Township of West Milford

Passaic County, New Jersey

~ Resolution 2011 - 301 ~

RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, COUNTY OF PASSAIC, STATE OF NEW JERSEY AUTHORIZING ITS PARTICIPATION IN THE PASSAIC COUNTY IMPROVEMENT AUTHORITY'S RENEWABLE ENERGY PROGRAM, AND AUTHORIZING THE AUTHORITY TO APPLY TO THE LOCAL FINANCE BOARD FOR THE NECESSARY CONSENTS AND APPROVALS ON BEHALF OF THE PARTICIPATING LOCAL UNIT IN CONNECTION WITH THE RENEWABLE ENERGY PROGRAM
AMENDED

WHEREAS, the Passaic County Improvement Authority (the "*Authority*") has developed a program (the "*Program*") for the financing, design, permitting, acquisition, construction, installation, operation and maintenance of photovoltaic and other renewable energy capital equipment and 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 of Passaic (the "County") and 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*"); and

WHEREAS, the Renewable Energy Projects procured under the 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, the primary goal of the Program is to expand the use of renewable energy sources available and utilized by the Local Units for their Local Unit Facilities, with the attendant environmental and financial benefits associated thereby, and to reduce the energy-related operating costs to the Local Units for their Local Unit Facilities, all intended to be offered at no net cost to the Local Units; and

WHEREAS, in accordance with (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 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, the Authority shall issue a request for solar developer proposals (the "*RFP*") and

WHEREAS, upon review of proposals from prospective solar developers, including the proposal of the successful respondent (the "*Company Proposal*"), the Authority anticipates to select a Company (the "*Company*") to design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects and design, permit, acquire, construct, renovate, and install the Capital Improvement Projects, if any, in both cases for the designated Local Unit Facilities of such Local Units, with the terms to be set forth in the contract documents to be entered into between the Company and, at a minimum, the Authority, or acknowledged by the Company, as applicable; and

WHEREAS, in order to implement the Program at no cost to the Local Units, the Authority has determined that if the Company Proposal is selected pursuant to either Option 2 or Option 3 of the RFP, it may finance the respective Renewable Energy Projects and Capital Improvement Projects (if any), on, in

or about the respective Local Unit Facilities, all as set forth on the exhibits to the Local Unit License Agreement defined below for the participating Local Units:

(i) Municipalities:
(ii) Boards of Education:
(iii) County of Passaic

(each a "*Local Unit,*" and together with any additional local governmental units within the County that might be added by the Authority to the Program pursuant to the Local Finance Board Application defined below or otherwise, collectively, the "*Local Units*"), through the issuance by the Authority of one or more series of bonds entitled "County of Passaic Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011 (Federally Taxable)" in the aggregate principal amount not to exceed $35,000,000 (the "*Series 2011 Bonds*"); and

WHEREAS, in the event that the Authority elects to finance the Renewable Energy Projects and Capital Improvement Projects (if any), prior to the issuance of the Series 2011 Bonds and in accordance with N.J.S.A. 40A:5A-6, 7 and 8 of the Local Authorities Fiscal Control Law, the Authority must file an application (the "*Local Finance Board Application*") with, and seek, obtain, and officially recognize the findings from, the Local Finance Board in the Department of Local Government Services of the State Department of Community Affairs (the "*Local Finance Board*"); and

WHEREAS, the governing body of the Township of West Milford adopting this resolution (the "*Participant*") desires to authorize the Authority and its consultants to submit the Local Finance Board Application on its behalf, if necessary, to finance the Renewable Energy Project(s) for the Participant (the "*Participant Project*") set forth in **Exhibit A** attached hereto (it being understood that the Participant is taking no action in connection with the other Renewable Energy Projects of the other Local Units as set forth in **Exhibit A**); and

WHEREAS, the pricing terms for the purchase of renewable energy-generated electricity produced from the Participant Project and sold through the Authority to the Participant, and bought by the Participant at an agreed upon price lower than that presently being paid by the Participant for electricity from its local utility, which pricing terms shall be competitively procured through the public RFP process and the Company Proposal, shall be established under the Authority's Program for an initial term no greater than 15 years; and

WHEREAS, the Participant has offered - and the Authority has accepted - public buildings for inclusion in the Program, and the Participant understands and acknowledges that by taking this official action it intends to participate in the Program with regard to the Participant Project, and that the Authority is taking several actions in reliance upon the inclusion of these public buildings, including, without limitation, proceeding with the issuance of the RFP, the selection of the Company, the establishment of the renewable energy pricing under the Company Proposal, potentially seeking the required approvals from the Local Finance Board to issue the Series 2011 Bonds in accordance with the Local Finance Board Application, and the marketing, sale and issuance of the Series 2011 Bonds; and

WHEREAS, the Participant desires to confirm its participation in the Program in order to permit the Authority to proceed with the issuance of the RFP, and if necessary, obtain the approval of the Local Finance Board and issue the Series 2011 Bonds;

NOW THEREFORE BE IT RESOLVED by the governing body of the Participant as follows:

Section 1. The Participant believes that its participation in the Program (a) is in the public interest through the accomplishment of the purposes described in the preamble paragraphs above, including the possible financing of the Participant Project; (b) benefits the health, wealth, convenience or betterment of the Participant's citizens; (c) entails amounts to be expended for the these purposes that are not unreasonable or exorbitant; and (d) is an efficient and feasible means of providing services for the needs of the Participant's citizens without creating any financial burden upon the Participant.

