

Encl.#09.11
March 23, 2013

The Horseheads Central School District
and
Renovus Energy, Inc.

PAYMENT IN-LIEU OF TAXES AGREEMENT

for a
Community Solar Farm on Breesport Road, Erin NY
Tax Map #51.00-2-2.1

PILOT Agreement

This **Payment in-Lieu of Taxes (PILOT) Agreement** (hereafter "**Agreement**"), made this ____ day of _____, by and between **Renovus Energy, Inc.**, a corporation duly organized and existing under the laws of the State of New York (herein referred to as **Renovus Energy**), having its offices at 1520 Trumansburg Road, Ithaca, NY 14850 and the **Horseheads Central School District** having its offices at One Raider Lane, Horseheads, NY 14845. Renovus Energy and the Horseheads Central School District are hereinafter referred to each as a **Party** or collectively as the **Parties**.

THAT, WHEREAS, the purpose of this Agreement is to define the rights, interests, and obligations of the Parties regarding the construction and operation of the Renovus Energy Solar Farm in the Town of Erin located near Breesport Road, Erin NY (Tax Parcel #51.00-2-2.1).

WHEREAS, under its lease agreements with landowners, Renovus Energy will be responsible for the payment of local *ad valorem* real estate taxes on Project structures and improvements (but not for taxes on the value of the underlying land which will continue to be landowner's responsibility).

WHEREAS, Section 487(2) of the Real Property Tax Law (RPTL) provides, in relevant part, that real property which includes a solar energy system in accordance with the provisions of said section, shall be exempt from taxation to the extent of any increase in the value thereof by reason of the inclusion of such solar system for a period of fifteen (15) years.

WHEREAS, RPTL §487(8)(a) provides, in relevant part, that a taxing jurisdiction may by resolution or local law provide that no exemption under this section of the law shall be applicable within its jurisdiction with respect to any solar energy system which began construction subsequent to January 1, 1991 or the effective date of such local law, ordinance or resolution, whichever is later. The Horseheads Central School District has not, to date, adopted such a local law, or resolution.

WHEREAS, RPTL §487(9)(a) provides, in relevant part, that a taxing jurisdiction which has not acted to remove the exemption under said section may require the owner of a property which includes a solar system which meets the requirement of RPTL §487 to enter into an Agreement for Payments in-Lieu of Taxes (PILOT). Said section also provides, in relevant part, that such contract may require payment of annual amounts in amounts not to exceed the amounts which would otherwise be payable but for the exemption under this section.

WHEREAS, RPTL §487(9)(a) provides that if the owner or developer of such a system provides written notification to the taxing jurisdiction of its intent to construct such a system, then in order to require the owner or developer of such system to enter into a contract for Payments in-Lieu of Taxes (PILOT), such taxing jurisdiction must notify such owner or developer of its intent to require contract for payment in lieu of taxes within sixty (60) days of receiving the written

notification and both parties have complied with their respective obligations under this section of law in relation to the listed parcel.

NOW, THEREFORE, the Horseheads Central School District and Renovus Energy, Inc. desire to enter into such a PILOT agreement under RPTL 487.

WHEREAS, the Town of Erin has authorized a solar energy system and related infrastructure to be built and operated in the district which is known as the **“Project”**; and

WHEREAS, the parties hereto believe that their mutual best interests will be served by the execution of this Agreement which specifies their respective rights, interests, and obligations relative to the construction and operation of the Project.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties hereto agree as follows:

Section 1 DEFINITIONS.

The terms of this Agreement shall have the meanings ascribed to them herein, for all purposes of this Agreement, unless the context clearly indicates some other meaning. Words in singular shall include the plural and words in the plural shall include the singular where the context so requires.

