

RESOLUTION NO. 15-12

**RESOLUTION OF THE BOARD OF COMMISSIONERS
MORRIS COUNTY IMPROVEMENT AUTHORITY**

TITLE:

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY
RATIFYING THE FILING OF MATERIAL EVENTS NOTICES IN
CONNECTION WITH EACH OF TRANCHE II OF THE MORRIS COUNTY
RENEWABLE ENERGY PROGRAM AND THE SUSSEX COUNTY
RENEWABLE ENERGY PROGRAM**

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 “*Morris Board of Freeholders*”) of the County of Morris (“*Morris 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 the Program Documents (the “*Morris Program Documents*”) defined in the hereinafter defined Morris Bond Resolution, including that certain resolution number 11-31 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, including by Certificates of an Authorized Officer of the Authority dated December 8, 2011 and May 15, 2012, (collectively, and as the same may be further amended or supplemented in accordance with its terms, the “*Morris Bond Resolution*”), the Act and other applicable law and official action, the Authority issued its (i) “County of Morris Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011A (Federally Taxable)” dated December 8, 2011, in the aggregate principal amount of \$33,100,000 (the “*Morris Series 2011A Bonds*”) and its (ii) “County of Morris Guaranteed Renewable Energy Program Lease Revenue Note, Series 2011B (Federally Taxable)” dated May 15, 2012, in the aggregate principal amount of \$1,200,000 (the “*Morris Series 2011B Note*”, and together with the Morris Series 2011A Bonds, the “*Morris Series 2011 Bonds*”), which Morris Series 2011B Note is held in its entirety by Morris County, to finance the Renewable Energy Projects (the “*Morris Renewable Energy Projects*”) defined therein (certain capitalized terms herein not otherwise defined herein relating to the Morris Series

2011 Bonds, for all purposes herein, shall have the meanings ascribed to such terms in the Morris Bond Resolution); and

WHEREAS, pursuant to the Program Documents (the “*Sussex Program Documents*”, and together with the Morris Program Documents, the “*Program Documents*”) defined in the hereinafter defined Sussex Bond Resolution, including that certain resolution number 11-39 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, including by a Certificate of an Authorized Officer of the Authority dated December 14, 2011 (collectively, and as the same may be further amended or supplemented in accordance with its terms, the “*Sussex Bond Resolution*” and together with the Morris Bond Resolution, the “*Bond Resolutions*”), the Act and other applicable law and official action, the Authority issued its (i) “County of Sussex Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011A (Federally Taxable)” dated December 14, 2011, in the aggregate principal amount of \$26,715,000 (the “*Sussex Series 2011A Bonds*”) and its (ii) “County of Sussex Guaranteed Renewable Energy Program Lease Revenue Note, Series 2011B (Federally Taxable)” dated December 14, 2011, in the aggregate principal amount of \$985,000 (the “*Sussex Series 2011B Note*”, which Sussex Series 2011B Note is no longer Outstanding as of the date hereof, and together with the Series 2011A Bonds, the “*Sussex Series 2011 Bonds*”) to finance the Renewable Energy Projects (the “*Sussex Renewable Energy Projects*”, and together with the Morris Renewable Energy Projects, the “*Renewable Energy Projects*”) defined therein (any capitalized terms herein not otherwise defined herein, relating to the Sussex Series 2011 Bonds, for all purposes herein, shall have the meanings ascribed to such terms in the Sussex Bond Resolution); and

WHEREAS, Sussex County utilized the services of the Authority for the development and implementation of the Sussex Renewable Energy Program, pursuant to that certain “Service Agreement (Sussex County Renewable Energy Program),” dated as of March 1, 2011, by and between the County of Sussex and the Authority (the “*Sussex Service Agreement*”);

WHEREAS, the Company Parties were selected to develop the respective Renewable Energy Projects under the Program Documents by competitive processes of the Morris Authority; and

WHEREAS, the respective Company Parties engaged in arbitrations before the American Arbitration Association with the EPC Contractor, Power Partners Mastec, LLC (“*Mastec*”), with respect to the Morris Renewable Energy Projects and the Sussex Renewable Energy Projects (the “*Arbitrations*”), to which no governmental entity associated with the Renewable Energy Projects was a party; and

WHEREAS, the EPC Contractor filed certain liens on funds held by the Trustee

preventing the Company from requisitioning the balance of the proceeds of the Series 2011 Bonds, which prevented the completion of the development of all of the Renewable Energy Projects, and which actions (among others) resulted in several federal and state court litigation proceedings involving the Authority (collectively, the “*Litigations*”);

WHEREAS, on August 15, 2014, a panel of arbitrators issued Findings of Fact and entered Partial Final Arbitrators’ Awards in favor of the EPC Contractor against the respective Project Company in the amount of \$22,326,738 (the “*Morris Arbitration Award*”), and \$13,649,230 (the “*Sussex Arbitration Award*”), in connection with the Morris Renewable Energy Projects and the Sussex Renewable Energy Projects, respectively, it being understood that such arbitrations were private proceedings not involving any County Party;

