
PAYMENT IN LIEU OF TAXES AGREEMENT

FOR SOLAR ENERGY SYSTEMS

by and among

ALBANY COUNTY, THE TOWN OF BETHLEHEM ASSESSOR

and

YELLOW 8, LLC

Dated as of _____, 2021

RELATING TO THE PREMISES LOCATED AT
518 ELM AVE (Tax Map #109.00-1-4.1)
IN THE TOWN OF BETHLEHEM,
ALBANY COUNTY, NEW YORK.

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

THIS PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT FOR SOLAR ENERGY SYSTEMS PURSUANT TO REAL PROPERTY TAX LAW § 487 (“Agreement”), effective as of the ___ day of _____, 2021 (“Effective Date”), is by and between Yellow 8, LLC, a foreign limited liability company authorized to do business in the State of New York, with a principal place of business located at 125 Wolf Rd, Suite 312, Colonie, NY 12205 (“Owner”), the COUNTY OF ALBANY, New York, a New York municipal corporation having its principal office located at 112 State Street, Albany, New York 12207 (“County”) and the TOWN OF BETHLEHEM ASSESSOR, 445 Delaware Ave, Delmar, NY 12054 (“Assessor”).

The Owner, the County, and the Assessor are collectively referred to in this Agreement as the “Parties” and are individually referred to as a “Party.”

The County is herein referred to as the “Taxing Jurisdictions.”

DEFINITIONS

Agreement – shall mean the executed PILOT agreement.

Annual Payment – shall mean annual payments made by the Owner to the County on behalf of the Taxing Jurisdictions in lieu of real property taxes attributable to the Project.

Assessor – shall mean the appropriate officer or officers charged with assessing the value of real property for purposes of determining real property taxes assessed by the Taxing Jurisdictions.

Completion Date - shall mean the date that a Certificate of Completion is issued by the municipal building department of the municipality in which the Project is located.

County – shall mean the County of Albany, New York.

Exemption – shall mean the real property tax exemption granted pursuant to RPTL 487.

Fiscal Year – shall mean each successive twelve (12) month period commencing on January 1 and ending on December 31.

Notice of Termination – shall mean a letter sent by U.S Certified. Mail to all Taxing Jurisdictions informing them that the Owner is discontinuing the production of electricity and is de-commissioning its equipment.

Owner – shall mean the owner of the Project.

Project – shall mean the solar energy system that the Owner plans to build and operate.

Property – shall mean the description of land as described in Exhibit A upon on which the Project will be constructed.

Solar Energy System – is as defined in RPTL 487 (1)(b).

Taxable Status Date – shall mean March 1st of each fiscal year.

Taxing Jurisdictions – Shall mean the County.

RECITALS

WHEREAS, Owner has submitted a Notice of Intent to the Taxing Jurisdictions that it plans to build and operate a “Solar Energy System” as defined in New York Real Property Tax Law (“RPTL”) §487 (1)(b) (“Project”) with an expected nameplate capacity (“Capacity”) of approximately two (2) Megawatts AC on a parcel of land located within the Town of Bethlehem, Albany County at 518 Elm Ave and identified as Town of Bethlehem SBL # 109.00-1-4.1, as described in Exhibit A (“Property”); and

WHEREAS, the Taxing Jurisdictions have not opted out of RPTL 487; and

WHEREAS, pursuant to RPTL 487 (9)(a), the Taxing Jurisdictions have indicated their intent to require a payment in lieu of taxes 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 an RP-487 Application for Tax Exemption of Solar or Wind Energy Systems or Farm Waste Energy Systems (“Form RP-487”), demonstrating the eligibility of the Project for a real property tax exemption pursuant to RPTL 487(4); and

WHEREAS, the Parties intend that, during the term of this Agreement, any increase in value of the Property due to the Project will be exempt from real property taxation in accordance with and to the extent authorized by RPTL 487 (“Exemption”).

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:

1.0 Representations of the Parties.

1.1 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 or 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 jurisdictions 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.

