West Friendship, MD 21794 (“Clear View IV Project”).
5. KDC Solar CV Cedar Lane Park LLC (“Clear View V”) is developing a 2.494 MW DC, 2.0 MW AC virtual net-metered ground mounted, fixed tilt project on a private site located at 13370 Route 144, West Friendship, MD 21794 (“Clear View V Project”).
6. KDC Solar TC Little Patuxent WWTP LLC (“KDC Triple Creek Phase I”) is developing a 2.734 MW DC, 1.99 MW AC virtual net-metered ground mounted, single-axis tracker project on a private site located at 12855 Frederick Road, West Friendship, MD 21794 (“Triple Creek Phase I Project”).
7. KDC Solar TC Blandair Park LLC (“Triple Creek Phase II”) is developing a 2.906 MW DC, 1.99 MW AC virtual net-metered ground mounted, single-axis tracker project on a private site located at 12855 Frederick Road, West Friendship, MD 21794 (“Triple Creek Phase I Project”).
8. KDC Solar TC George Howard LLC (“Triple Creek Phase III”) is developing a 2.517 MW DC, 1.99 MW AC virtual net-metered ground mounted, single-axis tracker project on a private site located at 12855 Frederick Road, West Friendship, MD 21794 (“Triple Creek Phase II Project”).
9. KDC Solar HC LLC (“Courthouse”) is developing a 0.800 MW DC, 0.700 MW AC net-metered ground mounted, fixed tilt and roof mounted project on a County site located at 9250 Judicial Way (Formerly Bendix Way), Ellicott City, MD 21043 (“Courthouse Project”).

10. KDC Solar ECL Dorsey Run SPS LLC (“East Columbia Library”) is developing a 0.995 MW DC, 0.830 MW AC virtual net-metered carport project on a County site located at 6600 Cradlerock Way, Columbia, MD 21045 (“East Columbia Library Project”).
11. KDC Solar ECL LLC (“East Columbia Library Roof”) is developing a 0.273 MW DC, 0.150 MW AC net-metered roof mounted project on a County site located at 6600 Cradlerock Way, Columbia, MD 21045 (“East Columbia Library Roof Project”).
12. KDC Solar DC LLC (“Detention Center”) is developing a 0.208 MW DC, 0.180 MW AC net-metered roof mounted project on a County site located at 7301 Waterloo Road, Jessup, MD 20794 (“Detention Center Project”).
13. KDC Solar Gateway Chestnut Hills WPS LLC (“Gateway Building”) is developing a 1.201 MW DC, 0.950 MW AC virtual net-metered carport project on a County site located at 6751 Columbia Gateway Drive, Columbia, MD 21045 (“Gateway Building Project”).
14. KDC Solar Gateway LLC (“Gateway Building Roof”) is developing a 0.059 MW DC, 0.060 MW AC net-metered roof mounted project on a County site located at 6751 Columbia Gateway Drive, Columbia, MD 21045 (“Gateway Building Roof Project”).
15. KDC Solar SPS LLC (“Scaggsville PS”) is developing a 0.077 MW DC, 0.060 MW AC net-metered roof mounted project on a County site located at 11226 Scaggsville Road, Laurel, MD 20723 (“Scaggsville PS Project”).
16. KDC Solar 50 LLC (“50+ Center”) is developing a 0.044 MW DC, 0.050 MW AC net-metered roof mounted project on a County site located at 6600 Cradlerock Way, Columbia, MD 21045 (“50+ Center Project”).
17. KDC Solar WLF LLC (“Waterloo Fire”) is developing a 0.084 MW DC, 0.060 MW AC net-metered roof mounted project on a County site located at 7645 Port Capital Drive, Jessup, MD 21075 (“Waterloo Fire Project”).

EXHIBIT “B”

Exhibit B County Council Resolution