
PAYMENT IN LIEU OF TAXES AGREEMENT

FOR SOLAR ENERGY SYSTEMS

between

WHEATLAND-CHILI CENTRAL SCHOOL DISTRICT

and

HELIOS ENERGY NEW YORK 114 LLC and HELIOS ENERGY NEW YORK 11

Dated as of June 1, 2019

RELATING TO THE PREMISES LOCATED AT 9565 UNION ST.,
(CURRENT TAX MAP 199.03-1-4 AND 199.03-1-5, SUBJECT TO
CHANGE AFTER SUBDIVISION) IN THE TOWN OF
WHEATLAND, NEW YORK

PAYMENT IN LIEU OF TAXES AGREEMENT
FOR SOLAR ENERGY SYSTEMS PURSUANT TO REAL PROPERTY TAX LAW § 487

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR REAL PROPERTY (the "Agreement"), effective as of June __, 2019, is by and between HELIOS ENERGY NEW YORK ~~114 LLC and HELIOS ENERGY NEW YORK 11 LLC~~ (collectively, the "Owner"), ~~aboth~~ Delaware limited liability company with a principal place of business located at 411 South Old Woodward Avenue No. 807, Birmingham, MI, 48009, and the WHEATLAND-CHILI CENTRAL SCHOOL DISTRICT, a school district duly established with a principal place of business located at 13 Beckwith Avenue, Scottsville, NY 14546 (the "School District", and collectively with the Owner, the "Parties").

RECITALS

WHEREAS, the Owner has submitted a Notice of Intent to the School District that it plans to build and operate ~~at two (2)~~ "Solar Energy System" as defined in New York Real Property Tax Law ("RPTL") Section 487 (1)(b) (collectively, the "Project") with an expected combined nameplate capacity (the "Capacity") of approximately ~~four and a half nine (4.59)~~ Megawatts AC on portions of such parcels of land located within the Town of Wheatland at 9565 Union Street and identified as SBL # 199.03-1-4 and 199.03-1-5 ~~(subject to change after subdivision)~~, as described in Exhibit A and as may be subdivided for the purposes of hosting the Project (collectively, the "Property"); and

WHEREAS, the School District had not opted out of RPTL Section 487 prior to the date a Notice of Interconnection with respect to the Project was presented; and

WHEREAS, pursuant to RPTL Section 487(9)(a), the School District has indicated its intent require a Payment in Lieu of Taxes ("PILOT") Agreement with the Owner, under which the Owner (or any successor owner of the Project) will be required to make annual payments to the School District during the term of this Agreement; and

WHEREAS, the Owner has entered into lease agreement(s) with the fee owners of the Property to host the Project;

WHEREAS, the Owner has submitted or will submit to the assessor of the Town of Wheatland a RP-487 Application for Tax Exemption of Solar or Wind Energy Systems or Farm Waste Energy Systems, demonstrating its eligibility for a real property tax exemption pursuant to RPTL Section 487; and

WHEREAS, the Parties intend that, during the term of fee this Agreement, the fee owner of the Property will continue to pay full taxes on the assessed value of the Property, provided, however, that the fee owner of the Property and the Owner shall be exempt from such taxation to the extent of any increase in the value of the Property by reason of inclusion of the assessed value of the Project (the "Project Improvement").

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Representations of the Parties.

(A) The Owner hereby represents, warrants, and covenants that, as of the date of this Agreement:

- a. The Owner is duly organized, and a validly existing limited liability company duly authorized to do business in the State of New York, has requisite authority to conduct its business as presently conducted or proposed to be conducted under this Agreement, and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.
- b. All necessary action has been taken to authorize the Owner's execution, delivery, and performance of this Agreement and this Agreement constitutes the Owner's legal, valid, and binding obligation enforceable against it in accordance with its terms.
- c. None of the execution or delivery of this Agreement, the performance of the obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof will (i) conflict with or violate any provision of the Owner's Certificate of Formation, bylaws or other organizational documents or of any restriction or any agreement or instrument to which the Owner is a party and by which it is bound; (ii) conflict with, violate, or result in a breach of any applicable law, rule, regulation, or order of any court or other taxing jurisdiction or authority of government or ordinance of the State of New York or any political subdivision thereof; or (iii) conflict with, violate, or result in a breach of or constitute a default under or result in the imposition or creation of any mortgage, pledge, lien, security interest, or other encumbrance under this Agreement or under any term or condition of any mortgage, indenture, or any other agreement or instrument to which it is a party or by which it or any of the Owner's properties or assets are bound.
- d. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against the Owner, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the Owner's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

(B) The School District hereby represents, warrants, and covenants that, as of the date of this Agreement:

- a. The School District has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.
- b. All necessary action has been taken to authorize the School District's execution, delivery, and performance of this Agreement, and this Agreement constitutes the School District's legal, valid, and binding obligation enforceable against it in accordance with its terms.
- c. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against the School District, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the School District's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

2. Tax Exemption; Payment in Lieu of Real Property Taxes.

(A) Pursuant to RPTL Section 487 the Parties hereto agree that the Project Improvement shall be placed by the School District as exempt upon the assessment rolls of the School District. A Real Property Tax Exemption Form (RP 487) has or will be filed with the Assessor responsible for the School District and the Project is eligible for exemption pursuant to RPTL 487.

