

Warren County Board of Supervisors

RESOLUTION NO. 231 OF 2023

RESOLUTION INTRODUCED BY SUPERVISORS BRUNO AND SMITH

RESOLUTION REQUIRING AC POWER, LLC TO ENTER INTO AN AGREEMENT FOR PAYMENTS IN LIEU OF TAXES UPON CERTAIN PROPERTY LOCATED OFF OF RIVER STREET, TOWN OF QUEENSBURY

WHEREAS, the County of Warren received written notification on August 18, 2022 that AC Power, LLC intends to construct a solar energy system on certain property located off River Street, Town of Queensbury (Tax Map Parcel No. 303.20-2-50) pursuant to Section 487 of the Real Property Tax Law, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors hereby authorizes the Chair of the Board of Supervisors to execute a PILOT agreement with AC Power, LLC up to the fifteen (15) year statutory period, as provided by Section 487 of the Real Property Tax Law, for the real property set forth above, as described in the attached Schedule "A," and in a form approved by the County Attorney.

PAYMENT IN LIEU OF TAXES AGREEMENT
FOR SOLAR ENERGY SYSTEMS

between

COUNTY OF WARREN

and

AC POWER 31, LLC

Effective as of April 21, 2023

RELATING TO THE PREMISES LOCATED AT RIVER STREET
(TAX MAP 303.20-2-50) IN THE TOWN OF QUEENSBURY,
WARREN COUNTY, 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, effective as of the date on the cover page, above, by and between AC Power 31, LLC (the "Owner"), a Delaware limited liability company, with a principal place of business located at 20 West 22nd Street, Suite 1501, New York, New York 10010; and the County of Warren, New York, a municipal corporation duly established with a principal place of business located at 1340 State Route 9, Lake George, New York 12845 (the "County"); the County is herein referred to as the "Taxing Jurisdiction." Owner and the Taxing Jurisdiction are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party."

RECITALS

WHEREAS, Owner has submitted a Notice of Intent to the Taxing Jurisdiction that it plans to build and operate a "Solar Energy System" as defined in New York Real Property Tax Law ("RPTL") § 487(1)(b) (herein the "Project") with an expected nameplate capacity ("Capacity") of approximately 5.0 Megawatts AC on a parcel of land located within the Town at River Street, Queensbury, New York, and identified as S.B.L. No. 303.20-2-50, as described in Exhibit A (herein the "Property"); and;

WHEREAS, the Taxing Jurisdiction had not opted out of RPTL § 487, prior to April 21, 2023; and

WHEREAS, pursuant to RPTL § 487(9)(a), the Taxing Jurisdiction has indicated its intent to 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 Taxing Jurisdiction for each year during the term of this Agreement; and

WHEREAS, the Owner has submitted or will submit to the assessor of the Town 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 § 487; and

WHEREAS, the Parties intend that, during the term of this Agreement, the Project will be placed on exempt portion of the assessment roll and the Owner will not be assessed for any statutory real property taxes for which it might otherwise be subjected under New York law with respect to the Project.

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:

1. 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.

2. 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.

3. 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 Incorporation, 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 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. 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 Taxing Jurisdiction hereby represents, warrants, and covenants that, as of the date of this Agreement:

1. The Taxing Jurisdiction is duly organized, validly existing, and in good standing under the laws of the State of New York and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.

2. All necessary action has been taken to authorize the Taxing Jurisdiction's execution, delivery, and performance of this Agreement, and this Agreement constitutes the Taxing Jurisdiction's legal, valid, and binding obligation enforceable against it in accordance with its terms.

3. No governmental approval by or with any government authority is required for the valid execution, delivery, and performance under this Agreement by the Taxing Jurisdiction except such as have been duly or will be obtained or made.

4. 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 Taxing Jurisdiction, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the Taxing Jurisdiction'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) Tax-Exempt Status of the Project Facility. Pursuant to RPTL § 487 the Parties hereto agree that the Project shall be placed by the Taxing Jurisdiction as exempt upon the assessment rolls of the Taxing Jurisdiction. A Real Property Tax Exemption Form (RP-487) has or will be filed with the Assessor responsible for the Taxing Jurisdiction and the Project is eligible for exemption pursuant to RPTL § 487(4).

(b) Owner agrees to make annual payments to the Taxing Jurisdiction in lieu of real property taxes for the Project for a period of fifteen (15) consecutive fiscal tax years; annual payments may not exceed the amounts that would otherwise be payable but for the RPTL § 487 exemption. Such 15-year term shall commence on the first taxable status date selected by Owner following commencement of the construction of the Project (the "Commencement Date"), and shall end the fifteenth fiscal year following the Commercial Operations Date. The first annual payment shall be in the amount of ONE THOUSAND FOUR HUNDRED and 00/100 DOLLARS (\$1,400.00) (the "Annual Payment"), with a two percent (2%) increase upon the prior year's annual payment thereafter during each successive year during the fifteen (15) year term of the Agreement. Annual Payments to be made by Owner during the term of this Agreement shall be as listed in Exhibit B. Each Annual Payment will be paid to the Taxing Jurisdiction 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 Taxing Jurisdiction to the Owner, provided that any failure of the Taxing Jurisdiction to issue such a bill shall not relieve Owner of its obligation to make timely payments under this section.

(c) Owner agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor or reduction in the Taxing Jurisdiction tax rate, and the Taxing Jurisdiction agrees that the payments in lieu of taxes will not be increased on account of an inflation factor or increase in the Taxing Jurisdiction tax rate, all of which factors have been considered in arriving at the payment amounts reflected in this Agreement.

