

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

TITLE:

SUPPLEMENTAL RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$9,250,000 COUNTY GUARANTEED LEASE REVENUE REFUNDING BONDS, SERIES 2019 (RENEWABLE ENERGY PROGRAM PROJECT) OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AND DETERMINING VARIOUS OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Morris County Improvement Authority (the "*Authority*") has been duly created by resolution of the Board of Chosen Freeholders (the "*Board of Chosen Freeholders*") of the County of Morris, New Jersey (the "*County*"), duly adopted April 10, 2002, as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authorities Law, N.J.S.A. 40:37A-44 *et seq.*, as amended and supplemented (the "*Act*"); and

WHEREAS, on October 29, 2009, 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; 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 Refunding 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 (the "*Default Agreement*") to be entered into 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 (the "*Assignment*") to be entered into 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; and

WHEREAS, in conjunction with the execution and delivery of the Default Agreement and the Assignment, the County desires to redeem and defease the Renewable Energy Bonds and to pay costs of issuance on the Bonds defined below (collectively, the "*Project*"); and

WHEREAS, the County has requested that the Authority finance the undertaking of the Project through the issuance of its bonds; and

WHEREAS, in order to finance the Project, the Authority will issue a series of bonds in an aggregate principal amount not to exceed \$9,250,000 to be designated as "County Guaranteed Lease Revenue Refunding Bonds, Series 2019 (Renewable Energy Program Project)" (the "*Bonds*"); and

WHEREAS, the Bonds will be issued pursuant to the terms of the Act, other applicable law and the bond resolution of the Authority entitled, "Resolution Authorizing the Issuance of County Guaranteed Lease Revenue Refunding Bonds, Series 2019 (Renewable Energy Program Project) of the Morris County Improvement Authority and Determining Other Matters Related Thereto" (as the same may be amended or supplemented from time to time in accordance with its terms, the "*Bond Resolution*"); and

WHEREAS, in order to facilitate and in exchange for the undertaking of the Project by the Authority, the County will lease the Project from the Authority pursuant to a Lease Agreement (the "*Lease Agreement*"), which Lease Agreement will provide, *inter alia*, for the satisfaction of debt service on the Bonds by the County; and

WHEREAS, the County shall unconditionally guaranty the payment of principal of and interest on the Bonds to finance the Project; and

WHEREAS, the principal of and interest on the Bonds shall be fully, unconditionally and irrevocably guaranteed in an aggregate principal amount not to exceed \$9,250,000 in accordance with the terms of: (i) a guaranty ordinance of the County to be finally adopted by the Board of Chosen Freeholders (the "*County Guaranty*"); (ii) a guaranty agreement by and between the County and the Authority (the "*County Guaranty Agreement*"); and (iii) a guaranty certificate (collectively, the "*County Bond Guaranty*") to be executed by the Freeholder Director on the face of each Bond, all pursuant to N.J.S.A. 40:37A-80; and

WHEREAS, in accordance with N.J.S.A. 40:37A-56, prior to the issuance of the Bonds, the Authority will have made a detailed report to the Board of Chosen Freeholders, which report will include, without limitation, the Bond Resolution, the Bonds, the Lease Agreement and the County Guaranty Agreement; and

WHEREAS, the Authority desires, under and pursuant to this supplemental resolution (this "*Supplemental Bond Resolution*"), to issue not to exceed \$9,250,000 aggregate principal amount of Bonds, to appoint the Trustee, Registrar and Paying Agent therefor, to authorize the execution of necessary documentation, to delegate the sale and award of the Bonds to the Authorized Authority Representative, to determine other matters in connection with the Bonds and to adopt this Supplemental Bond Resolution to effectuate the purposes herein stated.

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

ARTICLE I DEFINITIONS

Section 101. Title. This resolution shall hereinafter be cited as the "*Supplemental Bond Resolution*".

Section 102. Terms Defined in Resolution. Whenever used or referred to in this Supplemental Bond Resolution, all capitalized terms herein shall, unless specifically defined herein or unless the context clearly requires otherwise, have the same meanings assigned to such terms in the Bond Resolution.

Section 103. Definitions. As used or referred to in this Supplemental Bond Resolution, unless a different meaning clearly appears from the context:

(A) "*Authorized Authority Representative*" means the Chairman, the Vice Chairman or the Executive Director of the Authority and any other person or persons who are authorized to act on behalf of the Authority by virtue of a written certificate, duly executed on behalf of the Authority.

