

**RESOLUTION AUTHORIZING ASSIGNMENT AND ASSUMPTION
NSF ANGELICA SITE 3, LLC PROJECT**

A regular meeting of Allegany County Industrial Development Agency (the "Agency") was convened in public session at the office of the Agency located at Crossroads Commerce & Conference Center, 6087 State Route 19 North, Belmont, New York on October 14, 2021 at 10:00 o'clock a.m., local time.

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

PRESENT:

Richard Ewell	Chair
Judy Hopkins	Vice-Chair
Douglas Frank	Treasurer
Ward "Skip" Wilday	Member

Each of the members present participated in the meeting either in person or remotely pursuant to the signing into law on September 2, 2021 of Chapter 417 of the Laws of 2021.

ABSENT:

Michael Johnsen	Secretary-Resigned
Randy Shayler	Member

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Craig R. Clark, P.E., Ph.D.	Executive Director
Pam Common	Recording Secretary

The following resolution was offered by D. Frank, seconded by S. Wilday, to wit:

Resolution No. 1021-05

**RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND
DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO THE ASSIGNMENT
AND ASSUMPTION OF THE NSF ANGELICA SITE 3, LLC PROJECT.**

WHEREAS, Allegany 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 99 of the 1973 Laws of New York, as amended, constituting Section 906-a 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 manufacturing, warehousing, research, commercial 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, on June 23, 2020 (the “Closing”), the Agency granted certain financial assistance to NSF Angelica Site 3, LLC (the “Current Company”) to assist in financing a project (the “Project”) consisting of the following: (A) (1) the acquisition of an interest in an approximately 32.89 acre parcel of land (tax map number 131.-1-21.1) located at 6917 River Road in the Town of Belfast, Allegany County, New York (the “Land”), (2) the construction of an approximately 5 MW AC solar energy generating facility, including panels, racking, inverters, electrical cables, grid interconnection, site preparation, access roads and any other required improvements (all said improvements being collectively referred to as the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”), all of the foregoing to constitute a solar energy generating facility to be owned and operated by the Company (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”); (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, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility to the Current Company pursuant to a lease agreement dated as of June 1, 2020 (the “Lease Agreement”) by and between the Current Company and the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Current Company executed and delivered to the Agency (1) a certain lease to agency dated as of June 1, 2020 (the “Lease to Agency”) by and between the Agency and the Current Company, pursuant to which the Current Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”) for a lease term ending on December 31, 2037; (2) a certain license agreement dated as of June 1, 2020 (the “License to Agency”) by and between the Current Company, as licensor, and the Agency, as licensee, pursuant to which the Current Company granted to the Agency (a) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Current Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of June 1, 2020 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Current Company in the Equipment, (B) the Current Company and the Agency executed and delivered a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Current Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Current Company executed and delivered the uniform agency project agreement dated as of June 1, 2020 (the “Uniform Agency Project Agreement”) by and between the Agency and the Current Company relating to the terms of the granting by the Agency of the Financial Assistance to the Current Company; (D) the Agency executed and delivered to the Current Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which formed a part of the Financial Assistance; and (E) 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”) (the Lease Agreement and the above described documents being collectively referred to as the “Basic Documents”); and

WHEREAS, pursuant to a request (the "Request") attached hereto as Exhibit A, the Agency has been requested to (A) a merger of the Current Company with an affiliate of the Current Company and (B) convey the Project Facility and its interests in the Basic Documents to the affiliate, DG Empire Bright, LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in New York ("the "New Company") and, in connection with such conveyance, provide for the assignment of the Basic Documents from the Current Company to the New Company, as described in the Request (the "Assignment"); and

WHEREAS, the Lease Agreement provides that the Current Company is prohibited from selling, leasing, transferring or otherwise conveying any part of the Project Facility without the prior written consent of the Agency; and

WHEREAS, in connection with the conveyance of the Project Facility, the Current Company and the New Company have requested (the "Request") that the Agency execute documents providing for the following (the "Conveyance and Assignment Documents"): the consent by the Agency of the merger, the conveyance of the Project Facility and the assignment and assumption of the Basic Documents from the Current Company to the New Company; 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"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the execution and delivery of the Conveyance and Assignment Documents; and

WHEREAS, pursuant to SEQRA, the Agency has reviewed the Request in order to make a determination as to whether the execution and delivery of the Conveyance and Assignment Documents is subject to SEQRA, and it appears that the Request is not an "Action" under SEQRA;

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

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) Pursuant to SEQRA, the approval of the Request is not an "Action" under SEQRA and therefore is not subject to SEQRA review by the Agency.