(B) The Owner agrees to make annual payments to the School District in lieu of real property taxes for the Project Improvement for a period of fifteen (15) consecutive fiscal tax years, after which time the Project Improvement will be subject to full taxes. Annual payments hereunder may not exceed the amounts that would otherwise be payable but for the RPTL Section 487 exemption. Pursuant to RPTL Section 487, the Parties agree that the Project Improvement shall be placed by the School District as exempt upon the 2020 assessment rolls (tax status date March 1, 2020) of the School District. The term of the exemption shall be fifteen (15) years and shall automatically terminate following the 2034 assessment roll (tax status date March 1, 2034) unless terminated earlier pursuant to the Agreement. During the term of this Agreement, the Owner agrees to make an "Annual Payment" calculated as follows:—"Per Megawatt Charge" shall mean for the first annual payment, an amount of \$19,000.00 per Megawatt AC of Capacity (\$4,500), and for each subsequent year, an amount equal to the immediate prior per Megawatt AC of Capacity amount increased by two percent (2%) per Megawatt, as set forth in Exhibit B. Each Annual Payment will be paid to the School District in accordance with Section 5 of this Agreement; and the annual payment amount and payment date will be noted on an annual bill issued by the School District to the Owner, provided that any failure of the School District to issue such a bill shall not relieve the Owner of its obligation to make timely payments under this section.

(C) The Owner agrees that the Per Megawatt Charge under this Agreement will not be reduced on account of a depreciation factor or reduction in the School District tax rate, and the School District agrees that the Per Megawatt Charge will not be increased on account of an

inflation factor or increase in the School District tax rate, all of which factors have been considered in arriving at the Per Megawatt Charges reflected in this Agreement.

~~(D) The Owner or its assignees commit to certain efforts that will support the educational mission of the School District as it relates to the Project, during the term of the Agreement, as follows:~~

~~a. Experiential Learning: the Owner will be available to provide experiential learning opportunities based around solar and renewable energy technologies including but not limited to guest speaking, participation in environment/energy forums, or other activities as identified by the School District. At a minimum this is to include participation/presentation in one community education course per school year.~~

3. Change in Capacity at Mechanical Completion: Adjustments to Payments. To the extent that the Capacity of the Project is more or less than the 4.52 Megawatts AC on the date when the Project is mechanically complete and the Owner has commenced production of electricity, the Per Megawatt Charge will be increased or decreased on a pro rata basis.

4. Change in Capacity After Mechanical Completion: Adjustments to Payments. If after the Completion Date the Capacity is increased or decreased as a result of the replacement or upgrade or partial removal or retirement of existing Project equipment or property or the addition of new Project equipment or property, the Per Megawatt Charge shall be increased or decreased on a pro rata basis for the remaining years of the Agreement.

5. Payment Collection. Payments for the School District shall be made payable to the Wheatland-Chili Central School District and mailed to the School District, c/o the Business Office, located at 13 Beckwith Avenue, Scottsville, NY 14546 and are due no later than September 15th of each year (the "Payment Collection Date") following completion of installation of the Project. All late payments shall accrue interest at the statutory rate for late tax payments under New York Law. The Owner shall pay the reasonable attorney fees, court and other costs incurred by the School District in the collection of the unpaid amounts. All payments by the Owner hereunder shall be paid in lawful money of the United States of America.

6. Tax Status. Separate Tax Lot. The School District agrees that during the term of this Agreement, the School District will continue to assess the fee owner of the Property for any real property taxes-based on the assessed value of the Property before installation of any Project Improvements, which amount shall be increased from time to time by the percentage increase in the assessed valuation of all taxable real property in the Town of Wheatland, New York, as of the respective tax status date for the tax year for which the recalculation is made. The School District agrees that this Agreement will exclusively govern the payments for all real property taxes attributable to the Project Improvement, provided, however, that this Agreement is not intended to affect, and will not preclude the School District from assessing, any other taxes, fees, charges, rates or assessments which the Owner is obligated to pay, including, but not limited to, special assessments or special district assessments, fees, or charges for services provided by the School

District to the Project. Nothing in this Agreement shall limit the right of the Owner to challenge the assessment of the Property or the Property Improvement pursuant to the RPTL.