(d) The parties understand that the Annual Payments made pursuant to this Agreement may not exceed the amount that the Owner would otherwise be obligated to pay in County tax (the "Tax Liability"). If, during the term of this Agreement, the Taxing Jurisdiction is required to employ an assessment methodology that, if applied to the real property subject to this Agreement, would cause the Annual Payments set forth in attached Exhibit B to exceed the Owner's Tax Liability, then the Taxing Jurisdiction, after receiving all necessary information and documentation from the Owner, shall recalculate the assessment of the subject real property and shall also calculate the Owner's Tax Liability for that tax year. The new assessment shall become effective on the taxable status date next following the required use of such assessment methodology. The first PILOT payment to be made after such taxable status date shall reflect 100% of the Owner's Tax Liability. Thereafter Annual Payments will escalate by Two percent (2%) per year, not to exceed the Tax Liability.

(e) For purposes of Section 4 of this Agreement, in the event that changes in Capacity occur following a change in assessment methodology as described in this Section, the pro rata change to Annual Payments shall not be based upon the price per MW set forth in Section 2(b) above. Instead, a new price per MW shall be established based upon the amount of the first Annual Payment following the taxable status date described above divided by the Project Capacity as of that same date. This price per MW will then be used for any and all changes in Project Capacity occurring thereafter, not to exceed the Tax Liability.

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 5.0 Megawatts AC on the date when the Project is mechanically complete and Owner has commenced production of electricity, the payments set forth in Exhibit B 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 Annual Payments set forth in Exhibit B shall be increased or decreased on a pro rata basis for the remaining years of the Agreement.

5. Payment Collection. Payments for the County shall be made payable to the County Treasurer and mailed to the County of Warren, 1340 State Route 9, Lake George, New York 12845, and payments are due no later than February 15th of each year. All late payments shall accrue interest at the statutory rate for late tax payments under New York Law. Owner shall pay the reasonable attorney fees, court and other costs incurred by the Taxing Jurisdiction 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 Taxing Jurisdiction agrees that during the term of this Agreement, the Taxing Jurisdiction will not assess Owner for any real property taxes with respect to the Project to which Owner might otherwise be subject under New York law, and the Taxing Jurisdiction agrees that this Agreement will exclusively govern the payments of all such taxes, provided, however, that this Agreement is not intended to affect, and will not preclude the

Taxing Jurisdiction 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 Taxing Jurisdiction to the Project. Nothing in this Agreement shall limit the right of the Owner to challenge the assessment of the Project pursuant to the RPTL.

7. No Assignments Without Prior Notice; Binding Effect.

(a) This Agreement may not be assigned by Owner without the prior written consent of the Taxing Jurisdiction; 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 Owner. If Owner assigns this Agreement with the advance written consent of the Taxing Jurisdiction, the Owner shall be released from all obligations under this Agreement upon assumption hereof in writing by the assignee, provided that Owner shall, as a condition of such assignment and to the reasonable satisfaction of the Taxing Jurisdiction, 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 Owner and the Taxing Jurisdiction shall cooperate in the execution of required Assignments with the Owner and its successors. Owner may, with advance written notice to the Taxing Jurisdiction and without prior consent, assign this Agreement to an affiliate of Owner or to any party who has provided or is providing financing to Owner for the construction, operation and/or maintenance of the Project.

(b) Binding Effect. This PILOT Agreement shall inure to the benefit of, and shall be binding upon, the Taxing Jurisdiction, 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. Owner shall pay all reasonable attorneys' and consulting fees incurred by the Taxing Jurisdiction 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 Owner: AC Power 31, LLC
 20 West 22nd Street, Suite 1501
 New York, New York 10010

With a copy to: Jake Hirsch, Esq.
General Counsel
AC Power, LLC
20 West 22nd Street, Suite 1501
New York, New York 10010

If to the Taxing Jurisdiction:

Board of Supervisors
County of Warren
1340 State Route 9
Lake George New York 12845

With a copy to: Lawrence Elmen, Esq.
County Attorney
County Attorney's Office
1340 State Route 9
Lake George New York 12845

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. Owner and the Taxing Jurisdiction 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. Owner may terminate this Agreement at any time by Notice to the Taxing Jurisdiction. Upon receipt of the Notice of Termination, the Project shall be placed on the taxable portion of the tax roll effective on the next taxable status date of the Taxing Jurisdiction. Owner shall be liable for all PILOT payments due in the year of termination, except that if Owner is required to pay any part-year real property taxes, the PILOT payment for that year shall be reduced pro rata so that the Owner is not required to pay both PILOT payments and real property taxes for any period of time.

13. Termination Rights of Taxing Jurisdiction. Notwithstanding anything to the contrary in this Agreement, the Taxing Jurisdiction may terminate this Agreement on thirty (30) days written notice to Owner if:

(a) Owner fails to make timely payments required under this Agreement, unless such payment is received by the Taxing Jurisdiction within the 30-day notice period with interest as stated in this Agreement

(b) Owner has filed, or has had filed against it, a petition in Bankruptcy, or is otherwise insolvent.

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.

SPACE INTENTIONALLY OMITTED
SIGNATURE PAGE FOLLOWS

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.

AC POWER 31, LLC

Name

Title

Date

Approved as to Form:

COUNTY OF WARREN

Lawrence Elmen, Esq.
Warren County Attorney

KEVIN B. GERAGHTY, as Chairman,
Warren County Board of Supervisors

Date

Date

EXHIBIT A

Description of Land

EXHIBIT B

Schedule of Annual Payments

Year	Payment Amount
1	\$1,400.00
2	\$1,428.00
3	\$1,456.56
4	\$1,485.69
5	\$1,515.41
6	\$1,545.71
7	\$1,576.63
8	\$1,608.16
9	\$1,640.32
10	\$1,673.13
11	\$1,706.59
12	\$1,740.72
13	\$1,775.54
14	\$1,811.05
15	\$1,847.27