

RESOLUTION NO. R 025 00

A PROJECT RESOLUTION AUTHORIZING UP TO \$12,000,000 INDUSTRIAL REVENUE BONDS (PERDUE-AGRIRECYCLE, LLC PROJECT) SERIES 2000

WHEREAS, 9 Delaware Code §7001 (a) confers upon the government of Sussex County (the "County") all powers which under the Constitution of the State of Delaware, it would be competent for the General Assembly to grant by specific enumeration, and which are not denied by statute;

WHEREAS, 9 Delaware Code §7001(c) confers upon the government of the County the power to exercise any of its powers or perform any of its functions and participate in the financing thereof, jointly or in cooperation by contract or otherwise with any one or more states or civil divisions or counties or agencies thereof; and

WHEREAS, Sussex County Council (the "Council") has adopted the Sussex County Commercial, Industrial and Agricultural Revenue Bond Ordinance No. 80, as amended (the "Act") to encourage and assist in the financing of the acquisition, construction, sale or lease of industrial, commercial and agricultural facilities related to the maintenance or promotion of employment or to the redevelopment or revitalization of areas within the County; and

WHEREAS, Perdue-AgriRecycle, LLC, a Maryland limited liability company (the "Company") has submitted to the County through the County Administrator an application (the "Application") for the financing of a project consisting of the acquisition, construction and equipping of a 63,000 square foot building for the conversion of poultry manure into fertilizer that will be located on the West side of Route 13A approximately 2/10ths of one mile North of the intersection of Route 13A and County Road 485/O'Neals Road, in Seaford, Sussex County, Delaware. (the "Project") by the issuance by the County of Industrial Revenue Bonds in the principal amount not to exceed \$12,000,000 (the "Bonds"); and

WHEREAS, the Application was reviewed by a committee comprised of the County Administrator, the Director of Finance, the County Attorney and the Director of Economic Development (the "Review Committee"); and

WHEREAS, the Review Committee made findings and determinations required by the Act; and

WHEREAS, the Council adopted Resolution No. R 011 00 on February 29, 2000 which authorized the issuance of the Bonds for the purpose of paying a portion of the Costs of acquisition, construction and equipping of the Project (the "Inducement Resolution"); and

WHEREAS, the Inducement Resolution approved the issuance of the Bonds was contingent upon the receipt of a final commitment to purchase the Bonds and upon adoption of a Project resolution (the "Project Resolution") providing for repayment of the Bonds in not more than 30 years at an interest rate not to exceed 80% of the prime rate generally offered by commercial lenders in Bonds, or at such other interest rate or method for determining the same as shall be approved by Council.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. This Resolution shall be known and cited as the Sussex County Perdue-AgriRecycle, LLC Project Resolution.

Section 2. Approval of Project; Legislative Findings

The Council hereby approves the findings and determinations made by the Review Committee with respect to the Project and in conjunction therewith it is hereby determined and declared as a matter of legislative finding that:



(a) the project is eligible for financial assistance and the financing thereof will accomplish the public purposes contemplated by the Act; and

(b) the Project will (i) tend to maintain or provide gainful employment opportunities within and for the people of the County; (ii) aid, assist and encourage the economic development or redevelopment of the County; and (iii) maintain, diversify or expand employment promoting enterprises within the County; and

(c) the issuance and sale of the Bonds by the County will enable the Company to obtain efficient and cost-effective financing thereby enhancing the Company's ability to accomplish the aforesaid public purposes in the County; and

(d) the Bonds will be limited obligations of the County and the County does not pledge the credit or taxing power thereof, but such Bonds shall be payable solely from Revenues as specified in Section 7 of the Act.

Based upon the foregoing findings and determinations and as a substantial inducement to the Company to locate, remain or expand within the County, the Project is hereby approved and determined to be eligible for financing by the County as provided herein.

### Section 3. Definitions

The terms used in this Project Resolution shall have the meanings specified herein or in the preamble hereto or, if not otherwise defined herein, as specified in the Act or the Inducement Resolution, unless a different meaning is clearly indicated by the context.

Notwithstanding any other provision to the contrary, "Costs" means with respect to the Project all costs, whether capital or otherwise and includes without limitation the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility or other improvement, the cost of machinery and equipment, the cost of land, rights in land, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads, and site development necessary or useful and convenient for the Project or in connection therewith, financing costs including, but not limited to, discount on the Bonds, costs of issuance of the Bonds, engineering and inspection costs, trustee or fiscal agent's fee, cost of financial, legal, professional and other estimates and advice, organization, administrative, insurance and other expenses of the County or the Company prior to and during any acquisition or construction; working capital; and all such other expenses as may be necessary or incidental to the financing, acquisition, construction or completion of the Project or part thereof including, but not limited to capitalized interest and such provisions for reserves for payment of principal of or interest on the Bonds during or after such financing, acquisition or construction as may be provided for herein.

### Section 4. Authorization

This Project Resolution is adopted pursuant to the Act and the Inducement Resolution.

### Section 5. Interpretation

All references in this Project Resolution to articles, sections and other subdivisions of this Project Resolution are to the designated articles, section or subdivisions of this Project Resolution as originally adopted. The words "herein," "hereof," "hereby" and "hereafter" and other words of similar import refer to this Project Resolution as a whole and not to any particular article, section or subdivision. The use of words in the singular number includes the plural and the use of the plural includes the singular number.

### Section 6. Descriptive Headings

The descriptive headings of the sections of this Project Resolution are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions.



#### Section 7. Severability

In case any one or more of the provisions contained herein or in the Bonds or any other document executed and delivered pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Project Resolution, the Bonds or other documents and this Project Resolution, the Bonds and other documents shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained herein or therein.