4. The Project meets the guidelines set forth by the New York State Energy Research and Development Authority and all other applicable provisions of law necessary for the Project to be entitled to Exemption, and Owner has submitted all required documentation and received all necessary approvals related there to.

1.2 The Taxing Jurisdictions hereby respectively represent, warrant, and covenant that, as of the date of this Agreement:

1. The Taxing Jurisdictions are each 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 Jurisdictions' execution, delivery, and performance of this Agreement, and this Agreement constitutes the Taxing Jurisdictions' legal, valid, and binding obligation enforceable against it in accordance with its terms.

3. [Intentionally omitted].

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

2.1 Tax-Exempt Status of the Project Facility. It is the intent of the Parties that, pursuant to RPTL 487, a Form RP-487 has or will be filed by the Owner with the Assessor establishing that the Project is eligible for the Exemption.

2.2 Term. Owner agrees to make annual payments to the Taxing Jurisdictions in lieu of real property taxes attributable to the Project for a period of fifteen (15) consecutive fiscal tax years in amounts and at the times set forth in Sections 2.3 and 4.0 ("Annual Payments"). The Parties agree that Annual Payments may not exceed the amounts that would otherwise be payable by Owner to the Taxing Jurisdictions in respect to the Project but for the Exemption. Such fifteen (15) year term shall commence on January 1st of the year immediately following the earlier of (a) the Completion Date, or (b) the date when the Project is recognized as exempt from taxation on the assessment roll of the Town, pursuant to RPTL 487 ("Commencement Date"), and shall end on the fifteenth Fiscal Year thereafter ("Term").

2.3 Payments. The first Annual Payment shall be in the amount of Seven Hundred Fifty Dollars (\$750.00) per interconnected Megawatt AC of Capacity, and thereafter, Annual Payments will escalate by two percent (2%) per year. Based on the Capacity of two (2) Megawatts AC, Annual Payments to be made by Owner to each Taxing Jurisdiction during the Term of this Agreement shall be as listed in Exhibit B, attached hereto and made a part hereof. Each Annual Payment will be paid to the County in accordance with Sections 4.0 and 2.4 of this Agreement.

2.4 Payment and Billing. The Annual Payment amount and payment date will be noted on an annual bill issued by the County to the Owner, provided that any failure by the County to issue such a bill shall not relieve Owner of its obligation to make timely payments under this Section.

2.5 Depreciation and Changes in Tax Rate. Owner agrees that the Annual Payments to be made under this Agreement will not be reduced on account of a depreciation factor or reduction in the Taxing Jurisdiction's respective tax rate, and the Taxing Jurisdiction agree that the Annual Payments will not be increased on account of an inflation factor or increase in the Taxing Jurisdiction's respective tax rate, all of which factors have been considered in arriving at the Annual Payment amounts reflected in this Agreement.

2.6 Special Districts and Underlying Property. Owner agrees that the Annual Payment shall not include any property taxes due and payable to any special district and/or any property taxes levied against the underlying land on which the Project is sited. Owner agrees that such special district and underlying land taxes shall be made in addition to the Annual Payment.

3.0 Change in Capacity.

3.1 Change in Capacity at Mechanical Completion: Adjustments to Payments. If on the date that the Project is mechanically complete and Owner has commenced production of electricity (the "Completion Date"), the Capacity of the Project is increased as a result of the replacement or upgrade of existing Project equipment or property, or the addition of new Project equipment or property, or any other reason whatsoever, the Annual Payments set forth in Exhibit

B will be increased on a pro rata basis, as mutually agreed upon by the Parties in their respective reasonable discretion.

3.2 Change in Capacity After Mechanical Completion: Adjustments to Payments. If, after the Completion Date, the Capacity of the Project is increased as a result of the replacement or upgrade of existing Project equipment or property, or the addition of new Project equipment or property, or any other reason whatsoever, the Annual Payments set forth in Exhibit B shall be increased on a pro rata basis for the remaining years of the Term, as mutually agreed upon by the Parties in their respective reasonable discretion.