1. **“Agreement”** means this Payment in-Lieu of Taxes (PILOT) and any and all amendments, exhibits, or schedules attached hereto.
2. **“Effective Date”** means the date upon which this Agreement becomes in effect.
3. **“Force Majeure”** shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United State or of the State of New York or civil or military authority, insurrections, riots, epidemics, landslides, lightning earthquakes, fires, hurricanes, storms, floods, washouts, droughts or other weather related events, arrest, restraining of government and people, civil disturbances, explosions, partial or entre failure of Utilities, serial equipment failures, shortages of labor, material, supplies or transportation, litigation or any other similar or different cause not reasonably within the control of the party claiming such inability. **“Installed Generating Capacity”** means the manufacturer-rated generating capacity in megawatts of the Renovus Energy SES for which the Operations Date has occurred; and (ii) that are not inoperable due to an event of Force Majeure.
4. **“Operations Date”** shall be the later of the date that a SES has (i) been issued a Certificate of Completion, or (ii) generated electricity (excluding any electricity sold during start-up and commissioning of the SES) for sale.
5. **“Project”** means the Renovus Energy Erin Solar Farm systems including related infrastructure, access roads, electrical transmission lines and substations for which the Planning Board Permits and related variances have been approved.
6. **“PILOT”** means Payment in-Lieu of Taxes
7. **“Renovus Energy”** means Renovus Energy, Inc. and its successors, assigns, and transferees.

8. **“School District** is the Horseheads Central School District
9. **“SES”** is a solar energy system (including all equipment, transformers and other associated equipment).
10. **“Term”** means the length of this Agreement
11. **“Town Board”** means the Planning Board of the Town of Erin.
12. **“Town Permits”** means all Special Use Permits and other approvals issued by the Town of Erin
13. **“Town of Erin”** means the municipal corporation known as the Town of Erin in Chemung County, State of New York, and, depending upon the context, the geographic area thereof.
14. Town for the construction and operation of the Project.

Section 2 DURATION OF AGREEMENT.

Section 2.1 Effective Date. This Agreement will become effective upon its execution by Renovus Energy and the Horseheads Central School District (the **“Effective Date”**).

Section 2.2 Term. The term of this Agreement will be fifteen (15) years commencing upon the first tax year in which the Project has achieved its Operations Date (the **“Term”**). The terms of this Agreement shall be in full force and effect until the earlier of (i) the Decommissioning of the system or, (ii) the termination of the Agreement.

Section 3 PAYMENTS.

Section 3.1 Payment in-Lieu of Taxes. Renovus Energy will make annual payments in-lieu by September 30th of each year of taxes (**“PILOT Payments”**) to the School District for each tax year during the term of this Agreement, in accordance with the Term. These PILOT payments will be in lieu of any and all *ad valorem* real estate taxes which would have otherwise been payable to the Horseheads Central School District if it had not left in place the exemption provided under Real Property Tax Law 487. See Exhibit A for a schedule of payments that will be payable. If such payments exceed what would otherwise be payable but for the exemption under section 487(8)(a), then Renovus will pay the lesser amount.

Section 4 PROJECT OWNERSHIP AND TRANSFER.

Section 4.1 Applicability. This Agreement is applicable to Renovus Energy its successors, transferees, and assigns, and to all parties to which Renovus Energy may transfer any or all of its ownership interests or contracts or subcontracts concerning the construction, management, operations and/or maintenance in, and responsibilities of the Project.

Section 4.2 Assignee obligations. Renovus Energy may transfer any or all of its interests in the ownership, operation and/or maintenance of the Project or its property interests if the proposed transferee has, in writing, agreed to abide by the terms of this Agreement, Town agreements, and any Permits, including any bonds or financial commitments.

Section 4.3 Security Assignment.

Renovus Energy may assign without further notice to the School District, pledge and mortgage to any lender as collateral security, all of its rights to and under this Agreement. The School District hereby: (i) irrevocably consents to said assignment, (ii) agrees to unconditionally execute without undue delay any such consents or other documents as may be required by the lender or their nominee, designee or assignee; and, (iii) agrees that, following the assumption of this Agreements by lender or their nominee, designee or assignee, all representations, warranties, indemnities and agreements (other than those representations and warranties expressly made only as of an earlier date) made by the School District under this Agreement shall inure to the benefit of such party originally named in the Agreement.