#### Section 8. Authorization of the Bonds

In order to provide funds to pay a portion of the Costs of the Project, the County shall issue its Industrial Revenue Bonds (Perdue-AgriRecycle, LLC Project) Series 2000 in a principal amount not to exceed \$12,000,000 (exclusive of original issue discount).

The Bonds shall mature on the dates and in the amounts set forth in the Indenture, bear interest at rates of interest set forth in the Indenture, and shall be subject to the redemption provisions set forth in the Indenture. The Bonds shall be issued only as registered bonds in denominations as set forth in the Indenture.

The Bonds, substantially in the form and substance set forth in the Indenture, and all of the terms set forth therein are hereby approved and are incorporated as part of this Project Resolution with the same effect as if the entire text thereof were set forth herein in full.

The Bonds shall be limited obligations of the County payable solely and exclusively from and secured by (i) payments received by the County pursuant to the loan agreement to be entered into by the County and the Company (the "Agreement"); and (ii) a pledge of the moneys held in the funds and accounts established under the Indenture, together with certain investment earnings thereon.

The Bonds shall not be payable out of any funds, revenues or properties of the County other than those specifically pledged therefor.

The Bonds shall mature no later than 30 years from the date of issuance.

#### Section 9. Authorization of Agreement

The County shall enter into the Agreement with the Company, providing for the proceeds of the Bonds to be loaned to the Company to finance the Project as set forth therein, and any other financing documents as the Underwriter (as defined herein) may require and such other documents provided for in the Agreement to evidence and secure such loan and containing covenants by the Company for the benefit of the County and the trustee.

#### Section 10. Authorization of Indenture

The County shall enter into the Indenture with SunTrust Bank, Atlanta (the "Trustee") providing for the issuance of and security for the Bonds, the application of the proceeds of the Bonds, the assignment to the Trustee of certain rights of the County and any other financing documents as the Underwriter may require and the application of the payments to be made by the Company for the repayment of the Bonds.

#### Section 11. Authorization of Bond Purchase Contract

The County shall enter into a Bond Purchase Contract with the SunTrust Equitable Securities Corporation (the "Underwriter") and the Company to provide for the sale of or placement of the Bonds to or by the Underwriter at a negotiated sale at such price plus accrued interest, if any, and on such other terms as may be mutually agreed upon by all such parties.



## Section 12. Execution of Bonds

The County Administrator is hereby authorized to execute the Bonds by manual or facsimile signature in substantially the form set forth in the Indenture, with appropriate insertions or variations; and the County Clerk is hereby authorized to attest by manual or facsimile signature, and to impress the seal of the County, or a facsimile thereof on the Bonds; following such execution, the County Administrator is authorized to cause the Bonds to be delivered to the Trustee for authentication and, after such authentication, to cause them to be delivered to the Underwriter against receipt of the purchase price and to apply the proceeds of the Bonds in accordance with the provisions of the Indenture and other financing documents.

## Section 13. Approval, Execution and Delivery of Documents

The County shall enter into the Indenture, the Agreement and the Bond Purchase Contract and such other documents as the County Administrator determines to be reasonable and appropriate to complete the financing for the Project as authorized by this Project Resolution. The County Administrator is hereby authorized to execute and deliver in the name of the County and on its behalf the following documents and to approve the final form and substance thereof: the Indenture, the Bonds, the Agreement, the Bond Purchase Contract and such other necessary documents in order to complete the financing for the Project. The County Clerk is hereby authorized to affix the seal of the County and to attest to the same, if required, the foregoing documents which the County Administrator is authorized to execute and deliver. Copies of the documents so executed, sealed, attested and delivered shall be filed in the official record of the County.

## Section 14. Authorization of Preliminary Official Statement and Official Statement

The County hereby authorizes the distribution by the Underwriter of a preliminary official statement (the "Preliminary Official Statement") in substantially the form presently on file with the County setting forth certain information relating to the County, the Company, the Project, the Bonds and the security. The County hereby authorizes the distribution by the Underwriter of a final official statement (the "Official Statement") in substantially the form as the Preliminary Official Statement except that it shall contain the final terms of the Bonds and such other changes as shall be approved by the County Administrator.

The County, however, does not make any representation or warranty, either express or implied, regarding the accuracy or completeness of the information in the Preliminary Official Statement or the Official Statement that has been supplied by sources other than the County.

## Section 15. Binding Effect of Covenants and Agreements

All covenants, obligations and agreements of the County set forth in this Project Resolution and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the County to the full extent authorized or permitted by law and all such covenants, obligations and agreements shall be binding upon the County and its successors. No covenant, obligation or agreement herein contained or in the documents authorized hereby shall be deemed to be a covenant, obligation or agreement of any member, officer, agent or employee of the County in his or here individual capacity and neither the members of the Council nor any officer executing the Indenture, the Bonds, the Agreement, the Bond Purchase Contract or other documents authorized by this Project Resolution shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

## Section 16. Further Action

The proper officers of the County are hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the issuance of the Bonds or the intent and purpose of this Project Resolution or any document herein authorized.

Section 17. Effective Date

This Project Resolution shall become effective upon its passage by Council

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 025 00 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 27TH DAY OF JUNE, 2000.

  
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Robin A. Griffith  
Clerk of the County Council

SYNOPSIS: This Resolution authorizes the County to issue Industrial Revenue Bonds in the principal amount not exceeding \$12,000,000 for the financing of a project for Perdue-AgriRecycle, LLC consisting of the acquisition, construction and equipping of a 63,000 square foot building for the conversion of poultry manure into fertilizer.