(B) "*Bond Purchase Agreement*" shall mean the Bond Purchase Agreement by and between the Authority and the Underwriters, dated as of the date of sale of the Bonds, to be entered into in connection with the issuance and delivery of the Bonds.

(C) "*Certificate of Authority Officer*" means a certificate that is executed by the Authorized Authority Representative determining any of the details relating to the issuance, sale, security and delivery of the Bonds or any other internal matters as provided in this Supplemental Bond Resolution.

(D) "*Escrow Agent*" means the escrow agent appointed for the Bonds in accordance with Section 301 hereof.

(E) "*Municipal Advisor*" means the municipal advisor appointed for the Bonds in accordance with Section 301 hereof.

(F) "*Paying Agent*" means the paying agent appointed for the Bonds in accordance with Section 301 hereof.

(G) "Registrar" means the registrar appointed for the Bonds in accordance with Section 301 hereof.

(H) "Securities Depository" means the securities depository appointed for the Bonds in accordance with Section 301 hereof.

(I) "Trustee" means the trustee appointed for the Bonds in accordance with Section 301 hereof.

(J) "Underwriters" means such underwriter or underwriters as determined by the Certificate of Authority Officer.

ARTICLE II AUTHORIZATION, AMOUNT AND DESCRIPTION OF BONDS

Section 201. Authorization and Purpose of Bonds. The proceeds of the Bonds will be used to finance the Project and to pay for costs incurred in connection with the authorization, issuance and delivery of the Bonds.

Section 202. Amount and Title of Bonds. Not to exceed \$9,250,000 of the Bonds are hereby authorized to be issued and sold in accordance with the provisions of the Bond Resolution, this Supplemental Bond Resolution and a Certificate of Authority Officer authorized pursuant to Section 203 of this Supplemental Bond Resolution. Each of the Bonds shall be designated "County Guaranteed Lease Revenue Refunding Bonds, Series 2019 (Renewable Energy Program Project)". The Bonds may be issued and sold in one or more series as determined by the Authorized Authority Representative in consultation with the Authority's Bond Counsel and Municipal Advisor and as set forth in the Certificate of Authority Officer.

Section 203. Description of Bonds.

(A) **Description of Bonds; Delegation to Authority Officer.** Pursuant to and in accordance with the provisions of N.J.S.A. 40:37A-60 and the terms of the Bond Resolution, the Authority hereby determines that the Authorized Authority Representative is hereby designated as the individual who shall have the power to sell and award the Bonds on behalf of the Authority to the Underwriters, in accordance with the terms of the Certificate of Authority Officer and subject to the parameters set forth herein, including the power to determine, among other things, (a) the amount of Bonds to be issued, in an amount not to exceed the amount set forth in Section 202 hereof, which are authorized to be issued pursuant to the terms of Section 301 of the Bond Resolution, (b) the time and manner of sale of the Bonds, (c) the maturity or maturities of the Bonds and the provisions pertaining to redemptions thereof and/or sinking funds established therefor, (d) the rate or rates of interest for the Bonds, and (e) such other terms and conditions as may be necessary or related to the sale of the Bonds. The Authorized Authority Representative is hereby authorized to award the Bonds to the Underwriters. Such award shall be evidenced by the execution of a Certificate of Authority Officer. Such Certificate of Authority Officer shall determine the terms and conditions relating to the sale of the Bonds, including the rate or rates of interest to be borne by the Bonds and the Underwriters' discount, if any, which is payable to the Underwriters in connection with the sale of the Bonds; *provided,*

however, that (i) the maximum maturity of the Bonds will not exceed 30 years; (ii) without further authorization of the Authority, the rate or rates of interest (or the net interest cost) to be borne by the Bonds shall not exceed six percent (6.00%) per annum; (iii) the Underwriters' discount for the Bonds shall not exceed \$5.00 per \$1,000 principal amount of the Bonds; and (iv) the rate or rates of interest (or the net interest cost) on the Bonds and the Underwriters' discount for the Bonds may exceed the amounts set forth herein if such greater rate or rates of interest or such greater Underwriters' discount is approved, prior to the award and sale of the Bonds, by a resolution duly adopted by the Authority. Such Certificate of Authority Officer shall contain such other terms and conditions as shall be deemed to be necessary in connection with the sale of the Bonds.

