

**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 at the offices of the Agency located at 113 Park Drive, Fultonville, New York on September 21, 2023 at 3:00 o’clock p.m., local time.

The meeting was called to order by the Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Matthew Beck	Chairperson
Carol Shineman	Vice-Chairperson
Laurie Weingart	Member
Cheryl Reese	Member
Brent E. Phetteplace	Member

ABSENT:

Mark Kowalczyk	Member
Amanda Auricchio	Member

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
A. Joseph Scott, III, Esq.	Agency Counsel

The following resolution was offered by Carol Shineman, seconded by Matthew Beck, to wit:

Resolution No. 0923-19

**RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND
DELIVERY OF CERTAIN MODIFICATIONS TO THE PILOT AGREEMENT AND
OTHER DOCUMENTS RELATING TO 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 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 are scheduled to continue on January 15th of each year in which a PILOT Payment (as defined in the PILOT Agreement) is made by the Company pursuant to the PILOT Agreement; 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, as a result of the ongoing effects of the COVID-19 pandemic, construction of the Project Facility has not commenced as of the date hereof and the First PILOT Payment has not been made by the Company; and

WHEREAS, in connection with such delay in construction of the Project Facility, the Company had discussions with the Town of Minden (“Minden”), the Town of Canajoharie (“Canajoharie”), the Canajoharie Central School District (“CCSD”), the Fort Plain Central School District (“FPCSD”) and Montgomery County (the “County”), as the affected jurisdictions (within the meaning of such term in Section 854(16) of the Act), relating to certain proposed modifications to the PILOT Agreement and the other Basic Documents (collectively, the “Modifications”), which Modifications are summarized in Exhibit A attached hereto; and

WHEREAS, as a result of such discussions, Minden, Canajoharie, CCSD and FPCSD have, by the execution of certain terms sheets with the Company as provided to the Agency (collectively, the “Consents”), each agreed to the Modifications relating to such affected jurisdiction; and

WHEREAS, in order to implement the Modifications, the Company has requested that the Agency modify the terms of the PILOT Agreement and the other Basic Documents in order to reflect the terms of the Modifications (collectively referred to hereinafter as the “Modification Documents”); and

WHEREAS, the Agency desires to approve the Modifications, provided that (a) the Company shall be required to make Administrative Payments on January 15th of each year thereafter for the term of the Lease Agreement, as amended by the Modification Documents and (b) such approval by the Agency shall be conditional upon the approval of the Modifications by the Montgomery County Legislature (the “County Legislature”) by an adopted resolution; and

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 Modifications and (b) the Consents, the Agency hereby makes the following determinations:

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

(B) The Modifications described in Exhibit A attached include summaries of certain host community agreements (collectively, the “Host Community Agreements”) to be entered into between the Company and Canajoharie, CCSD, and FPCSD. The Agency has not reviewed,

approved or consented to the terms contained in the Host Community Agreements, and the Agency has not played any role in the structuring or preparation of the Host Community Agreements.

(C) Since compliance by the Agency with the Modifications 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 Modifications.

(D) 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.

(E) It is desirable and in the public interest for the Agency to enter into the Modification Documents.

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 due to the Agency for the term of the Lease Agreement, as amended by the Modification Documents; and (D) payment by the Company of all fees and expenses of the Agency in connection with the delivery of the Modification Documents, including the fees of Agency Counsel, the Agency hereby (a) consents to the Modifications and (b) determines to enter into the Modification Documents; *provided*, however, that such consent of the Agency is conditioned upon, and shall not be deemed effective until, the County Legislature has approved the Modifications pursuant to a duly adopted resolution.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairperson, Vice Chairperson or Chief Executive Officer of the Agency is hereby authorized to execute and deliver the Modification Documents, with such changes, variations, omissions and insertions as the Chairperson, Vice Chairperson or Chief Executive Officer shall approve, all in substantially the forms approved by counsel to the Agency, the execution thereof by the Chairperson, Vice Chairperson or Chief Executive Officer to constitute conclusive evidence of such approval.

Section 4. 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 Documents, 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 Documents binding upon the Agency.

Section 5. 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	ABSENT
Amanda Auricchio	VOTING	ABSENT
Laurie Weingart	VOTING	YES
Cheryl Reese	VOTING	ABSTAIN
Brent E. Phetteplace	VOTING	YES

The foregoing resolution was thereupon declared duly adopted.

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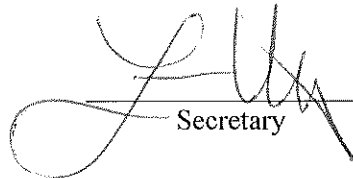
STATE OF NEW YORK)
) SS.:
COUNTY OF MONTGOMERY)

I, the undersigned 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 September 21, 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 21 day of September, 2023.


Secretary

(SEAL)

EXHIBIT A

SUMMARY OF MODIFICATIONS

Definitions

“COD” means the commercial operation date.

“COO” means the certificate of occupancy.

“HCA” means a host community agreement entered into between Company and relevant taxing jurisdiction.

“Status Report” means a written report to be provided by the Company under a HCA in September of each year prior to COD (commencing with September 2024) regarding (i) the status of the Project, (ii) the anticipated receipt of the COO (if known or planned) and (iii) the anticipated COD (if known or planned).

