

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

TITLE:

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING AN AMENDMENT TO THE LEASE PURCHASE AGREEMENT WITH SUNLIGHT GENERAL MORRIS SOLAR, LLC IN CONNECTION WITH THE MORRIS COUNTY IMPROVEMENT AUTHORITY'S COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE BONDS, 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 hereinafter defined Original Series 2011 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, pursuant to (i) N.J.S.A. 40A:11-4.1(k) of the Local Public Contracts Law, (ii) Local Finance Board Notice 2008-20, December 3, 2008, Contracting for Renewable Energy Services, (iii) the Board of Public Utilities ("BPU") protocol for measuring energy savings in PPA agreements dated February 20, 2009 (Public Entity Energy Efficiency and Renewable Energy Cost Savings Guidelines), (iv) Local Finance Board Notice 2009-10 dated June 12, 2009, Contracting for Renewable Energy Services: Update on Power Purchase Agreements, (v) all other applicable law, and (vi) pursuant to a competitive contracting process governed thereby, the Authority selected Sunlight General Morris Solar, LLC, as solar developer (the "Company") to implement the Renewable Energy Projects for the Original Series 2011 Local Units; 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, upon issuance of the Series 2011 Bonds, pursuant to N.J.S.A. 40:37A-78 of the Act, the Authority and the Company entered into that certain "Lease Purchase Agreement (Morris County Renewable Energy Program, Series 2011)" dated December 1, 2011 (as the same may be amended or supplemented from time to time in accordance with its terms, the "Company Lease Agreement"), between the Authority, as owner and lessor, and the Company, as lessee, (I) conveying to the Company a leasehold interest in and to the Renewable Energy Projects, (II) assigning to the Company a license of the necessary portion of each Original Series 2011 Local Units' Local Unit Facilities (obtained by the Authority through the Local Unit License Agreements) in order for the Company to design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects for such Original Series 2011 Local Units, and (III) obligating the Company to operate and maintain, or cause the operation and maintenance of, the Renewable Energy Projects for the Original Series 2011 Local Units;

WHEREAS, upon issuance of the Series 2011 Bonds, the Authority and the Company entered into that certain "Power Purchase Agreement (Morris County Renewable Energy Program, Series 2011)" dated December 1, 2011 (as the same may be amended or supplemented from time to time in accordance with its terms, the "Power Purchase Agreement"), which Power Purchase Agreement, among other things, obligates the Company to develop the Renewable Energy Projects for the Series 2011 Local Units on their Local Unit Facilities, and combined with the Local Unit License Agreement, provide for the sale of the electricity produced by the Renewable Energy through the Authority to the Series 2011 Local Units at a fixed price, plus fixed escalation, set forth in the Power Purchase Agreement (the "PPA Price"), all as authorized pursuant to N.J.S.A. 40:37A-77 and -78 of the Act, N.J.S.A. 40A:65-4 of the Shared Services Act, N.J.S.A. 40A:11-15(45) of the Local Public Contracts Law and N.J.S.A. 18A:18A-42(o) of the Public Schools Contracts Law, and the guidelines applicable to such contracts promulgated by the State Board of Public Utilities; 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) (collectively, the "Completed Series 2011 Local Units"); 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 Completed 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; and

WHEREAS, each of the Recommended Series 2011 Local Units has, as of the date hereof, 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 and has acknowledged the Power

Purchase Agreement by signature of an authorized officer of each such Recommended Series 2011 Local Unit; and

WHEREAS, in order to effectuate the provisions of the Consents, the County Authorizing Resolution and the Program Documents, each of the Recommended Series 2011 Local Units has, as of the date hereof, entered into and executed a Local Unit License Agreement with the Authority; and

WHEREAS, the Authority and the Company desire to amend the Company Lease Agreement such that the Company Lease Agreement include all Series 2011 Local Units and all Renewable Energy Projects constructed or to be constructed at such Series 2011 Local Units, as applicable (in the form attached hereto as Exhibit A, the "Company Lease Agreement Amendment").

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

Section 1. The recitals to this resolution are incorporated herein as if set forth in full.

Section 2. 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 Company Lease Agreement Amendment.

Section 3. 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, the Consents and the Program Documents, including execution of any amendment to any Program Document required to effectuate the transactions contemplated by the County Authorizing Resolution, the Consents and this resolution.

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

Form of Company Lease Agreement Amendment

MOVED/SECONDED:

Resolution moved by Commissioner _____.

Resolution seconded by Commissioner _____.

VOTE:

Commissioner	Yes	No	Abstain	Absent
Gallopo				
Kovalcik				
Ramirez				
Sandman				
Bonanni				

This Resolution was acted upon at the Regular Meeting of the Authority held on May 11, 2016 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this ___ day of May, 2016

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of May 11, 2016.

By: _____
Matthew D. Jessup, Member, McManimon, Scotland & Baumann, LLC
Counsel to the Authority
Resolution No. 16-20