

# County Council Of Howard County, Maryland

2014 Legislative Session

Legislative Day No. 8

## Resolution No. 90 -2014

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.

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Introduced and read first time \_\_\_\_\_, 2014.

By order \_\_\_\_\_  
Sheila M. Tolliver, Administrator

Read for a second time at a public hearing on \_\_\_\_\_, 2014.

By order \_\_\_\_\_  
Sheila M. Tolliver, Administrator

This Resolution was read the third time and was Adopted\_\_\_, Adopted with amendments\_\_\_, Failed\_\_\_, Withdrawn\_\_\_, by the County Council on \_\_\_\_\_, 2014.

Certified By \_\_\_\_\_  
Sheila M. Tolliver, 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 (the “Land Records”) at Liber  
5 12565, folio 273 and located in Howard County, Maryland, as more particularly described  
6 therein, and commonly known as Nixon’s Farm (the "Property"); and

7  
8           **WHEREAS**, the Owner, in conjunction with Bith Energy, Inc., is developing and  
9 constructing an alternative and renewable energy project, which shall include a 10MWAC solar  
10 photovoltaic facility and a Hybrid Renewable Energy System training facility dedicated  
11 specifically to green technology training for youths and veterans (the “Project”); and

12  
13           **WHEREAS**, in order to make the Project affordable, the Owner has requested that the  
14 County abate all County real property taxes pursuant to Section 7-514 of the Tax-Property  
15 Article of the Annotated Code of Maryland; and

16  
17           **WHEREAS**, the Owner has demonstrated to the County that an agreement for payments  
18 in lieu of taxes is necessary to make the Project economically feasible; and

19  
20           **WHEREAS**, in order to promote the generation of renewable energy, the County wishes  
21 to accept payments in lieu of County real property taxes, subject to the terms and conditions of  
22 the proposed Payment in Lieu of Taxes Agreement, attached to this Resolution as “Exhibit 1”.

23  
24           **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,  
25 Maryland this \_\_\_\_ day of \_\_\_\_\_, 2014, that:

- 26 (1) In accordance with Section 7-514 of the Tax-Property Article of the Annotated Code of  
27 Maryland, the County shall accept payments in lieu of County real property taxes for the  
28 Project subject to the terms and conditions of the Payment in Lieu of Taxes Agreement  
29 (the “Agreement”) attached to this Resolution as “Exhibit 1”.
- 30 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the  
31 name and on behalf of the County in substantially the form attached.

1 (3) The County Executive, prior to execution and delivery of the Agreement, may make such  
2 changes or modifications to the Agreement as he deems appropriate in order to  
3 accomplish the purpose of the transactions authorized by this Resolution, provided that  
4 such changes or modifications shall be within the scope of the transactions authorized by  
5 this Resolution; and the execution of the Agreement by the County Executive shall be  
6 conclusive evidence of the approval by the County Executive of all changes or  
7 modifications to the Agreement, and the Agreement shall thereupon become binding  
8 upon the 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 \_\_\_\_\_, 2014, 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., plans to develop and construct an alternative and renewable energy project, which shall include a 10MWAC 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. The Owner has 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 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 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 Agreement (this "PILOT" Agreement).

E. The County Council of Howard County, Maryland has approved this 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) This Agreement shall take effect on July 1, 2014 (the "Effective Date").
- (b) Beginning on the Effective Date, and continuing for the term of this Agreement, Howard County real property taxes for the Property shall be abated as follows:
  - (1) For years one (1) through ten (10) 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 eleven (11) through fifteen (15) from the Effective Date, the Owner shall receive a fifty percent (50%) abatement of all Howard County real property taxes for the Property;
  - (3) For years sixteen (16) through twenty (20) from the Effective Date, the Owner shall receive a twenty-five percent (25%) abatement of all Howard County real property taxes for the Property.
- (c) 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 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 Agreement to make payments in lieu of taxes under the Act.
- (b) The Owner will develop, construct, and provide for the operation of the alternative and renewable energy Project on the Property. The Project shall include a 10MWAC solar photovoltaic facility and a Hybrid Renewable Energy System (HRES) training facility dedicated specifically to green technology training for youths and veterans on the Property.
- (c) The Owner agrees that the Project will be producing 10MWAC of energy by June 30, 2019.
- (d) Beginning on June 30, 2015, and every year thereafter while the Agreement is in effect, the Owner shall provide the County with a report regarding the status of the Project and the electricity being produced by the Project.
- (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.

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 10MWAC 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 10MWAC of electricity produced, or
- (d) any default by the Owner under this Agreement, which shall include but is not limited to the failure of the Owner to pay the County for any amounts due under this 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.

**ATTEST:**

**HOWARD COUNTY, MARYLAND**

\_\_\_\_\_  
Lonnie Robbins  
Chief Administrative Officer

By: \_\_\_\_\_  
Ken Ulman  
County Executive

**APPROVED** for Form and Legal Sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 2014

**APPROVED** by Department of Finance:

\_\_\_\_\_  
Margaret Ann Nolan  
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 \_\_\_\_\_, 2014, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared \_\_\_\_\_, Member of 2000 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 2000 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 \_\_\_\_\_, 2014, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **Ken Ulman**, 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. \_\_\_\_-2014