Modifications Relating to Canajoharie Central School District (“CCSD”)

- CCSD would not receive any payment from the Company under the amended PILOT Agreement.
- Under the HCA, CCSD would receive the following accommodation payments from the Company:
 - \$50,000 within sixty (60) days after term sheet executed by CCSD; and
 - If CCSD does not receive a Status Report by September 30, 2024, COO is not anticipated before December 31, 2025 or COD is not anticipated to occur before December 31, 2025, \$50,000 by March 15, 2025.
- Under the HCA, CCSD would additionally receive the following payments from the Company:
 - If COD anticipated to occur before December 31, 2025:
 - \$752,311 by March 15, 2025; and
 - \$752,311 by January 31, 2026.
 - If COD is not anticipated to occur before December 31, 2025:
 - \$752,311 by the first January 31st following COD (the “CCSD First Installment”); and
 - \$752,311 by the first January 31st following the due date of the CCSD First Installment

Modifications Relating to Fort Plain Central School District (“FPCSD”)

- FPCSD would not receive any payment from the Company under the amended PILOT Agreement.
- Under HCA, FPCSD would receive the following accommodation payments from the Company:
 - \$52,687 within sixty (60) days after term sheet executed by FPCSD; and
 - If FPCSD does not receive a Status Report by September 30, 2024, COO is not anticipated before December 31, 2025 or COD is not anticipated to occur before December 31, 2025, \$50,000 by March 15, 2025.

- Under the HCA, FPCSD would additionally receive the following payments from the Company:
 - If COD anticipated to occur before December 31, 2025:
 - \$328,436 by March 15, 2025; and
 - \$328,436 by January 31, 2026.
 - If COD is not anticipated to occur before December 31, 2025:
 - \$328,436 by the first January 31st following COD (the “FPCSD First Installment”); and
 - \$328,436 by the first January 31st following the due date of the FPCSD First Installment

Modifications Relating to Town of Canajoharie (“Canajoharie”)

- Canajoharie would not receive any payment from the Company under the amended PILOT Agreement.
- Under the HCA, Canajoharie would receive the following accommodation payments from the Company:
 - \$50,000 within sixty (60) days after term sheet executed by Canajoharie; and
 - If Canajoharie does not receive a Status Report by September 30, 2024, COO is not anticipated before December 31, 2025 or COD is not anticipated to occur before December 31, 2025, \$50,000 by March 15, 2025.
- Under HCA, Canajoharie would additionally receive the following payments from the Company:
 - If COD anticipated to occur before December 31, 2025:
 - \$105,900 by March 15, 2025; and
 - \$105,900 by January 31, 2026.
 - If COD is not anticipated to occur before December 31, 2025:
 - \$105,900 by the first January 31st following COD (the “Canajoharie First Installment”); and
 - \$105,900 by the first January 31st following the due date of the Canajoharie First Installment

Modifications Relating to Town of Minden (“Minden”)

- Minden would receive payments under amended PILOT Agreement.
- Under the HCA, Minden would receive the following accommodation payments from the Company:
 - \$50,000 within sixty (60) days after term sheet executed by Minden; and
 - If Minden does not receive a Status Report by September 30, 2024, COO is not anticipated before December 31, 2025 or COD is not anticipated to occur before December 31, 2025, \$50,000 by March 15, 2025.

- Under the amended PILOT Agreement, Minden would additionally receive payments from the Company based on the following schedule:

<u>Year</u>	<u>Payment Amount</u>
2023	\$7,649
2024	\$7,802
2025	\$7,958
2026	\$8,118
2027	\$8,280
2028	\$8,446
2029	\$8,614
2030	\$8,787
2031	\$8,962
2032	\$9,142
2033	\$9,325
2034	\$9,511
2035	\$9,701
2036	\$9,895
2037	\$10,093
2038	\$10,295
2039	\$10,501
2040	\$10,711
2041	\$10,925
2042	\$11,144
2043	Prior year's amount multiplied by 102%

- First payment due on or before January 31st of first calendar year following the first taxable status date occurring after COD.
- Subsequent fourteen (14) payments would be due on or before January 31st of each calendar year
- Illustration:
 - COD occurs in December 2025.
 - First payment of \$8,280 would be due on or before January 31, 2027.
 - Final payment of \$10,925 would be due on or before January 31, 2041.

Modifications Relating to Montgomery County (“County”)

- County would receive fifteen (15) payments under amended PILOT Agreement.
- First payment to County made upon execution and delivery of amended PILOT Agreement.
- Payments thereafter made no later than January 1st of each year through 2037, with the first payment due January 1, 2023.
- Payment to County each year would be based on County’s applicable percentage share of the following amounts:

[TABLE APPEARS ON FOLLOWING PAGE]

<u>Payment Year</u>	<u>PILOT Payment</u>
1	\$300,000
2	\$306,000
3	\$312,120
4	\$318,362
5	\$324,730
6	\$331,224
7	\$337,849
8	\$344,606
9	\$351,498
10	\$358,528
11	\$365,698
12	\$373,012
13	\$380,473
14	\$388,082
15	\$395,844

Modifications relating to Montgomery County IDA (“IDA”)

- IDA would continue to receive annual administrative fee of \$76,500.
- Annual administrative fee would be paid each year the amended PILOT Agreement is in effect (including through the extended PILOT term).
- Per the Uniform Agency Project Agreement, the Company would continue to agree to create five (5) full-time jobs for the Project.