

**RESOLUTION AUTHORIZING MODIFICATION AND AMENDMENT  
MOHAWK SOLAR LLC PROJECT**

A regular meeting of Montgomery County Industrial Development Agency (the "Agency") was convened in public session offices of the Agency located at the Old County Courthouse, 9 Park Street, Fonda, New York on January 12, 2023 at 4:40 o'clock p.m., local time, local time.

The meeting was called to order by the (Vice) Chair of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Matthew Beck	Chair
Carol Shineman	Vice-Chair
Mark Kowalczyk	Member
Amanda Auricchio	Member
Laurie Weingart	Member
Cheryl Reese	Member
Brent E. Phetteplace	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Kenneth F. Rose	Chief Executive Officer
Sheila Snell	Chief Financial Officer
Andrew Santillo	Staff Assistant
Vincenzo Nicosia	Director of Program Development
Stephanie Battisti	Economic Development Specialist

The following resolution was offered by Brent Phetteplace, seconded by Carol Shineman, to wit:

Resolution No. 23-03

RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND  
DELIVERY OF A CERTAIN MODIFICATION AGREEMENT WITH RESPECT TO  
THE MODIFICATION AND AMENDMENT OF THE MOHAWK SOLAR LLC  
PROJECT.

WHEREAS, Montgomery County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 666 of the 1970 Laws of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to a closing on December 20, 2019 (the “Closing”), the Agency entered into a lease agreement dated as of December 1, 2019 (the “Lease Agreement”) by and between the Agency and Mohawk Solar LLC (the “Company”), in connection with a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A)(1) the acquisition of an interest in approximately 1,000 acres of land located in the Town of Canajoharie, Montgomery County, New York and the Town of Minden, Montgomery County, New York (collectively, the “Land”), (2) the construction on the Land of a solar-powered electric generating facility, including, but not limited to, PV modules, metal racks and electric equipment with related foundations (collectively, the “Facility”) and (3) the acquisition and installation of certain machinery and equipment therein and thereon (collectively, the “Equipment”) (the Land, the Facility and the Equipment hereinafter referred to as the “Project Facility”), all of the foregoing to be operated by the Company as a solar-powered electric generating facility and other directly and indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes and real estate transfer taxes (the “Financial Assistance”); and (C) the lease of the Project Facility to the Company pursuant to the terms of the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (A) the Company executed and delivered to the Agency a certain lease to agency dated as of December 1, 2019 (the “Underlying Lease”) by and between the Company, as landlord and the Agency, as tenant, pursuant to which the Company leased to the Agency the Land and all improvements now or hereafter located on the land (collectively, the “Premises”), (B) the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of December 1, 2019 (the “PILOT Agreement”) by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Company and the Agency executed and delivered a certain recapture agreement dated as of December 1, 2019 (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes, (D) the Agency filed with the assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Initial Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the PILOT Agreement, (E) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the financial assistance to be provided by the Agency, and (F) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) (collectively, with the Lease Agreement, the “Basic Documents”); and

WHEREAS, pursuant to the terms of the PILOT Agreement, the Company was required to make the First PILOT Payment (as defined in the PILOT Agreement) no later than January 1, 2023 (the “PILOT Start Date”); and

WHEREAS, pursuant to Section 5.3(B) of the Lease Agreement, the Company is required to make certain annual payments to the Agency equal to the Agency’s annual administrative fee of \$76,500 (the

“Administrative Payments”); and

WHEREAS, the Administrative Payments commenced on January 15, 2021 and were scheduled to continue on January 15<sup>th</sup> of each year in which a PILOT Payment is made by the Company pursuant to the PILOT Agreement; and

WHEREAS, the construction of the Project Facility has been delayed as a result of the effects of the COVID-19 pandemic; and

WHEREAS, as a result of the delay in construction, the Company has requested that the Agency modify the terms of the Basic Documents in order to extend the PILOT Start Date from January 1, 2023 to June 1, 2023 (the “Modification”); and

WHEREAS, the Agency desires to approve the Modification, provided however, that (a) the Company shall be required to make the Administrative Payment due on January 15, 2023 as if the First PILOT Payment was made on January 1, 2023; (b) the Company shall be required to make Administrative Payments on January 15<sup>th</sup> of each year thereafter for the term of the Lease Agreement; and (c) the Agency shall not enter into the Modification Agreement (as hereinafter defined) without the consent of the “affected tax jurisdictions” (as defined in Section 845(16) of the Act); and

WHEREAS, as of the date of this resolution, the Agency has received written consent to the Modification from the chief executive officer of each Affected Tax Jurisdictions (the “Consents,” copies of which are attached hereto as Exhibit A);

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), it appears that the Modification constitutes a Type II action under SEQRA; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon an examination of (a) the Modification and (b) the Consents, the Agency hereby makes the following determinations:

(A) The Modification constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c), (26), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Modification.

(B) That since compliance by the Agency with the Modification will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Modification.

(C) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(D) It is desirable and in the public interest for the Agency to enter into the Modification Agreement (as hereinafter defined).

Section 2. Subject to (A) compliance with the terms and conditions in the Basic Documents, (B) compliance with the terms and conditions (if any) contained in the Consents; (C) payment by the Company of all Administrative Payments which shall continue to be due beginning on January 15, 2023, and on each January 15<sup>th</sup> thereafter for the term of the Lease Agreement; and (D) payment by the Company of all fees and expenses of the Agency in connection with the delivery of a modification agreement (the "Modification Agreement") by and between the Company and the Agency, including the fees of Agency Counsel and Special Agency Counsel, the Agency hereby (a) consents to the Modification and (b) determines to enter into the Modification Agreement.

