

**RESOLUTION**

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened in public session on November 19, 2018, at 11:00 a.m., local time, at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701.

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

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[     ]	[     ]
Suzanne Loughlin	[     ]	[     ]
Sean Rieber	[     ]	[     ]
Edward T. Sykes	[     ]	[     ]
Howard Siegel	[     ]	[     ]
Scott Smith	[     ]	[     ]
Paul Guenther	[     ]	[     ]
Joseph Perrello	[     ]	[     ]
Carol Roig	[     ]	[     ]

The following persons were also present:

- Jennifer M. Flad, Executive Director
- Julio Garaicoechea, Project Manager
- Cassandra Eagan, Administrative Assistant
- Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by \_\_\_\_\_,  
and seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_\_\_\_ - 18

***RESOLUTION OF THE AGENCY (I) AMENDING THE DRS COMMUNITY SOLAR PROJECT RESOLUTIONS (AS HEREIN DEFINED); (II) AUTHORIZING A FIRST AMENDMENT TO THE AGENT AND PROJECT AGREEMENTS FOR NY DELAWARE I, LLC; NY LIBERTY I, LLC; NY DELWARE II, LLC; NY THOMPSON I, LLC; AND NY THOMPSON II, LLC DRS COMMUNITY SOLAR PROJECTS (AS HEREIN DEFINED); AND (III) AUTHORIZING ITS CHAIRMAN, EXECUTIVE DIRECTOR AND/OR CHIEF EXECUTIVE OFFICER TO EXECUTE THE SAME***

***WHEREAS***, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York, as amended, pursuant to Title I of Article 18-A of the General Municipal Law of the

State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

**WHEREAS**, on March 13, 2017 by resolution #13-17 ("Delaware I Resolution"), the Agency approved the construction by NY Delaware I, LLC ("Delaware I") of an approximately 2MW solar photovoltaic electricity generating facility that will be interconnected to the New York State Electric and Gas ("NYSEG") electrical grid located along Lahm Road in the Town of Delaware ("Delaware I Project"); and

**WHEREAS**, on or about November 1, 2017 the Agency and Delaware I closed a lease/leaseback transaction and contemporaneously therewith entered into an Agent and Project Agreement ("Delaware I APA"); and

**WHEREAS**, the Agency authorized and approved Delaware I (together with its Sub-Agents) to make purchases of goods and services relating to the Delaware I Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$981,950, which would result in New York State and local sales and use tax exemption benefits based on the Agency exemption not to exceed \$78,556; and

**WHEREAS**, on August 23, 2017 by resolution #41-17 ("Liberty I Resolution"), the Agency approved the construction by NY Liberty I, LLC ("Liberty I") of an approximately 2MW solar photovoltaic electricity generating facility that will be interconnected to the NYSEG electrical grid along Kelly Bridge Road in the Town of Liberty ("Liberty I Project"); and

**WHEREAS**, on or about November 1, 2017, the Agency and Liberty I closed a lease/leaseback transaction and contemporaneously therewith entered into an Agent and Project Agreement ("Liberty I APA"); and

**WHEREAS**, the Agency authorized and approved Liberty I (together with its Sub-Agents) to make purchases of goods and services relating to the Liberty I Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$981,950, which would result in New York State and local sales and use tax exemption benefits based on the Agency exemption not to exceed \$78,556; and

**WHEREAS**, on December 11, 2017 by resolution #60-17 ("Delaware II Resolution"), the Agency approved the construction by NY Delaware II, LLC ("Delaware II") of an approximately 1.50MW solar photovoltaic electricity generating facility that will be interconnected to the NYSEG electrical grid along 309 Hospital Road in the Town of Delaware ("Delaware II Project"); and

**WHEREAS**, on or about March 1, 2018, the Agency and Delaware II closed a lease/leaseback transaction and contemporaneously therewith entered into an Agent and Project Agreement ("Delaware II APA"); and

**WHEREAS**, the Agency authorized and approved Delaware II (together with its Sub-Agents) to make purchases of goods and services relating to the Delaware II Project that would

otherwise be subject to New York State and local sales and use tax in an amount up to \$981,950, which would result in New York State and local sales and use tax exemption benefits based on the Agency exemption not to exceed \$78,556; and

**WHEREAS**, on December 11, 2017 by resolution #61-17 (“Thompson I Resolution”), the Agency approved the construction by NY Thompson I, LLC (“Thompson I”) of an approximately 2MW solar photovoltaic electricity generating facility that will be interconnected to the NYSEG electrical grid along Sackett Lake Road in the Town of Thompson (“Thompson I Project”); and

**WHEREAS**, on or about June 1, 2018, the Agency and Thompson I closed a lease/leaseback transaction and contemporaneously therewith entered into an Agent and Project Agreement (“Thompson I APA”); and

**WHEREAS**, the Agency authorized and approved Thompson I (together with its Sub-Agents) to make purchases of goods and services relating to the Thompson I Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$981,950, which would result in New York State and local sales and use tax exemption benefits based on the Agency exemption not to exceed \$78,556; and

**WHEREAS**, December 11, 2017 by resolution #62-17 (“Thompson II Resolution” and together with the Delaware I Resolution, Liberty I Resolution, Delaware II Resolution, and Thompson I Resolution, the “DRS Community Solar Project Resolutions”), the Agency approved the construction by NY Thompson II, LLC (“Thompson II” and together with Delaware I, Liberty I, Delaware II and Thompson I, the “DRS Companies”) of an approximately 1.75MW solar photovoltaic electricity generating facility that will be interconnected to the NYSEG electrical grid along Sackett Lake Road in the Town of Thompson (“Thompson II Project” and together with the Delaware I Project, Liberty I Project, Delaware II Project, and Thompson I Project, the “DRS Community Solar Projects”); and

