

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

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**TITLE:**

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING EXECUTION OF A PROCUREMENT AND CONSTRUCTION CONTRACT PROVIDING FOR CONSTRUCTION OF CERTAIN RECOMMENDED SERIES 2011 LOCAL UNIT PROJECTS IN FURTHERANCE OF THE COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM, SERIES 2011 AND CERTAIN OTHER MATTERS RELATED THERETO**

**WHEREAS**, the Morris County Improvement Authority (including any successors and assigns, the "Authority") has been duly created by resolution duly adopted by the Board of Chosen Freeholders (the "Board of Chosen Freeholders") of the County of Morris (the "County") in the State of New Jersey (the "State") as a public body corporate and politic of the State pursuant to and in accordance with the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, and the acts amendatory thereof and supplemental thereto (the "Act"), and other applicable law; and

**WHEREAS**, pursuant to that certain resolution entitled "RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE NOTES AND BONDS, SERIES 2011 AND ADDITIONAL BONDS OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY" adopted by the governing body of the Authority on July 20, 2011, as amended and supplemented from time to time in accordance with its terms (the "Bond Resolution"); (capitalized terms used herein and not otherwise defined herein, for all purposes of this Resolution, shall have the meanings ascribed to such terms in the Bond Resolution), the Act and other applicable law and official action, the Authority issued its "County of Morris Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011A (Federally Taxable)", in the aggregate principal amount of \$34,100,000 (the "Series 2011 Bonds") to finance Renewable Energy Projects for Series 2011 Local Units as set forth in the various Program Documents in connection with the second tranche of the Authority's Renewable Energy Program ("Tranche II"); and

**WHEREAS**, in order to implement Tranche II of the Renewable Energy Program, the Authority determined to finance the respective Renewable Energy Projects on, in or about the respective Local Unit Facilities, all as set forth on Exhibits B, C, and A to the Local Unit License Agreement for each of the following participating Local Units:

(i) Township of Hanover (Municipal Building/Police) and Township of Parsippany-Troy Hills (Township Library) (collectively, the "Original Municipal Series 2011 Local Units"); and

(ii) Chester Board of Education (Dickerson School, Bragg Intermediate School, Black River Middle School), Kinnelon Board of Education (Kinnelon High School, Pearl Miller Middle School, Stonybrook School), Mine Hill Township Board of Education (Canfield Avenue School), Montville Township Board of Education (Montville High School, Lazar Middle School, Woodmont Elementary School), Morris Hills Regional District Board of Education (Morris Knolls High School), Randolph Township Board of Education (Randolph High School, Randolph Middle School, Ironia School), and Washington Township Board of Education (Long Valley Middle School) (collectively, the "Original Board of Education Series 2011 Local Units"); and

(iii) County College of Morris (Demare Hall Penthouse, Parking Lots 1, 2, 5, 6, 7 and 8, Student Community Center) (the "Original County Series 2011 Local Units");

(each an "Original Series 2011 Local Unit", and collectively, the "Original Series 2011 Local Units"), through the issuance by the Authority of the Series 2011 Bonds; and

**WHEREAS**, in connection with Tranche II, the County and the Authority entered into that certain "County Guarantee Agreement (Morris County Renewable Energy Program, Series 2011," dated December 1, 2011 pursuant to which the County guaranteed the payment of all principal of and interest on the Series 2011 Bonds (the "County Guaranty"); and

**WHEREAS**, pursuant to Amendment and Consent No. 1 (Morris County Renewable Energy Program, Series 2011) dated as of December 1, 2012 ("Consent No. 1"), the parties thereto agreed that the Renewable Energy Projects at the following Original Series 2011 Local Units had satisfied the conditions to be removed from the Program Documents as set forth in Section 4.6(c) of the Power Purchase Agreement (as defined in Consent No. 1): Kinnelon Board of Education (Kinnelon High School), Montville Township Board of Education (Woodmont Elementary School) and County College of Morris (Demare Hall Penthouse, Parking Lot 1); and