Section 3. The form and substance of the Modification Agreement (in substantially the form as shall be presented to Agency) are hereby approved.

Section 4. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman, Vice Chairman, or Chief Executive Officer of the Agency is hereby authorized to execute and deliver the Modification Agreement to the Company, all in substantially the form thereof as shall be presented to Agency, with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, or Chief Executive Officer shall approve, the execution thereof by the Chairman, Vice Chairman, or Chief Executive Officer to constitute conclusive evidence of such approval.

Section 5. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Modification Agreement, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Modification Agreement binding upon the Agency.

Section 6. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Matthew Beck	VOTING	YES
Carol Shineman	VOTING	YES
Mark Kowalczyk	VOTING	YES
Amanda Auricchio	VOTING	YES
Laurie Weingart	VOTING	YES
Cheryl Reese	VOTING	YES
Brent E. Phetteplace	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

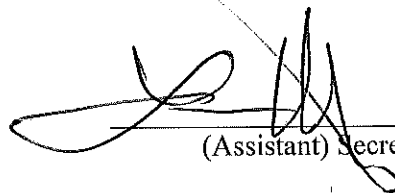
STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF MONTGOMERY )

I, the undersigned (Assistant) Secretary of Montgomery County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on January 12, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 12 day of January 12, 2023.

  
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(Assistant) Secretary

(SEAL)

EXHIBIT A  
AFFECTED TAX JURISDICTION CONSENTS

- SEE ATTACHED -

**Mcdonald, Scott**

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**From:** Nick Fitzgerald <nick.fitzgerald@canjo.org>  
**Sent:** Friday, December 23, 2022 12:51 PM  
**To:** Sheila Snell; Ken Rose  
**Cc:** Mcdonald, Scott  
**Subject:** Solar Extension

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EXTERNAL SENDER: Be cautious, especially with links and attachments. Report phishing if suspicious.

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I wanted to let you know that the Canajoharie CSD is willing to give Mohawk Solar a 6 month extension regarding their first payment. This should be resolved no later than June 30, 2023.

Thank you.

--  
Dr. Nick Fitzgerald  
*Superintendent of Schools*  
Canajoharie Central School District  
136 Scholastic Way  
Canajoharie, NY 13317

## **Mcdonald, Scott**

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**From:** Lauren Crisman <lauren.crisman@fortplain.org>  
**Sent:** Thursday, December 29, 2022 8:44 AM  
**To:** krose@co.montgomery.ny.us; ssnell@co.montgomery.ny.us  
**Cc:** Mcdonald, Scott; Philene Hudson; Becky Smith  
**Subject:** Solar Extension

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EXTERNAL SENDER: Be cautious, especially with links and attachments. Report phishing if suspicious.

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Good Morning,

The Fort Plain CSD is willing to give Mohawk Solar a 6 month extension regarding their first payment. Payment is expected no later than June 30, 2023.

Thank you.

*Lauren H. Crisman  
Superintendent of Schools  
Fort Plain Central School District  
25 High Street  
Fort Plain, NY 13339  
(518) 993-4000*

*All contents of this email are considered confidential. Please notify the sender if you are not the intended recipient.*

*"Start where you are. Use what you have. Do what you can." Arthur Ashe*



## Mcdonald, Scott

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**From:** Benny Goldstein <canajohariesupervisor@gmail.com>  
**Sent:** Wednesday, December 28, 2022 3:16 PM  
**To:** Mcdonald, Scott; Ken Rose; Sheila Snell  
**Subject:** Re: Mohawk Extension email

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EXTERNAL SENDER: Be cautious, especially with links and attachments. Report phishing if suspicious.

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To: Mcdonald Scott, Ken Rose and Sheila Snell,

I wanted to let you know that the Town of Canajoharie is willing to give Mohawk Solar a 6-month extension regarding their first payment.

This should be resolved no later than June 30, 2023.

All the best,

Benny Goldstein

347-606-9342

On Wed, Dec 28, 2022 at 10:11 AM Mcdonald, Scott <[scott.mcdonald@avangrid.com](mailto:scott.mcdonald@avangrid.com)> wrote:

Hi Benny,

This is all the email text that's needed, and mirrors what the Canajoharie CSD provided to Ken Rose and Sheila Snell via email:

I wanted to let you know that the Town of Canajoharie is willing to give Mohawk Solar a 6 month extension regarding their first payment. This should be resolved no later than June 30, 2023.

Here are Ken and Sheila's emails. Please cc me.

Ken Rose [kruse@co.montgomery.ny.us](mailto:kruse@co.montgomery.ny.us)

Sheila Snell [ssnell@co.montgomery.ny.us](mailto:ssnell@co.montgomery.ny.us)

**Mcdonald, Scott**

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**From:** Cheryl Reese <townofmindensupervisor@gmail.com>  
**Sent:** Friday, December 30, 2022 8:23 AM  
**To:** Ken Rose; ssnell@co.montgomery.ny.us  
**Cc:** Mcdonald, Scott  
**Subject:** Mohawk Solar

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EXTERNAL SENDER: Be cautious, especially with links and attachments. Report phishing if suspicious.

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The Town of Minden is willing to give Mohawk Solar a 6 month extension regarding their first payment. Payment is expected no later than June 30, 2023.