4.0 Payment Collection.

4.1 Payment to the Taxing Jurisdictions. Annual Payments to the Taxing Jurisdiction as specified in Exhibit “B” hereof shall be made in lawful money of the United States of America by check payable to the County Treasurer and mailed to the County of Albany, 112 State Street, Room 1200, Albany, New York 12207, Attn: Albany County Treasurer, and are due no later than January 31st of each Fiscal Year (the “Annual Payment Date”).

4.2 Late Payments. All late Annual Payments, or portions thereof, shall accrue interest at the statutory rate for late tax payments under New York Law (“Interest”), and are subject to a late fee equal to twelve percent (12%) of any outstanding amount due. Owner shall pay the attorney fees, costs and disbursements, filing fees, and other Court costs, and all other costs incurred by a Taxing Jurisdictions in the collection of its share of any unpaid amounts required by this Agreement to have been paid.

4.3 In the event of the failure by the Owner to make the required Annual Payment, the Taxing Jurisdiction shall notify the Assessor in writing of such failure, whereupon the Assessor shall remove the RPTL 487 exemption for the Project and immediately return the Project to its full value on the tax roll for taxation purposes. Additionally, in the event of such failure the Taxing Jurisdictions shall have the right to pursue any remedy against the Owner for in personam monetary relief now or hereafter existing at law, in equity or by statute.

5.0 Tax Status. Tax Certiorari. Separate Tax Lot.

5.1 Exemption. The Parties acknowledge and agree that the Project is to be assessed as exempt from real property taxation in accordance with and to the extent authorized by RPTL 487. The Taxing Jurisdiction agree as long as the Owner timely pays the Annual Payments throughout the Term and upon the terms and conditions of this Agreement, the Taxing Jurisdiction will not levy any ad valorem real property taxes with respect to the Project to which the Project might otherwise be subject to under New York law.

5.2 Payments of Special Assessments or Special District Assessments. 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 Jurisdictions to the Project other than taxes or charges from which the Project is exempt pursuant to RPTL 487.

5.3 Tax Certiorari. Provided that the Project is recognized as exempt upon the assessment rolls of the Taxing Jurisdictions in accordance with RPTL 487 during each Fiscal Year of the Term hereof, Owner covenants that it will not commence any proceeding pursuant to Article 7 of the RPTL or any other applicable State or Federal law, for the review of any assessment covered by this Agreement.

5.4 Separate Lots. [Intentionally omitted].

6.0 Underlying Land. Notwithstanding anything to the contrary contained in this Agreement, the Owner hereby acknowledges and agrees that the Taxing Jurisdictions shall continue to assess and levy real property taxes against the Property upon which the Project is constructed.

7.0 Assignments, Binding Effect.

7.1 Assignment, generally. This Agreement may not be assigned by Owner without the prior written consent of the Taxing Jurisdictions; 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 Jurisdictions, 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 satisfaction of the Taxing Jurisdictions, in their respective sole and absolute discretion, cure any defaults and satisfy all liabilities arising under this Agreement prior to the date of such assignment. A memorandum of this Agreement shall be recorded by Owner, at Owner's cost and expense, in the Albany County Clerk's Office, and the Taxing Jurisdictions shall reasonably cooperate in the execution of any required assignments with the Owner and its successors.

7.2 Assignment to Affiliate or Financing Party. Owner may, with advance written notice to the Taxing Jurisdictions 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.

7.3 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Taxing Jurisdictions, the Owner and their respective successors and assigns.

8.0 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.

9.0 Additional Documentation and Actions. Subject to applicable laws and regulations, each Party shall hereafter, execute and deliver or cause to be executed and delivered, such reasonable additional instruments and documents as the other Parties 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 Jurisdictions to review and negotiate any such instruments or documents.