(B) **Denomination and Place of Payment.** The Bonds shall be issued in book-entry form only and, when issued, will be registered in the name of and held by Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"). The Bonds shall be issued in the form of one certificate for each maturity for each series, in the aggregate principal amount of such maturity. As long as DTC or its nominee, Cede & Co., is the Registered Owner of the Bonds, payments of the principal of, redemption premium, if any, and interest on the Bonds will be made by the Paying Agent directly to Cede & Co., as Registered Owner, which will remit such payments to DTC participants, which will in turn remit such payments to the beneficial owners of the Bonds. All other terms and conditions with respect to the payment of the principal of, redemption premium, if any, and interest on the Bonds shall be as provided in the Bond Resolution.

(C) **Transfer and Exchange of Bonds.** As long as the Bonds remain in book-entry form, the Bonds shall be transferable only upon the records of DTC. All other provisions governing the transfer and exchange of the Bonds shall be as provided in the Bond Resolution.

(D) **Form of Bonds.** The Bonds shall be in substantially the form set forth in Section 1207 of the Bond Resolution, which form is by this reference incorporated in full as if set forth herein, with such omissions, insertions and variations as are properly required and not contrary to any of the provisions of the Bond Resolution or any of the provisions of this Supplemental Bond Resolution.

ARTICLE III APPOINTMENT OF PROFESSIONALS, OFFICIAL STATEMENT AND OTHER REQUIRED ACTIONS

Section 301. Appointment of Professionals.

(A) DTC is hereby appointed to serve as Securities Depository for the Bonds, pursuant to and under the provisions of the Bond Resolution.

(B) The appointment of the (i) Trustee, Registrar and Paying Agent, (ii) Escrow Agent, (iii) Underwriters and (iv) financial printer in connection with the issuance and sale of the Bonds shall be designated by the Authorized Authority Representative pursuant to the Certificate of Authority Officer.

(C) NW Financial Group, LLC is hereby appointed to serve as Municipal Advisor in connection with the issuance and sale of the Bonds.

Section 302. Authorization of Official Statement. The Authority's Bond Counsel and the Underwriters are hereby authorized to prepare and distribute a Preliminary Official Statement on behalf of the Authority in connection with the sale of the Bonds. The form and content of such Preliminary Official Statement shall, prior to the distribution thereof, be approved by the Authority or the Authorized Authority Representative, as the case may be, acting on behalf of the Authority. Subsequent to obtaining such approval, the Preliminary Official Statement may be revised, if necessary, and may contain additional terms and information relating to the sale of the Bonds; *provided, however*, that the form and content of such revised Preliminary Official Statement shall have been previously approved by the Authority or the Authorized Authority Representative, as the case may be, acting on behalf of the Authority, prior to the distribution thereof. The Authorized Authority Representative is hereby authorized to execute the final Official Statement and shall execute any closing or other documents that are required to be executed in connection with the delivery of the Bonds. Any actions that are not determined by this Supplemental Bond Resolution or any other resolution of the Authority duly adopted prior to the authentication and delivery of the Bonds shall be determined by the execution of a Certificate of Authority Officer.

Section 303. Approval of Other Actions and Agreements. The Authorized Authority Representative shall also take all other actions and execute any other documents, agreements, certificates or other instruments deemed necessary, convenient or desirable by the Authorized Authority Representative to consummate the transactions contemplated by the Bond Resolution, this Supplemental Bond Resolution and the Bond Purchase Agreement.

Section 304. Execution of Bond Purchase Agreement Evidencing Award of Bonds. The Bonds shall be sold and awarded to the Underwriters upon the terms and conditions set forth in the Bond Purchase Agreement to be dated the date of sale of the Bonds and to be executed on behalf of the Authority and the Underwriters. The Authorized Authority Representative is hereby authorized and directed to execute the Bond Purchase Agreement and to deliver same to the Underwriters on terms deemed advisable by the Authorized Authority Representative in consultation with the Authority's Bond Counsel and Municipal Advisor. The Bonds will be sold to the Underwriters for the purchase price set forth in the Bond Purchase Agreement, plus accrued interest and giving effect to an Underwriters' discount, all as set forth therein. Settlement of the purchase price for the Bonds will be made as provided in the Bond Purchase Agreement. Such sale and award of the Bonds by the Authorized Authority Representative shall be evidenced by the execution of the Certificate of Authority Officer as of the date of the sale and award of the Bonds and the Bond Purchase Agreement, and such Certificate of Authority Officer and Bond Purchase Agreement shall be presented to the members of the Authority at the next regular meeting of the Authority following such sale and award as evidence of the terms and details of the sale of the Bonds.