7. No Assignments Without Prior Notice; Binding Effect.

(A) This Agreement may not be assigned by the Owner without the prior written consent of the School District; such consent may not be unreasonably withheld if the assignee has agreed in writing to accept all obligations of the Owner. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of the Owner. If the Owner assigns this Agreement with the advance written consent of the School District, the Owner shall be released from all obligations under this Agreement upon assumption hereof in writing by the assignee, provided that the Owner shall, as a condition of such assignment and to the reasonable satisfaction of the School District, cure any defaults and satisfy all liabilities arising under this Agreement prior to the date of such assignment. A notice of this Agreement may be recorded by the Owner and the School District shall cooperate in the execution of required assignments with the Owner and its successors. The Owner may, with advance written notice to the School District and without prior consent, assign this Agreement to an affiliate of the Owner or to any party who has provided or is providing financing to the Owner for the construction, operation and/or maintenance of the Project.

(B) This Agreement shall inure to the benefit of, and shall be binding upon, the School District, the Owner and their respective successors and assigns.

8. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement have been negotiated in good faith in recognition of and with due consideration of the full and fair taxable value of the Project.

9. Additional Documentation and Actions. Subject to applicable laws and regulations, each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such reasonable additional instruments and documents as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement. The Owner shall pay all reasonable attorneys' and consulting fees incurred by the School District to review and negotiate any such instruments or documents.

10. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service, by hand, or by certified mail, return receipt requested. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

If to the Owner:	<u>Helios Energy New York 114 LLC and</u> <u>Helios Energy New York 11 LLC</u> <u>411 S. Old Woodward Avenue #807</u> <u>3402 Pico Boulevard</u> <u>Santa Monica, CA 90405</u> <u>Attn: Noah HYTE</u>
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If to the School District: Wheatland-Chili Central School District
13 Beckwith Avenue
Scottsville, NY 14546
Attn: Superintendent

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

11. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the State of New York. The Owner and the School District each consent to the jurisdiction of the New York courts in and for the County in which the Project is located regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Accordingly, any litigation arising hereunder shall be brought solely in such courts.

12. Termination Rights of the Owner. The Owner may terminate this Agreement at any time by notice to the School District. Upon receipt of the notice of termination, the Project Improvement shall be placed on the taxable portion of the tax roll effective on the next taxable status date of the School District. The Owner shall be liable for all payments due hereunder in the year of termination, except that if the Owner is required to pay any part-year real property taxes, such payment for that year shall be reduced pro rata so that the Owner is not required to pay both the payments due hereunder and real property taxes for the same period of time. This Agreement shall be automatically terminated and there shall be no tax assessed by the School District in the event the Project is no longer operational or has been decommissioned.

13. Termination Rights of School District. Notwithstanding anything to the contrary in this Agreement, the School District may terminate this Agreement on sixty (60) days written notice to the Owner if:

A) The Owner fails to make timely payments required under this Agreement, unless such payment is received by the School District within the 60-day notice period with interest as stated in this Agreement; or

(B) The Owner has filed, or has had filed against it, a petition in bankruptcy, or is otherwise insolvent.

Notwithstanding anything contained herein to the contrary, upon the failure by the Owner to make any payments required under this PILOT Agreement, the School District shall have the right to recapture real property tax abatements provided hereunder. Any such recapture is at the sole and exclusive discretion of the School District. The School District shall notify the Owner in writing of such event of default and of its intent to recapture the PILOT benefits (or any portion thereof). Any and all recaptured payments received pursuant to this provision shall be remitted to the School District on a pro rata basis within sixty (60) days of receipt of payment.

14. Remedies; Waiver And Notice.

(A) No Remedy Exclusive. No remedy herein conferred upon or reserved to Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any breach of an obligation hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

15. Entire Agreement. The Parties agree that this is the entire, fully integrated Agreement between them with respect to payments in lieu of taxes for the Project.

16. Amendments. This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

17. No Third Party Beneficiaries. The Parties state that there are no third-party beneficiaries to this Agreement.

18. Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

19. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow.]

Executed by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

HELIOS ENERGY NEW YORK 114 LLC

By: _____
Michael Lossia
Managing Partner

HELIOS ENERGY NEW YORK 114 LLC

By: _____
Michael Lossia
Managing Partner

WHEATLAND-CHILI CENTRAL
SCHOOL DISTRICT

By: _____
Deborah Leh, Ed.D.,
Superintendent of Schools

EXHIBIT A

Description of Land

Address: Portions of the Property commonly known as 9565 Union Street,
Wheatland, NY 14546

Tax Map Nos: Property identified as tax map parcels 199.03-1-4 and 199.03-1-5

DRAFT

EXHIBIT B

Year	Per Megawatt Charge (\$)
1	1000
2	1020
3	1040
4	1061
5	1082
6	1104
7	1126
8	1149
9	1172
10	1195
11	1219
12	1243
13	1268
14	1293
15	1319