Section 2. The Mayor, Township Administrator, and the Township Attorney of the Participant (including their designees in writing, each an "*Authorized Officer*") are each hereby severally authorized to assist the Authority, should the Authority determine to finance the Program, with the preparation and submission of the Local Finance Board Application for the purpose of financing the Participant Project through the issuance of the Series 2011 Bonds, and to take all action necessary, desirable, or convenient in connection therewith. Accordingly, the Authorized Officers, and any consultants of their choosing, shall, if necessary, represent the Participant at any public hearing held by the Local Finance Board in connection with the Local Finance Board Application.

Section 3. Upon a date to be selected by the Authority, the Authorized Officers shall deliver to the Authority a fully executed certificate, substantially in the form attached hereto as **Exhibit B**, evidencing the proper officials approval of the substance and scope of the Participant Project.

Section 4. The Participant understands and acknowledges that by adopting this resolution, the Participant intends to participate in the Program, which may entail the funding of the Participant Project through a portion of the proceeds of the Authority's Series 2011 Bonds, and that the Authority is taking several actions in reliance upon this action by the Participant, including, without limitation, proceeding with the issuance of the Company RFP, the selection of the Company, the establishment of the renewable energy pricing under the Company Proposal, potentially seeking the required approvals from the Local Finance Board to issue the Series 2011 Bonds, as set forth in the Local Finance Board Application, and the marketing, sale and issuance of the Series 2011 Bonds, all for the benefit of the Participant and the other Local Units. The Participant further acknowledges that its continued participation in the Program is critical to the pricing to be obtained from Proposers during the RFP process and any change in the extent of its participation will have a negative impact on the other Local Units participating in the Renewable Energy Project.

Section 5. The Participant covenants to the Authority that: (i) except for extraordinary unforeseen circumstances not presently contemplated, the Participant intends to participate in the Authority's Program and will not withdraw any of the Local Unit Facilities in the Participant Project from inclusion in the that it has requested and the Authority has approved to be part of the Program, so long as the Company Proposal results in a savings to the Participant, and should it elect to withdraw such a Local Unit Facility for reasons other than an extraordinary unforeseen circumstance, that it will substitute a building with comparable energy usage or reimburse the Authority for the costs incurred to remove the public building from the Program, (ii) this official action authorizes the Authority to take all such actions contemplated above in order to develop the Participant Project and to provide the Participant with such savings and (ii) should the Authority determine to finance the Program, prior to the sale of the Series 2011 Bonds, the Participant shall (a), if it is a board of education, obtain any and all approvals from the State Department of Education with respect to the Participant Project, and (b) adopt a resolution authorizing, among other things, the Participant to enter into that certain "Power Purchase Agreement" and that certain "Site License Agreement," each to be dated as of the first day of the month of issuance of the Series 2011 Bonds in such form as shall be presented to the Participant prior to adoption of the supplemental resolution. The Township of West Milford's participation shall be in accordance with the same or more favorable terms as all other Participants.

Section 6. The Authorized Officer shall direct the Participant official in charge of the officially adopted resolutions of the governing body of the Participant to (a) prepare an official, certified copy of this resolution, as adopted, and (b) deliver such certified copy in accordance with Section 11 below. Further, the Participant hereby consents to such certified copy of the resolution, and any further information regarding the Participant and/or the Participant Project, as the Authorized Officer shall determine to be necessary, desirable or convenient in connection with the Local Finance Board Application, to be submitted as part of, or pursuant to the Local Finance Board Application. The Authorities shall hold the Township harmless for any liability in connection with the bonding of this transaction.

Section 7. The Authorized Officers are hereby severally authorized to take such other actions, and execute such other certificates, documents, and instruments, as such Authorized Officers shall deem

to be necessary, desirable, or convenient to assist the Authority in developing the Participant Project, producing the contemplated energy savings for the Participant, issuing the RFP and selecting the Company through the most desirable Company Proposal in accordance with the terms of the RFP and applicable law, and potentially marketing, selling, and issuing the Series 2011 Bonds, procuring the final terms of the Renewable Energy Project documents, or any other action related to the implementation of the Program for the Series 2011 Local Units.