10.0 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:

Yellow 8 LLC
125 Wolf Rd, Suite 312
Colonie, NY 12205

If to the County:

Albany County Executive
112 State Street
Albany, New York 12207

With a copy to:

Albany County Attorney
112 State Street, Room 600
Albany, New York 12207

If to the Assessor:

Town of Bethlehem Assessor
445 Delaware Ave
Delmar, New York 12054

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.

11.0 Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the State of New York without regard to principles of conflicts of law. The Parties each consent to the jurisdiction of the New York State Supreme Court, County of Albany regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Accordingly, any litigation arising under this Agreement shall be brought solely in such Court.

12.0 Termination Rights of the Owner.

12.1 The Owner may terminate this Agreement in the event the Owner provides notice to the Taxing Jurisdictions that it is discontinuing the production of electricity and is decommissioning its equipment (a "Notice of Termination").

12.2 Upon Owner's delivery of the Notice of Termination, the Owner shall annually pay to the Taxing Jurisdictions, on or before January 31st of each Fiscal Year, an amount equal to the assessed value of the Project for such Fiscal Year, as determined in accordance with the provisions of the RPTL, multiplied by the respective tax rate of the Taxing Jurisdiction for such Fiscal Year that would be applicable to Project without regard to the application of RPTL 487 to the Project. Owner shall be liable for Annual Payments due in the Fiscal Year of such termination, except that if Owner is required to pay any pro-rata portion of real property taxes for the unexpired portion of any Fiscal Year, the Annual Payments for such Fiscal Year shall be reduced pro rata so that the Owner is not required to pay both Annual Payments and real property taxes for any period of time.

13.0 Termination Rights of Taxing Jurisdiction. Notwithstanding anything to the contrary in this Agreement, the Taxing Jurisdictions may terminate this Agreement on ten (10) days written Notice of Termination to Owner if:

13.1 Owner fails to timely make the Annual Payments required under this Agreement, unless such payment, with Interest, is received by the Taxing Jurisdictions within fifteen (15) days of the Annual Payment Date; or

13.2 Owner has filed, or has had filed against it, a petition for voluntary or involuntary bankruptcy, liquidation, receivership, or executes an assignment for the benefit of creditors, or is otherwise insolvent.

13.3 Upon the Taxing Jurisdictions delivery of a Notice of Termination and the Owner's failure to cure any default within ten (10) days of delivery thereof, the provisions of Section 12.2 hereof shall apply. In the event the Owner has failed to timely make the payments required under this Agreement, including accrued Interest thereon under Section 4.1, and the Taxing Jurisdictions have terminated this Agreement, in addition to the foregoing, each Taxing Jurisdictions may pursue any remedy against the Owner for in personam monetary relief now or hereafter existing at law, in equity or by statute to collect the total amount due. In the event this Agreement is terminated pursuant to this Section 13.3, then the provisions of Section 12.2 hereof shall apply.

14.0 Remedies; Waiver and Notice.

14.1 No Remedy Exclusive. No remedy herein conferred upon or reserved to Party is intended to be exclusive of any other remedy or remedies provided by this Agreement, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement.

14.2 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.

14.3 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.

15.0 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.

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

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

18.0 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.

19.0 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.

[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.

YELLOW 8, LLC

By: _____

Name

Title

Date

COUNTY OF ALBANY, NEW YORK

By: _____

Name

Title

Date

TOWN OF BETHLEHEM ASSESSOR

By: _____

Name

Title

Date

EXHIBIT A
DESCRIPTION OF LAND

EXHIBIT B
ANNUAL PAYMENTS

Fiscal Year	Payment to County
Year 1	\$1,500.00
Year 2	\$1,530.00
Year 3	\$1,560.60
Year 4	\$1,591.81
Year 5	\$1,623.65
Year 6	\$1,656.12
Year 7	\$1,689.24
Year 8	\$1,723.03
Year 9	\$1,757.49
Year 10	\$1,792.64
Year 11	\$1,828.49
Year 12	\$1,865.06
Year 13	\$1,902.36
Year 14	\$1,940.41
Year 15	\$1,979.22