

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND TAKING OFFICIAL ACTION AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AGREEMENTS AND TAKING OF CERTAIN OTHER ACTION PERTAINING TO THE FACILITY FOR **SHOREHAM ENERGY, LLC** AND/OR ANY OF THE PRINCIPALS OF **SHOREHAM ENERGY, LLC** AND/OR OTHER ENTITY TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING.

WHEREAS, the Town of Brookhaven Industrial Development Agency (the “Agency”) was created by Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York (collectively, the “Act”), with the authority and power to, among other things, acquire, construct, renovate and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, SHOREHAM ENERGY, LLC, a New York limited liability company, on behalf of itself and/or the principals of SHOREHAM ENERGY, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “Company”), has submitted to the Agency a proposal for the Agency (the “Project”) (a) to assist with (i) the acquisition of a leasehold interest in an approximately 9.9 acre parcel of land, together with the improvements thereon, located at 227 North Country Road, Shoreham, Town of Brookhaven, Suffolk County, New York (the “Land”), to be leased by the Long Island Lighting Company d/b/a LIPA, or the Long Island Power Authority, or PSEG Long Island LLC, as agent for the Long Island Power Authority or the Long Island Lighting Authority d/b/a LIPA, to the Company, and subleased by the Company to the Agency, and sub-subleased by the Agency to the Company, and (ii) the maintenance and operation of the Company’s existing 91MW electric power generation facility located thereon (the “Equipment”), to be initially leased by the Company to the Agency, and subleased by the Agency to the Company (the Land and Equipment may be referred to as the “Facility), which Facility is to be used by the Company as a peak electric generating facility, and (b) to provide financial assistance within the meaning of the Act; and

WHEREAS, the Act authorizes and empowers the Agency to acquire, renovate, construct, equip, promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general property and economic welfare of the people of the State of New York; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company, consistent with the policies of the Agency, in the form of an abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), all consistent with the policies of the Agency; and

WHEREAS, the Agency contemplates that the Agency will acquire from the Company a subleasehold interest in the Land, and a leasehold interest in the Equipment, under a certain Company Lease Agreement (the “Company Lease Agreement”) for a term of

approximately twenty (20) years, by and between the Company and the Agency, and sub-lease the Land and sublease the Equipment to the Company under a certain Lease and Project Agreement (the “Lease Agreement”) for a term of approximately twenty (20) years, by and between the Agency and the Company; and

WHEREAS, a public hearing (the “Hearing”) was held on January 11, 2017, at 8:30 a.m., so that all persons with views in favor of, or opposed to either the financial assistance contemplated by the Agency or the location or nature of the facility, could be heard; and

WHEREAS, notice of the Hearing was given more than ten days prior thereto, such notice (together with proof of publication) having been filed with the records of this Agency; and

WHEREAS, the minutes of the Hearing having been filed with the records of this Agency; and

WHEREAS, the Agency has given due consideration to the application of the Company and to the representations by the Company that the proposed facility is either an inducement to the Company to maintain or expand the Facility in the Town of Brookhaven or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, “SEQR”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the “Questionnaire”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Town of Brookhaven Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. Based upon the Questionnaire completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that action relating to the acquisition and operation of the Facility is a “Unlisted” action, as that term is defined in the SEQR Act. The Agency determines that the action will not have a “significant effect” on the environment and, therefore, an environmental impact statement will not be required. This determination constitutes a negative declaration for the purposes of SEQRA. Notice of this determination shall be filed to the extent required by the applicable regulations under the SEQR Act or as may be deemed advisable by the Chairman, Chief Executive Officer of the Agency or counsel to the Agency.

Section 2. The Agency hereby finds and determines:

a. 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; and

b. The Facility constitutes a “project”, as such term as defined in the Act; and

c. The subleasing of the Land and the leasing of the Equipment by the Agency from the Company, the sub-subleasing of the Land and subleasing of the Equipment to the Company, and the providing of financial assistance to the Company within the meaning of the Act, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

d. The acquisition of the leasehold interests in the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

e. Based upon representations of the Company and counsel to the Company,

i. the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and

ii. The Facility and the operations conducted therein do not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder; and

iii. It is desirable and in the public interest for the Agency to sub-sublease and sublease the Facility to the Company.

Section 3. The Agency, in furtherance of the purposes of the Act, hereby determines to sublease the Land and lease the Equipment from the Company, sub-sublease the Land and sublease the Equipment to the Company, and operate and maintain the Facility.

Section 4. The Agency hereby authorizes and approves of the following economic benefits to be granted or inure to the benefit of the Company: abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency.

Section 5. The Chairman, Chief Executive Officer and/or any other member of the Agency are hereby authorized and directed to, on behalf of and in the name of the Agency, execute, deliver and perform a Company Lease Agreement and Lease Agreement, and other

instruments, including amendments and modifications of any or all of the such agreements and instruments, as above contemplated and in such form and containing such terms, conditions and provisions as the person executing same on behalf of the Agency shall deem necessary or desirable, and shall approve, such necessity, desirability, and approval, to be conclusively evidenced by his or her execution and delivery thereof.

Section 6. Weinberg Gross & Pergament LLP are hereby appointed Transaction Counsel to the Agency, and is authorized and directed to work with Counsel to the Company to prepare, for submission to the Agency, all documents necessary to effect the transaction described in this resolution.

Section 7. Any and all acts, instruments, and other writings heretofore or hereafter performed and/or executed and delivered by any one or more of the Chairman, Chief Executive Officer or any member of the Agency, pursuant to this resolution, for and on behalf of and in the name of the Agency, in connection with the transactions contemplated thereby, be and the same hereby are, in all respects ratified, confirmed and approved.

Section 8. The documents, including the Company Lease Agreement and Lease Agreement, and any amendments and modifications thereto, promptly following the execution, and delivery thereof, be identified by any of the Chairman, Chief Executive Officer or any member of the Agency by his or her endorsement thereon and when so identified be filed with the official records of the Agency.

Section 9. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 10. The Chairman, Chief Executive Officer, Counsel to the Agency or any member of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 11. This resolution shall take effect immediately.

Adopted: January 11, 2017

Accepted:

SHOREHAM ENERGY, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

PROPOSED PILOT BENEFITS ARE FOR DISCUSSION PURPOSES ONLY
AND HAVE NOT APPROVED BY THE AGENCY BOARD.

January 11, 2017

Year	PILOT
1	\$1,200,000
2	\$1,224,000
3	\$1,248,480
4	\$1,273,450
5	\$1,298,919
6	\$1,324,897
7	\$1,351,395
8	\$1,378,423
9	\$1,405,991
10	\$1,434,111
11	\$1,462,793
12	\$1,492,049
13	\$1,521,890
14	\$1,552,328
15	\$1,583,375
16	\$1,615,042
17	\$1,647,343
18	\$1,680,290
19	\$1,713,895
20	\$1,748,173