

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

TITLE:

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DEFAULT AND ASSIGNMENT AGREEMENTS RELATING TO THE AUTHORITY'S "COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE BONDS, SERIES 2009A".

WHEREAS, on October 29, 2009, the Morris County Improvement Authority (the "*Authority*") issued a "Request for Proposals for a Developer of Photovoltaic Systems with Respect to Certain Local Government Facilities in the County of Morris, New Jersey" (the "*RFP*") to design, permit, acquire, construct, install, operate and maintain solar renewable energy projects (the "*Renewable Energy Projects*") at multiple county, municipal and board of education facilities located throughout the County of Morris, New Jersey (the "*County*"); and

WHEREAS, the Authority selected and designated Tioga Solar Morris County 1, LLC (the "*Company*") as the successful respondent to the RFP, and the Authority and the Company thereafter entered into a Lease Purchase Agreement, dated as of February 1, 2010 (as the same may be amended and supplemented from time to time, the "*Lease Agreement*"), and certain other agreements with the Company and others in furtherance thereof; and

WHEREAS, on February 18, 2010, the Authority issued its "County of Morris Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2009A" (the "*Renewable Energy Bonds*"), of which the Authority asserts \$10,080,000 is presently outstanding, to finance all or a portion of the costs of the Renewable Energy Projects, with the Company financing any balance of such costs; and

WHEREAS, pursuant to Section 301 of the Lease Agreement, the Company is required to make Lease Payments (as defined in the Lease Agreement) to the Authority in amounts equal to, among other things, the payment of the principal of and interest due on the Renewable Energy Bonds; and

WHEREAS, the County, in accordance with the terms of the County Guaranty Agreement (Morris County Renewable Energy Program, Series 2009A), dated as of February 1, 2010, has fully, unconditionally and irrevocably guaranteed the timely payment of the principal of and interest due on the Renewable Energy Bonds; and

WHEREAS, Tioga Energy, Inc. ("*Tioga Energy*"), the sole member and managing member of the Company, in accordance with the terms of the Guaranty Agreement, dated as of February 1, 2010, fully, unconditionally and irrevocably guaranteed the timely payment of the principal of and interest due on the Renewable Energy Bonds; and

WHEREAS, the Renewable Energy Projects procured under the Renewable Energy Program (as defined in the Lease Agreement) are, in all material respects, complete, lien free, in service and generating energy and revenues, with such revenues being principally derived from (i) the sale of electric energy to the local unit hosts under a Power Purchase Agreement, dated as of February 1, 2010 (the "*Power Purchase Agreement*"), by and between the Company, the Authority and certain local government units, and (ii) the sale of Solar Renewable Energy Certificates (the "*SRECs*") to utilities; and

WHEREAS, Tioga Energy, which was engaged in the solar energy business throughout the United States, advised the Authority that, on April 30, 2013, it (not the Company) transferred ownership of all of its right, title and interest in, to and under all of its tangible and all of its intangible assets, including, but not limited to, its interest in the Company, to Tioga Energy (Assignment for the Benefit of Creditors), LLC, Solely as Assignee for the Benefit of Creditors of Tioga Energy, Inc. (the "*Assignee*"), pursuant to the laws of the State of California, and thereby created an assignment estate; and

WHEREAS, the Company has failed to make Lease Payments then due and owing to the Authority pursuant to the terms of Section 301 of the Lease Agreement, each of which failure constitutes an Event of Default pursuant to Section 1001 of the Lease Agreement; and

WHEREAS, as of the date hereof, the Company has not remedied any Event of Default pursuant to the terms of the Lease Agreement and, as such, such Events of Default continue; and

WHEREAS, as a result of the incurrence and continuance of the Events of Default by the Company, the Authority desires to exercise the remedies available to it pursuant to Section 1002 of the Lease Agreement, including, without limitation, (i) terminating the Lease Agreement, (ii) taking possession of the Renewable Energy Projects, the SRECs and any other portion of the Leased Property (as defined in the Lease Agreement), and (iii) assuming all of the Company's rights under the Power Purchase Agreement and the License Agreements (as defined in the Lease Agreement); and

WHEREAS, pursuant to the terms of that certain Default and Assignment Agreement, to be dated as of June 1, 2019 (the "*Default Agreement*"), by and among the Authority, the Company and the Assignee, neither the Company nor the Assignee will contest that the Events of Default have occurred and are continuing, nor will either protest the Authority's decision to exercise available remedies under the Lease Agreement, including, without limitation, those described above; and

WHEREAS, pursuant to the terms of that certain Assignment of Agreements, to be dated as of June 1, 2019 (the "*Assignment*"), from the Company to the Authority, the Company shall assign (and the Authority shall assume) all of its right, title and interest in and to certain Solar Renewable Energy Certificate Purchase and Sale Agreements by and between the Company and Jersey Central Power & Light Company.

NOW, THEREFORE, BE IT RESOLVED BY THE MORRIS COUNTY IMPROVEMENT AUTHORITY AS FOLLOWS:

Section 1. The recitals are hereby incorporated by reference thereto as if set forth in full herein.

Section 2. The Authority hereby approves the Default Agreement and the Assignment in substantially the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively. The Chairman of the Authority is hereby authorized and directed to execute and deliver the Default Agreement and the Assignment in substantially such forms, with such additions, modifications or deletions as recommended by counsel to the Authority. The Secretary of the Authority is hereby authorized and directed to attest to the execution of the Default Agreement and the Assignment and to affix the official seal of the Authority onto same.

Section 3. The Chairman of the Authority is hereby authorized and directed to take any and all actions deemed necessary, useful or convenient in connection with the foregoing and in furtherance of the Default Agreement and the Assignment.

Section 4. Subject to the second sentence of this Section 4, this resolution shall take effect immediately. In accordance with N.J.S.A. 40:37A-50, the Secretary of the Authority is hereby authorized and directed to submit to each member of the County Board of Chosen Freeholders, by the end of the fifth business day following this meeting, a copy of the minutes of this meeting. The Secretary is hereby further authorized and directed to obtain from the Clerk of the County Board of Chosen Freeholders a certification from said Clerk stating that the minutes of this meeting have not been vetoed by the Director of the County Board of Chosen Freeholders.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT A

FORM OF DEFAULT AGREEMENT

EXHIBIT B

FORM OF ASSIGNMENT

MOVED/SECONDED:

Resolution moved by Commissioner _____.

Resolution seconded by Commissioner _____.

VOTE:

Commissioner	Yes	No	Abstain	Absent
Gallopo				
Bauer				
Ramirez				
Sandman				
Bonanni				

This Resolution was acted upon at the Regular Meeting of the Authority held on April 25, 2019 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this 25th day of April, 2019:

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of April 25, 2019.

By: _____
Matthew D. Jessup, Esq., Member
McManimon, Scotland & Baumann, LLC
Counsel to the Authority
Resolution No. 19-10