(B) That since compliance by the Agency with the Request 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 New Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. The Agency hereby approves (A) the merger of the Current Company with its affiliate, (B) the assignment to, and assumption by, the New Company of all of the Current Company's interest in the Project Facility and the Basic Documents, including but not limited to the benefits of the Lease Agreement and the Payment in Lieu of Tax Agreement, and (C) the assumption by the New Company of all obligations of the Current Company under the Basic Documents pursuant to the Conveyance and Assignment Documents; subject in each case, however to the following conditions: (1) evidence of current certificates of insurance acceptable to the Agency; (2) receipt of confirmation that all real property taxes and payments in lieu of taxes required by the Project have been satisfied; (3) receipt of

confirmation from Agency counsel that no modifications shall result from the Assignment that result in any new tax relief for the Project (such as an extension of the term, increase in abatement or change in the Payment in Lieu of Tax Agreement); (4) approval by Agency Counsel of the form of the Conveyance and Assignment Documents to be executed by the Agency in connection with the Request; (5) receipt by the Agency of its administrative fee relating to the Assignment, and all fees and expenses incurred by the Agency with respect to the Assignment, including the fees and expenses incurred by Agency Counsel with respect thereto; (collectively, with the Conveyance and Assignment Documents, the "Assigned Documents"), and (6) the following additional conditions: None.

Section 3. Subject to (A) satisfaction of the conditions contained in Section 2 hereof, including the condition that no modifications provide any new tax relief for the Project (such as an extension of the term); and (B) the execution and delivery of the Assigned Documents by the other parties thereto, the Chair (or Vice Chair) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Assigned Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof approved by Agency Counsel, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) 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 Request and the Assignment, 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 Request.

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:

Richard Ewell	VOTING	AYE
Judy Hopkins	VOTING	AYE
Michael Johnsen	VOTING	Absent/Resigned
Douglas Frank	VOTING	AYE
Randy Shayler	VOTING	Absent
Ward "Skip" Wilday	VOTING	AYE

The foregoing Resolution was thereupon declared duly adopted.

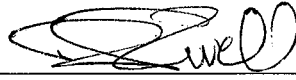
STATE OF NEW YORK)
) SS.:
COUNTY OF ALLEGANY)

I, the undersigned Secretary of Allegany County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency held on October 14, 2021 with the original thereof on file in my office, and that the same is a true and correct copy of said original 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 Chapter 417 of the Laws of 2021 (the "2021 Laws"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given; and (D) there was a quorum of the members of the Agency, either in person or attending remotely in accordance with the 2021 Laws, 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 14th day of October, 2021.



~~(Assistant) Secretary~~
Chairman

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED -

From: Robert J. Ryan <rryan@harrisbeach.com>
Sent: Friday, October 1, 2021 4:06 PM
To: Spitzer, Daniel <DSpitzer@hodgsonruss.com>
Subject: Allegany County IDA - Angelica Solar projects

External Email - Use Caution

Dan,
NextEra is doing a re-org and financing of a number of its NY solar projects that is being handled by Squire. The four Angelica Site projects will be included in the re-org/financing and will be merged into an affiliate. With respect to the IDA's consent to merger and to a collateral assignment, do you or the IDA have a specific form to be used or should Squire just prepare their own for your review? The closing is scheduled for Nov 15th and NextEra is trying to determine what would be more efficient.

Let me know you thoughts.

Thanks,

Bob

Robert J. Ryan
Partner

HARRIS BEACH PLLC

ATTORNEYS AT LAW
677 Broadway, Suite 1101
Albany, NY 12207
518.701.2715 Direct
518.527.1825 Mobile
518.427.0235 Fax
518.427.9700 Main
[Website](#) | [Bio](#) | [Add to Contacts](#)

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