

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

TITLE:

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING A LICENSE AND ACCESS AGREEMENT BETWEEN THE MORRIS COUNTY IMPROVEMENT AUTHORITY AND SUSSEX COUNTY, AND AN AMENDMENT TO THE LEASE PURCHASE AGREEMENT BETWEEN THE MORRIS COUNTY IMPROVEMENT AUTHORITY AND SUNLIGHT GENERAL SUSSEX SOLAR, LLC, IN FURTHERANCE OF THE COUNTY OF SUSSEX GUARANTEED RENEWABLE ENERGY PROGRAM, SERIES 2011

WHEREAS, the County of Sussex, New Jersey (the "County") previously undertook the development and implementation of a renewable energy program (the "Renewable Energy Program") for the financing, design, permitting, acquisition, construction, installation, operation and maintenance of renewable energy capital equipment and facilities such as solar panels, wind turbines, and hydro-electric, bio-diesel, geothermal, and biomass facilities, including any related electrical modifications, work related to the maintenance of roof warranties, or other work required, desirable or convenient for the installation of such systems (collectively, the renewable energy capital equipment and facilities, the "Renewable Energy Projects") for and on behalf of the County and its affiliates, and the local governmental units within the County, including without limitation municipalities, boards of education for school districts, local authorities and any other local government instrumentalities, public bodies or other local government entities (collectively, including the County, the "Local Units");

WHEREAS, as of the date of implementation of the Renewable Energy Program (and as of the date hereof), the County had not created its own county improvement authority, and therefore pursuant to 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 (as codified at N.J.S.A. 40:37A-44 *et seq.*, the "Act"), the County determined to utilize the services of another county improvement authority, including without limitation the Morris County Improvement Authority (the "Authority"), with the consent of both the County, a beneficiary county under the Act, and the Morris County Board of Chosen Freeholders, for any purpose for which an improvement authority shall exist, including those set forth in Section 11 of the Act (N.J.S.A. 40:37A-54), which purposes include the development and implementation of the Renewable Energy Program;

WHEREAS, the County has implemented the Renewable Energy Program through the Authority pursuant to the Act, the Uniform Shared Services and Consolidation Act, constituting Chapter 63 of the Pamphlet Laws of 2007 of the State, and the acts amendatory thereof and

supplemental thereto (as codified at N.J.S.A. 40A:65-1 et seq., the "Shared Services Act"), and all other applicable law, the terms of which agreement has been set forth in that certain "Service Agreement (Sussex County Renewable Energy Program)" dated as of March 1, 2011 (as amended and supplemented from time to time in accordance with its terms, the "Service Agreement") between the County and the Authority, and consented to by Morris County;

WHEREAS, the Authority has been duly created by resolution no. 42 entitled "Resolution of the Board of Chosen Freeholders of Morris County, New Jersey creating the Morris County Improvement Authority" duly adopted by the Board of Freeholders of Morris County in the State on April 10, 2002 as a public body corporate and politic of the State pursuant to and in accordance with the Act and other applicable law; and

WHEREAS, the Renewable Energy Projects procured under the Renewable Energy Program are to be installed on, in, affixed or adjacent to and/or for any other Local Unit controlled buildings, other structures, lands or other properties of the Local Units (collectively, the "Local Unit Facilities"); and

WHEREAS, pursuant to that certain resolution entitled, "RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY OF SUSSEX 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 September 28, 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 Sussex Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011A (Federally Taxable)", in the aggregate principal amount of \$26,715,000 (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 County's Renewable Energy Program; and