Section 305. Certificate of Authority Officer. In accordance with the Bond Resolution and in addition to the matters set forth in Section 203 of this Supplemental Bond Resolution, the Authorized Authority Representative, after consultation with the Chairman of the Authority, Authority Bond Counsel and the Municipal Advisor, as applicable, is hereby:

- (i) authorized to execute the Certificate of Authority Officer;
- (ii) authorized to execute the Bond Purchase Agreement;
- (iii) authorized to take all actions necessary to provide any Credit Facility for the Bonds in accordance with Section 502(c) of the Bond Resolution, including additional covenants that may be required by the Underwriters on behalf of the Holders of the Bonds;
- (iv) authorized to negotiate the final terms and conditions of the Bond Purchase Agreement; and
- (v) authorized to amend or modify the provisions of the Bond Resolution or this Supplemental Bond Resolution in the Certificate of Authority Officer, provided that any such amendment or modification occurs prior to the issuance and delivery of the Bonds.

ARTICLE IV PROCEEDS OF BONDS

Section 401. Application of Proceeds of Bonds. At the time of delivery of the Bonds, the proceeds of the Bonds shall be irrevocably deposited with the Trustee and/or the Escrow Agent and applied in accordance with the letter of instruction of an Authorized Authority Representative provided at the closing of the Bonds.

Section 402. Costs of Issuance of Bonds. The Trustee is hereby authorized and directed to pay all of the costs of issuance in connection with the sale of the Bonds from the Construction Fund pursuant to the Certificate of Authority Officer or any other certificate of the Chairman of the Authority to be delivered to the Trustee at or about the time of closing.

ARTICLE V CONTINUING DISCLOSURE UNDERTAKING

Section 501. Material Events Disclosure. Solely for purposes of complying with Rule 15c2-12 of the Securities and Exchange Commission, as amended and interpreted from time to time (the "*Rule*"), the Chairman is hereby authorized to execute a Continuing Disclosure Certificate on behalf of the Authority in connection with the issuance and delivery of the Bonds.

Section 502. Damages. In the event that the Authority fails to comply with the requirements of the Continuing Disclosure Certificate, the Authority shall not be liable for monetary damages, remedy being hereby specifically limited to specific performance. If any part of the Rule ceases to be in effect for any reason, then the information required to be provided in the Continuing Disclosure Certificate, insofar as the provisions of the Rule no longer require such information, shall no longer be required pursuant to this Supplemental Bond Resolution.

Section 503. Amendments. Article V of this Supplemental Bond Resolution and the Continuing Disclosure Certificate may be amended from time to time without notice to the Bondholders if the Authority determines that an amendment is necessary to comply with the Rule and such amendment, in the opinion of nationally recognized bond counsel, complies with the Rule.

ARTICLE VI MISCELLANEOUS

Section 601. Amendments. The Authorized Authority Representative is hereby authorized, prior to the execution and delivery of the Bonds, through the execution of a Certificate of Authority Officer, to approve and implement any amendments and/or supplements to any financing documents, including the Bond Resolution and this Supplemental Bond Resolution, that may be required to amend, modify or clarify the terms and conditions of the Bond Resolution or this Supplemental Bond Resolution relating to the authorization, issuance, sale, security, flow of funds or covenants of the Bonds or as may be required by any rating agency and/or bond insurer in connection with their delivery of ratings on the Bonds or the issuance of financial guaranty insurance, respectively; *provided, however,* that the Authorized Authority Representative, in conjunction with the Authority's Bond Counsel and General Counsel, has determined that any such amendments and/or supplements will not have a material or adverse affect on the ability of the Authority to market, sell and deliver the Bonds or on any of the material terms, conditions and/or covenants set forth in the Bond Resolution or this Supplemental Bond Resolution.

Section 602. Filing of Supplemental Bond Resolution. The Secretary of the Authority is hereby authorized and directed to cause copies of this Supplemental Bond Resolution to be filed for public inspection at the offices of the Trustee and the Authority.

Section 603. Effective Date. This Supplemental Bond Resolution shall take effect immediately.

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 July 17, 2019 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this 17th day of July, 2019:

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of July 17, 2019.

By: _____
Matthew D. Jessup, Esq., Member
McManimon, Scotland & Baumann, LLC
Counsel to the Authority
Resolution No. 19-25