**WHEREAS**, further pursuant to Consent No. 1, the parties thereto agreed that the Renewable Energy Projects at the following Local Units had satisfied the conditions to be added to the Program Documents as set forth in Section 4.6(c) of the Power Purchase Agreement, and accordingly, for all purposes of the Program Documents, constitute Section 4.6(c) Projects (as defined in the Power Purchase Agreement): Washington Township Board of Education (Benedict A. Cucinella School), Borough of Chester (BOE/Police Station), Mount Olive Township Board of Education (Tinc Elementary School, Sandshore Elementary School), County of Morris (OT/Human Services Building, Morris View Nursing), Randolph Township Board of Education (Randolph Township DPW Building), Mount Olive Township (Senior Center), Township of Montville (Library) and Morris County Vocational School District (Vocational School); and

**WHEREAS**, as of March 1, 2015, the Authority had implemented Renewable Energy Projects on, in or about the respective Local Unit Facilities for each of the following Original Series 2011 Local Units: Chester Board of Education (Dickerson School, Bragg Intermediate School, Black River Middle School), Kinnelon Board of Education (Pearl Miller Middle School, Stonybrook School), Mine Hill Township Board of Education (Canfield Avenue School),

Montville Board of Education (Montville High School, Lazar Middle School), Morris Hills Regional District Board of Education (Morris Knolls High School), Randolph Township Board of Education (Randolph High School, Randolph Middle School, Ironia School) and County College of Morris (Parking Lots 2, 5, 6, 7 and 8, Student Community Center); and

**WHEREAS**, following, among other things, certain disputes between the Company and the Company's Engineering, Procurement, and Construction Contractor, Power Partners MasTec, LLC, the County, by resolution of the Board of Chosen Freeholders, adopted on November 9, 2015, and entitled, "RESOLUTION OF THE MORRIS COUNTY BOARD OF CHOSEN FREEHOLDERS AUTHORIZING THE MORRIS COUNTY IMPROVEMENT AUTHORITY TO CONSTRUCT CERTAIN RECOMMENDED SERIES 2011 LOCAL UNIT PROJECTS IN FURTHERANCE OF THE COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM, SERIES 2011 AND CERTAIN OTHER MATTERS RELATED THERETO" (the "County Authorizing Resolution"), directed the Authority to implement Renewable Energy Projects on, in or about the respective Local Unit Facilities for each of the following Local Units:

- (i) Borough of Chester (BOE/Police Station) (the "Recommended Municipal Series 2011 Local Units" and, together with the Original Municipal Series 2011 Local Units, the "Municipal Series 2011 Local Units");
- (ii) Mount Olive Township Board of Education (Tinc Elementary School, Sandshore Elementary School), Washington Township Board of Education (Long Valley Middle School, Benedict A. Cucinella School) and School District of the Chathams (Chatham High School) (collectively, the "Recommended Board of Education Series 2011 Local Units" and, together with the Original Board of Education Series 2011 Local Units, the "Board of Education Series 2011 Local Units"); and
- (iii) County of Morris (OTA/Human Services Building) (the "Recommended County Series 2011 Local Unit" and, together with the Original County Series 2011 Local Units, the "County Series 2011 Local Units");

(each a "Recommended Series 2011 Local Unit"; collectively, the "Recommended Series 2011 Local Units"; and together with the Original Series 2011 Local Units, the "Series 2011 Local Units"); and

**WHEREAS**, pursuant to the terms of Amendment and Consent No. 3 dated as of March 3, 2015 ("Consent No. 3" and, together with Consent No. 1 and Amendment and Consent No. 2 (Morris County Renewable Energy Program, Series 2011), dated as of October 1, 2013, the "Consents"), the Authority has determined in its sole discretion, in consultation with the County, to implement Renewable Energy Projects for each Recommended Series 2011 Local Unit (each a "Overdue Series 2011 Local Unit Project" and, together, the "Overdue Series 2011 Local Unit Projects"); and

**WHEREAS**, pursuant to that certain resolution entitled, "RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING CERTAIN ACTIONS