WHEREAS, upon or prior to the issuance of the Series 2011 Bonds, and in accordance with (i) N.J.S.A. 40A:11-4.1(k) of the Local Public Contracts Law and N.J.S.A. 18A:18A-4.1(k) of the Public Schools Contracts Law, (ii) Local Finance Board Notice 2008-20, December 3, 2008, Contracting for Renewable Energy Services, (iii) the State 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, and (v) all other applicable law, and pursuant to a competitive contracting process governed thereby, which included a request for solar developer proposals issued by the Authority dated September 8, 2011, as amended (the "Company RFP") and the receipt of proposals from prospective solar developers, including that proposal dated October 13, 2011 (the "Company Proposal") submitted with respect to Sunlight General Sussex Solar, LLC (the "Company"), the County by resolution adopted on October 26, 2011, and entitled, "Resolution

Providing Consent of Sussex County to Solar Developer and Underwriter Awards of Morris County Improvement Authority in Connection with Such Authority's 2011 Renewable Energy Program Undertaken on Behalf of Sussex County", and, pursuant to such County resolution, the Authority, selected the Company to design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects for the designated Local Unit Facilities of such Series 2011 Local Units, with such Program terms as are set forth in the following Company Documents entered into between the Company and, at a minimum, the Authority, or acknowledged by the Company, as applicable:

- (a) Pursuant to N.J.S.A. 40:37A-78 of the Act, a "Lease Purchase Agreement (Sussex 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 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 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 Series 2011 Local Units;

- (b) That certain "Power Purchase Agreement (Sussex 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") 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 (regarding that portion to be assigned to the Municipal Series 2011 Local Units and the County Series 2011 Local Units under the applicable Local Unit License Agreement), N.J.S.A. 18A:18A-42(o) of the Public Schools Contracts Law (regarding that portion to be assigned to the Board of Education Series 2011 Local Units under the applicable Local Unit License Agreements) and the guidelines applicable to such contracts promulgated by the BPU, whereby, among other things,
 - (I) The Company established a power purchase price based, in part, on the Authority's covenant in the Company Lease Agreement to issue the Series 2011 Bonds to finance the Renewable Energy Projects for the Series 2011 Local Units, and the Company shall be entitled to draw a dedicated portion of the net proceeds of the Series 2011 Bonds for the

design, permitting, acquisition construction, renovation, and installation of such Projects on a requisition basis,

(II) The Company established a power purchase price based, in part, on the Authority's covenant in the Company Lease Agreement, as nominal owner of the Renewable Energy Projects for State law purposes, to assign to the Company all or a portion of the Authority's rights to the Solar Renewable Energy Certificates generated by the Renewable Energy Projects for the Series 2011 Local Units, and

(III) The Company shall sell to the Authority for the benefit of the Series 2011 Local Units, for a term of fifteen (15) years, plus extensions if applicable, for a fixed power purchase price per kilowatt hour, as escalated under the terms thereof (such terms to be established pursuant to the Company Proposal), the renewable energy generated by the Renewable Energy Projects, which Authority obligation to purchase shall be assigned to the Series 2011 Local Units as part of the Local Unit License Agreements; and

WHEREAS, in connection with the County's Renewable Energy Program, the County and the Authority entered into that certain "County Guarantee Agreement (Sussex 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, the County and the Company have determined that the Renewable Energy Projects at the following Local Units have 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): County of Sussex (Office of Emergency Management) and County of Sussex (County Main Library) (together, the "Additional Local Unit Projects"); and

WHEREAS, the Company has entered into an Engineering, Procurement and Construction Contract (the "EPC Contract"), pursuant to which the Contractor named therein shall be responsible for the permitting, procurement, construction, installation and testing of the Renewable Energy Projects to be implemented at each Series 2011 Local Unit set forth therein, including the Additional Local Unit Projects, subject to the terms of such EPC Contract; and

WHEREAS, in order to include the Additional Local Unit Projects in the Renewable Energy Program, (i) the County and the Authority are required to enter into a License and Access Agreement (in the form attached hereto as Exhibit A, the "Access Agreement"), with respect to the Additional Local Unit Projects, (ii) the Company and the Authority are required to enter into