Section 4.4 Payments After Expiration of Term. At the expiration of this Agreement, the assessment, levy, and collection of taxes related to the Project shall be made pursuant to then current law. Pursuant to State statutes, the Company shall have the right to challenge any assessments relating to such taxes.

Section 5 Termination.

Section 5.1 Company Termination with Notice. In the event the Company chooses to relinquish the benefit of the exemption conferred by the School District hereunder, it may do so by providing at least thirty (30) days' prior written notice to the Tax Jurisdiction of its intent to terminate this Agreement (effective on the first taxable status date following such notice), and the Project shall become subject to a payment in lieu of taxes equal to the full tax amount due if the District had opted out of the exemption under RPTL 487 for the first full Tax Year associated with the taxable status date following the notice of termination.

Section 5.2 Effect of Company Termination. This Agreement shall be administered on a Tax Year basis. No partial Tax Year taxes levies or assessments shall be owed following termination by the District. Termination by the Company shall not relieve the Company of any partial payments. For calculating any PILOTS due upon early termination of this agreement, For that next Tax Year and Tax Years following termination, the assessment, levy and collection of taxes related to the Project shall be made pursuant to then current law. Renovus Energy shall have the right to challenge any assessments relating to such taxes payable on the Project for Tax Years following such termination.

Section 5.3 Effect of Default Termination. In the event that any PILOT payment for which a Notice of Default is issued is not received by the Town within six (6) weeks after the Company's receipt of the Notice of Default, this Agreement and the benefit of its underlying exemption shall terminate, the Company shall be subject to any action at law or in equity that the Town deems appropriate to collect amounts due hereunder, the Project will be classified as taxable by the Town, and Renovus Energy shall thenceforward be responsible for payment of property taxes pursuant to then current law.

Parties, pending the outcome of the litigation, including any and all related appeals. At the end of all such litigation, School District Fees shall be paid as appropriate according to the outcome of the litigation.

Section 6 NOTICES.

Section 6.1 Notices hereunder will be given in writing and delivered to the Parties by first class mail, postage prepaid, at the addresses set forth hereafter:

Notices to the School District:
Horseheads Central School District
1 Raider Lane
Horseheads, NY 14845

Notices to Renovus Energy, Inc.
Renovus Energy, Inc.
1520 Trumansburg Road
Ithaca, NY 14850

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and date above written.

RENOVUS ENERGY, INC.

By: Joseph Sliker

Its: President

HORSEHEADS SCHOOL DISTRICT

By:

Its: Superintendent

STATE OF NEW YORK

COUNTY OF _____

On the _____ day of _____ in the year _____ before me, the undersigned, a notary public in and for said state, personally appeared _____, on **behalf of Horseheads School District** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument. _____

Notary Public

Seal

STATE OF NEW YORK

COUNTY OF _____

On the _____ day of _____ in the year _____ before me, the undersigned, a notary public in and for said state, personally appeared _____, on **behalf of Renovus Energy,**

Inc personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Seal

EXHIBIT A

Schedule of PILOT Payments

<u>Year 1</u>	\$3,135.24	Per MW
<u>Year 2</u>	\$3,100.22	Per MW
<u>Year 3</u>	\$3,064.51	Per MW
<u>Year 4</u>	\$3,027.97	Per MW
<u>Year 5</u>	\$2,990.43	Per MW
<u>Year 6</u>	\$2,951.67	Per MW
<u>Year 7</u>	\$2,911.42	Per MW
<u>Year 8</u>	\$2,869.36	Per MW
<u>Year 9</u>	\$2,825.06	Per MW
<u>Year 10</u>	\$2,778.03	Per MW
<u>Year 11</u>	\$2,727.60	Per MW
<u>Year 12</u>	\$2,672.99	Per MW
<u>Year 13</u>	\$2,613.19	Per MW
<u>Year 14</u>	\$2,546.95	Per MW
<u>Year 15</u>	\$2,472.71	Per MW