IN CONNECTION WITH COMMENCEMENT OF CONSTRUCTION OF CERTAIN RECOMMENDED SERIES 2011 LOCAL UNIT PROJECTS IN FURTHERANCE OF THE COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM, SERIES 2011 AND CERTAIN OTHER MATTERS RELATED THERETO", duly adopted by the Authority on January 20, 2016, the Authority authorized delivery of an Authority Overdue Project Direction Notice to the Company; and

**WHEREAS**, pursuant to the Authority Overdue Project Direction Notice, the Authority has directed the Company to enter one or more fixed price contracts for construction of the Overdue Series 2011 Local Unit Projects (the "EPC Contract") with one or more Approved Subcontractors (the "EPC Contractor"), which EPC Contract shall provide that a representative of the Authority (the "Authority Representative") serve as the point of contact for communications with the EPC Contractor and shall be generally responsible for oversight of construction of the Overdue Series 2011 Local Unit Projects, that Matrix New World Engineering shall serve as the Authority Representative, that the Authority shall be an acknowledgement party to the EPC Contract (however, with respect to those provisions that impose affirmative obligations on the Authority and/or the Authority Representative (if any), both the Authority's acknowledgment and agreement thereto shall be required), and that the only source of funds available for payment for work performed under the EPC Contract shall be the Project Fund (as defined in the Bond Resolution); and

**WHEREAS**, the Company has delivered to the Authority the following EPC Contract executed by each of the parties thereto, which EPC Contract shall not become effective unless and until executed by an authorized representative of the Authority, a copy of which is attached hereto as Exhibit A: Procurement and Construction Contract dated as of April 20, 2016 by and between Sunlight General Morris Solar, LLC and HESP Construction, LLC, and acknowledged by the Morris County Improvement Authority; and

**WHEREAS**, the EPC Contract conforms to the requirements set forth in the Authority Overdue Project Direction Notice; and

**WHEREAS**, it is in the best interests of the Authority and the Recommended Series 2011 Local Units for the Authority to execute and deliver the EPC Contract.

**NOW THEREFORE BE IT RESOLVED** by the Board of Commissioners of the Authority as follows:

**Section 1.** The Chairperson of the Authority (including his designees, each an "Authorized Officer"), is hereby authorized and directed, in consultation with counsel to the Authority, to execute and deliver the EPC Contract in the form set forth in Exhibit A attached hereto, with such additions, modifications or deletions recommended by counsel to the Authority and agreed by the parties to such EPC Contract.

**Section 2.** The Authorized Officers are hereby authorized and directed to take all further actions, and to execute such certificates, instruments or documents, deemed necessary,

convenient or desirable by any such Authorized Officer, in consultation with counsel, in connection with all matters set forth in or contemplated by this resolution, Consent No. 3 and the Program Documents, including execution of any amendment to any Program Document required to effectuate the transactions contemplated by the County Authorizing Resolution, this resolution and the EPC Contract.

**Section 4.** Subject to the second sentence of this section, this resolution shall take effect immediately. In accordance with N.J.S.A. 40:37A-50, the Secretary of the Authority is hereby authorized and directed to submit to each member of the Board of Chosen Freeholders, by the end of the fifth business day following this meeting, a copy of the minutes of this meeting. The Secretary is hereby further authorized and directed to obtain from the Clerk of the Board of Chosen Freeholders a certification from the Clerk stating that the minutes of this meeting have not been vetoed by the Director of the Board of Chosen Freeholders.

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**EXHIBIT A**

**Executed EPC Contract**

**MOVED/SECONDED:**

Resolution moved by Commissioner \_\_\_\_\_.

Resolution seconded by Commissioner \_\_\_\_\_.

**VOTE:**

<b>Commissioner</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
Gallop				
Kovalcik				
Ramirez				
Sandman				
Bonanni				

This Resolution was acted upon at the Special Meeting of the Authority held on April 20, 2016 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this 20th day of April, 2016

By: \_\_\_\_\_  
Secretary of the Authority

**FORM and LEGALITY:**

This Resolution is approved as to form and legality as of April 20, 2016.

By: \_\_\_\_\_  
Matthew D. Jessup, Member, McManimon, Scotland & Baumann, LLC  
Counsel to the Authority  
Resolution No. 16-15