

County Council of Howard County, Maryland

2022 Legislative Session

Legislative Day No. 11

Resolution No. 111-2022

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 the Howard County, Maryland, Triple Creek Farm Properties LLC, and various Solar Power entities regarding the construction and operation of a solar array located on the property known as Triple Creek Farm in compliance with a certain Renewable Energy Power Purchase Agreement.

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This Resolution was read the third time and was Adopted __, Adopted with amendments __, Failed __, Withdrawn __, by the County Council on _____, 2022.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 renewal
2 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; and

7
8 **WHEREAS**, Triple Creek Farm Properties LLC, a Maryland Limited Liability Company
9 (the "Owner"), is the fee simple owner of that parcel of real property located at 12855 Route 144,
10 West Friendship, Maryland 21794 and described more fully in the deed from Teresa Kay
11 Stonesifer and Denise A. Dixon, dated January 11, 2017 and recorded among the Land Records of
12 Howard County, Maryland (the "Land Records") at Liber 17387, folio 272 and located in Howard
13 County, Maryland, as more particularly described therein, and commonly known as Triple Creek
14 Farm (the "Property"); and

15
16 **WHEREAS**, various affiliates of KDC Solar Maryland, LLC have entered into Lease
17 Agreements with the Owner to satisfy the requirements of the Renewable Energy Power Purchase
18 Agreement; and

19
20 **WHEREAS**, the Owner, in conjunction with KDC Solar TC Little Patuxent WWTP LLC,
21 KDC Solar TC Blandair Park LLC, and KDC Solar TC George Howard LLC (collectively, the
22 "Energy Project Operators"), are developing and constructing alternative and renewable energy
23 projects (the "Projects") on approximately twenty-eight percent (28%) of the Property; and

24
25 **WHEREAS**, pursuant to the Renewable Energy Power Purchase Agreement, the Projects
26 on the Property will produce renewable energy; and

27
28 **WHEREAS**, in order to make the Projects affordable, the Owner and Energy Project
29 Operators have requested that the County abate County real property taxes related to the portion
30 of the Property utilized for the Projects pursuant to Section 7-514 of the Tax-Property Article of
31 the Annotated Code of Maryland; and

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WHEREAS, the Owner and Energy Project Operators have demonstrated to the County that an agreement for payments in lieu of taxes is necessary to make the Projects economically feasible; and

WHEREAS, in order to promote the generation of renewable energy, the County agrees to abate County real property taxes, subject to the terms and conditions of the proposed Payment in Lieu of Taxes Agreement, attached to this Resolution as “Exhibit 1”.

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

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

Project: Triple Creek - 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**”), KDC Solar TC Little Patuxent WWTP LLC, KDC Solar TC Blandair Park LLC, KDC Solar TC George Howard LLC (collectively the “**Energy Project Operators**”) and Triple Creek Farm Properties LLC (the “**Owner**”).

RECITALS

- A. The Owner is the fee simple owner of that parcel of real property, approximately 110 total acres, located at 12855 Route 144, West Friendship, Maryland 21794 and described more fully in the deed from Teresa Kay Stonesifer and Denise A. Dixon, dated January 11, 2017 and recorded among the Land Records of Howard County, Maryland (the “**Land Records**”) at Liber 17387, folio 272 and located in Howard County, Maryland, as more particularly described therein, and commonly known as Triple Creek Farm (the “**Property**”).
- B. Owner has leased portions of the Property pursuant to lease agreements (the “**Leases**”) to KDC Solar TC Little Patuxent WWTP LLC (approximately 9.4 acres), KDC Solar TC Blandair Park LLC (approximately 9 acres), KDC Solar TC George Howard LLC (approximately 9 acres) (collectively the “**Energy Project Operators**”) for the purpose of generating and delivering renewable energy to the County as detailed in that certain Renewable Energy Power Purchase Agreement, entered into between the County and the Energy Project Operator’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. The portions of the Property which are leased to the Energy Project Operators, is the subject of this PILOT Agreement is set forth in **Exhibit C**.
- C. The Energy Project Operator is developing and constructing solar photovoltaic renewable energy facilities in Howard County to deliver renewable energy to the County on the Property. All electricity generated from the Project (defined below) will be sold to the County pursuant to the PPA. **Exhibit A** details the electric generation capacity of the Project. The facilities described in Exhibit A, and the corresponding land and improvements of the facilities, are referred to herein as the “**Project**” or collectively the “**Projects**”.
- 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. In order to induce the development of sustainable energy projects, the County agrees to abate County real property taxes for the Property, subject to the terms and conditions of this PILOT Agreement.