Amendment No. 1 to the Company Lease Agreement (in the form attached hereto as Exhibit B, the "Company Lease Amendment") and (iii) the County is required to become an acknowledgment party to the Power Purchase Agreement (the "Power Purchase Agreement Acknowledgment" and, together with the Access Agreement and the Company Lease Amendment, the "Additional Local Unit Documents"); and

WHEREAS, in accordance with Section 13 ("Section 13") of the Act (N.J.S.A. 40:37A-56), prior to the construction of the Additional Local Unit Projects or the execution of the Additional Local Unit Documents, the County, on behalf of the Authority, has made a detailed report with respect to the Additional Local Unit Projects to the County Board of Chosen Freeholders, which report is attached to the hereinafter defined County Resolution; and

WHEREAS, on July 13, 2016, the County adopted a resolution entitled " RESOLUTION OF THE SUSSEX COUNTY BOARD OF CHOSEN FREEHOLDERS AUTHORIZING A LICENSE AND ACCESS AGREEMENT BETWEEN THE COUNTY AND THE MORRIS COUNTY IMPROVEMENT AUTHORITY IN FURTHERANCE OF THE COUNTY OF SUSSEX GUARANTEED RENEWABLE ENERGY PROGRAM, SERIES 2011 AND CONSENTING TO THE CONSTRUCTION OF CERTAIN ADDITIONAL LOCAL UNIT PROJECTS PURSUANT TO N.J.S.A. 40:37A-56" (the "County Resolution"), (i) approving and authorizing the execution of the Access Agreement and the Power Purchase Agreement Acknowledgment, (ii) consenting to the construction of the Additional Local Unit Projects, the funding of the construction of the Additional Local Unit Projects with proceeds from the sale and issuance of the Series 2011 Bonds, and the entering into and execution by the Authority and the County, as applicable, of each Additional Local Unit Document, all pursuant to Section 13 and (iii) directing the Authority and its professionals to take all steps necessary to effectuate the purposes of the County Resolution, including but not limited to, preparation, execution and delivery of the Additional Local Unit Documents and execution and delivery of any amendment to the EPC Contract.

NOW THEREFORE BE IT RESOLVED BY THE MORRIS COUNTY IMPROVEMENT 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 to execute and deliver to the respective parties thereto an Access Agreement in the form set forth in Exhibit A attached hereto, and a Company Lease Amendment in the form set forth in Exhibit B attached hereto, each with such additions, deletions and other modifications as agreed to by the parties thereto and upon prior consultation with counsel to the Authority.

Section 3. The Authorized Officers are hereby authorized and directed to take all further actions, and to execute such certificates, instruments, agreements or documents, deemed necessary, convenient or desirable by any such Authorized Officer, in consultation with counsel

to the Authority, in connection with all matters set forth in or contemplated by this resolution and the Program Documents, as the same may have been amended from time to time.

Section 4. Prior to execution of the Additional Local Unit Documents by the Authority, and in accordance with Section 13, the Morris County Board of Chosen Freeholders shall consider a resolution consenting to the construction of the Additional Local Unit Projects, the funding of the construction of the Additional Local Unit Projects with proceeds from the sale and issuance of the Series 2011 Bonds, and the entering into and execution by the Authority and the County, as applicable, of each Additional Local Unit Document, and any other document or agreement required to effectuate the purposes of the County Resolution.

Section 5. 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.

Section 6. This resolution shall take effect in accordance with applicable law.

MOVED/SECONDED:

Resolution moved by Commissioner _____.

Resolution seconded by Commissioner _____.

VOTE:

Commissioner	Yes	No	Abstain	Absent
Gallop				
Kovalcik				
Ramirez				
Sandman				
Bonanni				

This Resolution was acted upon at the Regular Meeting of the Authority held on July 25, 2016 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this 25th day of July, 2016:

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of July 25, 2016.

By: _____
Matthew D. Jessup, Member
McManimon, Scotland & Baumann, LLC
Counsel to the Authority
Resolution No. 16-29

EXHIBIT A

Form of Access Agreement

EXHIBIT B

Form of Company Lease Amendment