**WHEREAS**, on or about June 1, 2018, the Agency and Thompson II closed a lease/leaseback transaction and contemporaneously therewith entered into an Agent and Project Agreement (“Thompson II APA” and together with Delaware I APA, Liberty I APA, Delaware II APA and Thompson I APA, the “Agent and Project Agreements”); and

**WHEREAS**, the Agency authorized and approved Thompson II (together with its Sub-Agents) to make purchases of goods and services relating to the Thompson II Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$981,950, which would result in New York State and local sales and use tax exemption benefits based on the Agency exemption not to exceed \$78,556; and

**WHEREAS**, at the time the DRS Companies filed applications with the Agency for the DRS Community Solar Projects, it was unclear the extent to which certain statutory exceptions, including, but not limited to, the Exemption for Machinery, Equipment, Materials and Services used in Production (“Production Exemption”) applied to certain purchases associated with the solar array development; and

**WHEREAS**, Section 1115(a)(12) of the Tax Law provides in applicable part as follows:

“(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment. This exemption shall include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas, and solution mining activities to the point of sale to the first commercial purchaser.”

; and

**WHEREAS**, subsequent to the time of the applications by the DRS Companies for the DRS Community Solar Projects, the DRS Companies have obtained guidance from the New York State Department of Taxation and Finance and now anticipate the Production Exemption would apply to substantially all purchases associated with solar array development; and

**WHEREAS**, the Agency wishes to amend the DRS Community Solar Project Resolutions to reduce the sales and use tax exemption conferred by the Agency, since substantially all purchases are exempt pursuant to the Production Exemption; and

**WHEREAS**, the Agent and Project Agreements currently in place require the DRS Companies to file periodic reports with the Agency (each a “Purchase Report”) to report to the Agency the extent of the purchases for the period covered by the Project Report that were purchased in reliance on the IDA sales and use tax exemption; and

**WHEREAS**, the Agent and Project Agreements require the DRS Companies to pay the Agency a sales tax abatement fee in an amount equal to one-half (0.5%) percent of purchases made without payment of sales tax; and

**WHEREAS**, the DRS Companies estimate that in no event shall the purchases to be made for any of the DRS Community Solar Projects pursuant to the exemption conferred by the Agency exceed \$500,000.00; and

**WHEREAS**, the Agency and DRS Companies desire to dispense with the requirement that the DRS Companies file Purchase Reports since substantially all purchases are exempt under the Production Exemption; and

**WHEREAS**, the Agency and DRS Companies desire to amend the Agent and Project Agreements to accomplish the foregoing.

***NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:***

Section 1. Each of the DRS Community Solar Project Resolutions are hereby amended to delete therefrom Section 6 and insert in its place and stead the following:

“Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to Five Hundred Thousand and 00/100 (\$500,000.00) Dollars, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed Forty Thousand and 00/100 (\$40,000.00) Dollars. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.”

Section 2. The Agency hereby authorizes a First Amendment to the Agent and Project Agreements to delete therefrom Section 3(a), Sales Tax Abatement Fee and to insert in its place and stead the following:

“(a) Sales Tax Abatement Fee. Upon execution of this First Amendment, the Company shall pay the Agency a sales tax abatement fee related to the DRS Community Solar Projects in the amount of Five Thousand and 00/100 (\$5,000.00) Dollars.

Within ten (10) days of the execution of this First Amendment, the Agency shall deliver to each of the DRS Community Solar Projects a Sales Tax Exemption letter substantially in the form of Exhibit 3.”

Section 3. The Chairman, Executive Director or Chief Executive Officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the First Amendment to Agent and Project Agreements with such changes, variations, omissions and insertions as the Chairman, Executive Director or Chief Executive Officer of the Agency shall approve, the execution thereof by the Chairman, Executive Director or Chief Executive Officer of the Agency to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such 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 this resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 5. It is hereby found and determined that all formal actions of the Agency concerning and relating to the adoption of this resolution were adopted in an open meeting of the Agency; and that all deliberations of the Agency and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 6. The Chief Executive Officer, Executive Director or Counsel to the Agency, each acting individually, are hereby authorized and directed (i) to distribute copies of this resolution to the DRS Companies; and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

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

Ira Steingart	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Suzanne Loughlin	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Sean Rieber	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Edward T. Sykes	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Scott Smith	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Joseph Perrello	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

The resolutions were thereupon duly adopted.

STATE OF NEW YORK :  
:SS  
COUNTY OF SULLIVAN :

I, the undersigned (Assistant) Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the Agency with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.
2. Such resolution was passed at a meeting of the Agency duly convened in public session on the 19<sup>th</sup> day of November, 2018 at 11:00 a.m. at the Sullivan County Government Center, 100 North Street, Village of Monticello, Sullivan County, New York, at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[    ]	[    ]
Suzanne Loughlin	[    ]	[    ]
Sean Rieber	[    ]	[    ]
Edward T. Sykes	[    ]	[    ]
Howard Siegel	[    ]	[    ]
Scott Smith	[    ]	[    ]
Paul Guenther	[    ]	[    ]
Joseph Perrello	[    ]	[    ]
Carol Roig	[    ]	[    ]

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

Ira Steingart	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Suzanne Loughlin	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Sean Rieber	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Edward T. Sykes	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Howard Siegel	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Scott Smith	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Paul Guenther	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Joseph Perrello	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Carol Roig	[    ] Yes	[    ] No	[    ] Absent	[    ] Abstain

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

*IN WITNESS WHEREOF*, I have hereunto set my hand and seal on the 19<sup>th</sup> day of November, 2018.

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Secretary