G. This PILOT Agreement shall commence on the date when signed by all parties hereto (the “**Execution Date**”). The abatement of County real property taxes shall become effective when Energy Project Operator notifies the County that the Project is operational (the “**Project Effective Date**”).

H. 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, the Energy Project Owners and the Owner agree as follows:

1. Abatement of County Real Property Taxes.

(a) From the Project Effective Date and continuing for the term of this PILOT Agreement, real property taxes imposed on the Owner shall be abated as follows: The Project, and its corresponding land and improvements, shall be fully exempt from County real property taxes. The Owner shall make a Payment in Lieu of Taxes in an amount of \$10 per year for the term of this PILOT Agreement. A metes and bounds of the Project site, attached hereto as **Exhibit C**, will determine the

abated land and improvements subject to this Agreement. The land and improvements of the site not included in the metes and bounds will remain in its current taxable status.

- (b) The Owner shall pay to the County the full amount of any County fire tax, front-foot benefit assessment charge, ad valorem charge, and any other charges on the Property as they become due on the Property.

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 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.
- (c) The PPA contemplates that the Owner will seek a payment in lieu of taxes for the real property taxes associated with the Project.
- (d) The Owner will ensure that the Energy Project Operators will develop, construct, and provide for the operation of the Project pursuant to the terms and requirements of the PPA. The Projects, at full buildout, will include a total of approximately 7 MW DC and shall include approximately 7 MW DC ground-mounted facilities.
- (e) 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.
- (f) On _____, and every year thereafter while this PILOT Agreement is in effect, the Owner or the Energy Project Operators shall provide the County with a copy of the annual report required under the PPA regarding the status of the Project and the electricity being produced by the Project and supplied to the County Office of Community Sustainability. A copy of the annual report required under the PPA will be due to the County within thirty (30) days of submission to the County Office of Community Sustainability.
- (g) By _____, and every year thereafter this PILOT Agreement is in effect, the County Office of Community Sustainability will certify to the Department of Finance that the Energy Project Operator is complying with the PPA and is providing the County with renewable energy and that the Owner's renewable energy real property tax may be abated pursuant to this PILOT Agreement. A copy of the certification from the County Office of Community Sustainability to the Department of Finance will also be provided to the Owner upon submission.

4. Term of Agreement. This Agreement shall remain in effect until the earlier to occur of:
- (a) the expiration of thirty (30) years from the Effective Date;
 - (b) the date on which the Energy Project Operator ceases the operation of the Project;
 - (c) the date the County declares a default and terminates the application of the PPA to the 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 it 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 Owner and all successors and assigns of the Owner.
7. Entire Agreement. This PILOT 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.

OWNER and ENERGY PROJECT OPERATORS

Triple Creek Farm Properties LLC

By: _____
Name:
Title: Authorized Signatory

KDC Solar TC Little Patuxent WWTP LLC

By: _____
Name:
Title: Authorized Signatory

KDC Solar TC Blandair Park LLC

By: _____
Name:
Title: Authorized Signatory

KDC Solar TC George Howard LLC

By: _____

Name:

Title: Authorized Signatory

[County signatures on following page]

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____
Calvin Ball
County Executive
Date: _____

APPROVED by Office of Community Sustainability

Joshua Feldmark, Director

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.]

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 **Triple Creek Farm Properties 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 _____, 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 _____].

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: Property & Projects

Exhibit B: Council Resolution No. _____

Exhibit C: Metes & Bounds of Projects

EXHIBIT A

Project Description

1. 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”).
2. 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”).
3. 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”).

EXHIBIT B

County Council Resolution

EXHIBIT C

Project Site Subject to PILOT Agreement

Approximately 27.5 acres comprising 28% of the Property