WHEREAS, on August 21, 2014, the Authority delivered to the Trustee, in connection with each of the Morris Renewable Energy Program and the Sussex Renewable Energy Program, notices entitled “Authority Notice Regarding Events of Defaults and other defaults” (collectively, the “*Authority Default Notices*”), each dated August 21, 2014, which by their terms directed the Trustee to issue to the respective Project Company notices entitled “Trustee Notice Regarding Events of Default and other defaults” (collectively, the “*Trustee Default Notices*”), each dated August 21, 2014;

WHEREAS, the Authority Default Notices, among other things, informed the respective Project Company of the Authority’s position that the respective Project Company: (i) had caused certain Events of Default under the Prior Program Documents; and (ii) was in default with respect to additional obligations pursuant to the Prior Program Documents, which if not timely cured, would accrue into additional Events of Default under the Program Documents (collectively, the “*Defaults*”);

WHEREAS, in order to resolve all of the Litigations, provide for a workable methodology to deal with the Defaults, allow Sussex County’s Renewable Energy Program to continue, and allow the Authority and Morris County to determine their best interests relating to the completion of the respective Renewable Energy Projects, and certain other considerations under the Prior Program Documents, each of the Authority, Morris County, and Sussex County, authorized, among other things, the entering of settlement agreements by and among, including others, the Authority, Morris County, Sussex County, the respective Project Company, and the EPC Contractor (respectively, the “*Morris Settlement Agreement*” and the “*Sussex Settlement Agreement*,” and collectively the “*Settlement Agreements*”) each of which are effective as of March 3, 2015;

WHEREAS, pursuant to the County Continuing Disclosure Agreement (Morris County Renewable Energy Program, Series 2011) dated the date of issuance of the Series 2011 Bonds (the “*County Continuing Disclosure Agreement*”) and Rule 15c2-12 (“*Rule 15c-12*”) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, the Authority is required to give bondholders notice of certain enumeration events (a “*Bond Disclosure Event*”), including, but not limited to, notice of an unscheduled draw of credit enhancement; and

WHEREAS, on March 13, 2015, pursuant to the County Continuing Disclosure Agreements and applicable federal securities laws referenced therein, the Authority provided the Trustee with a notice of a Bond Disclosure Event, for each of the Morris County Renewable Energy Program (the “*Morris Material Events Notice*”) and Sussex County Renewable Energy Program (the “*Sussex Material Events Notice*”), copies of which are attached hereto as Exhibit A and Exhibit B, respectively, to be posted with the Municipal Securities Rulemaking Board (the “*MSRB*”), stating that each of Morris County and Sussex County anticipates making unscheduled payments under its respective County Guaranty and further, that, going forward, the each County will be (i) depositing with the Trustee funds in an amount which, together with Revenues then on deposit with the Trustee, will be sufficient to pay the principal of, and interest on, the Series 2011 Bonds on each future Principal Payment Date and Interest Payment Date (the “*Scheduled County Guaranty Payments*”), (ii) making the Scheduled County Guaranty Payments unless and until notified that sufficient Revenues exist such that the Scheduled County Guaranty Payments are no longer necessary, and (iii) including the Scheduled County Guaranty Payments as net debt of the County in the budget and in its supplemental debt statement;

WHEREAS, pursuant to Section 1(a)(v) of the Sussex Service Agreement, neither the Authority nor Morris County shall have any financial responsibility in connection with the Sussex Renewable Energy Program.

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

Section 1. The form and content of each of the Morris Material Events Notice and the Sussex Material Events Notice is hereby approved. The actions of the Chairperson and the Treasurer of the Authority (including their designees, each an “*Authorized Officer*”) and the Authority’s counsel, Pearlman & Miranda, LLC, in connection with the preparation and submitting the Morris Material Events Notice and the Sussex Material Events Notice to the Trustee for posting with the MSRB are hereby ratified, confirmed, and approved.

Section 2. The Authorized Officers are hereby authorized and directed to take all actions deemed necessary, convenient or desirable by any such Authorized Officer in connection with the filing of the Morris Material Events Notice and Sussex Material Events Notice, including, but not limited to, engaging in follow up discussions with the rating agencies.

Section 3. RESERVED.

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Section 4. This resolution shall take effect immediately. Notwithstanding the prior sentence, 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 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 Freeholders a certification from the Clerk stating that the minutes of this meeting have not been vetoed by the Director of the Board of Freeholders.

MOVED/SECONDED:

Resolution moved by Commissioner _____.

Resolution seconded by Commissioner _____.

VOTE:

Commissioner	Yes	No	Abstain	Absent
Gallopo				
Kovalcik				
Ramirez				
Sandman				
Bonanni				

ATTESTATION:

This Resolution was acted upon at a regularly scheduled meeting of the Authority held on April 1, 2015, at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 1st day of April, 2015

By: _____
Secretary of the Morris Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of April 1, 2015

By: _____
Stephen B. Pearlman, Esq., Partner
Pearlman & Miranda, LLC
Counsel to the Morris Authority

Exhibit A

[Morris Material Events Notice]

Exhibit B

[Sussex Material Events Notice]