Section 8. The Local Finance Board is hereby respectfully requested to consider the Local Finance Board Application as the means to finance the Participant Project, pursuant to either Option 2 or Option 3 of the RFP, and to record its findings and recommendations as provided by N.J.S.A. 40A:5A-7 of the Local Authorities Fiscal Control Law.

Section 9. To the extent the Authority determines to finance the Program and Series 2011 Bonds are issued in any year other than 2011, references herein to "2011" may without any further action be changed to the year of issuance of such Series 2011 Bonds.

Section 10. All actions of the Authorized Officers or Participant consultants taken prior to the date of adoption hereof in connection with the possible issuance of the Series 2011 Bonds, the Participant Project or any of the foregoing transactions contemplated by this resolution, are hereby ratified and approved.

Section 11. Upon the adoption hereof, a certified copy of this resolution shall be forwarded to: Nicole Fox, Executive Director of the Authority, 401 Grand Street, Room 103, Paterson, New Jersey 07505, Telephone: (973) 881-4550, and Fax: (973) 278-5635, e-mail: nicolef@passaiccountynj.org, and Kevin A. Conti, Esq., Program Counsel to the Authority at DeCotiis, FitzPatrick and Cole, LLP, Glenpointe Centre West, 500 Frank W. Burr Boulevard, Teaneck, NJ 07666, Telephone: (201) 907-5202, and Fax: (201) 928-0588, e-mail: kconti@decotiislaw.com.

Section 12. This resolution shall take effect immediately.

Adopted: September 7, 2011

Adopted this 7th day of September 2011
and certified as a true copy of an original.

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Antoinette Battaglia, Township Clerk

SCHEDULE A

Local Unit's Local Unit Facility(ies) and Renewable Energy Project(s)

Hillcrest Community Center 103.5 kw Canopy

Exhibit B

LOCAL UNIT FACILITY ACCEPTANCE CERTIFICATE

On behalf of the Township of West Milford (the "*Local Unit*"), and as a duly authorized officer of the Local Unit, I hereby represent, warrant and covenant as follows:

1. The Local Unit understands that it has been preliminarily selected by the Passaic County Improvement Authority (the "*Authority*") as one of the local government participants in the Authority's 2011 Renewable Energy Program (the "*Program*"). The information being provided to the Authority in this Certificate enables the Authority to draft the "License and Access Agreement (Passaic County Renewable Energy Program, Series 2011)" (a form of which "*License Agreement*" shall be supplied to the Local Unit by the Authority when the Program is closer to implementation), seek the necessary approvals, and otherwise implement the Program.

2. The License Agreement shall refer to the building(s) or ground(s) (each "*Local Unit Facility*"), location, size and scope (and if applicable, style) of the solar project (the "*Renewable Energy Project*") to be implemented on behalf of the Local Unit by the Authority and its various contract parties, including a competitively selected solar developer (the "*Company*"). Various consultants to the Authority, based on site visits and past information supplied by the Local Unit to the Authority, have identified the Local Unit Facility(ies) and Renewable Energy Project(s) (which include solar overlays prepared by Authority consultants) set forth on **Schedule A** to this certificate for inclusion in the License Agreement, for selection of the Company, and potentially for financing and implementation under the Authority's Renewable Energy Program.

a. The Local Unit Facility and Renewable Energy Project set forth on **Schedule A** to this certificate has been reviewed on behalf of the Local Unit, at a minimum, by the Local Unit official responsible for managing the day to day affairs of the Local Unit (which may include the undersigned), and at least by an in-house facilities director or consulting engineer and/or architect. Based on such review, and the review of such other in-house officers or employees or outside consultants of the Local Unit's choosing (including council, board, legal or technical review), if deemed necessary by the Local Unit, the description of the Local Unit Facility and Renewable Energy Project set forth on **Schedule A** to this certificate is materially accurate, and can be used by the Authority in drafting the various Program documents, selecting the Company, and seeking the various Program approvals.

b. The Local Unit understands that any changes desired by the Local Unit to the Local Unit Facility and Renewable Energy Project from that set forth on **Schedule A** to this certificate (i) are the responsibility of the Local Unit to inform the Authority and its consultants, and (ii) may or may not be accepted by the Authority, depending on the timing of any such proposed change. The Local Unit may contact Nicole Fox, Executive Director of the Authority, 401 Grand Street, Room 103, Paterson, New Jersey 07505, Telephone: (973) 881-4550, nicolef@passaiccountynj.org, or the Authority's special counsel for the Program, Kevin A. Conti, Esq., of the law firm of DeCotiis, FitzPatrick and Cole, LLP, at 201-907-5202, kconti@decotiislaw.com, with any subsequent changes. To the extent the Company proposes other changes acceptable to the Authority; the Authority shall seek the consent of the Local Unit.

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Bettina Bieri, Mayor

Dated: September____, 2011