

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

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*TITLE:*

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING THE EXECUTION OF MODIFICATION AGREEMENTS WITH VARIOUS LOCAL UNITS IN CONNECTION WITH THE MORRIS COUNTY IMPROVEMENT AUTHORITY'S 2009 RENEWABLE ENERGY PROGRAM**

**WHEREAS**, the Morris County Improvement Authority (including any successors and assigns, the "Authority") has been duly created by resolution duly adopted by the Board of County Commissioners (the "Board of County Commissioners") of the County of Morris (the "County") in the State of New Jersey (the "State") as a public body corporate and politic of the State pursuant to and in accordance with the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, and the acts amendatory thereof and supplemental thereto (the "Act"), and other applicable law; and

**WHEREAS**, in 2009, the Authority created a program to facilitate and finance the design, permitting, acquisition, construction, installation, operation and maintenance of solar renewable energy projects (the "Renewable Energy Projects") at multiple county, municipal and board of education facilities located throughout the County; and

**WHEREAS**, in accordance with a request for proposal process, the Authority selected and designated Tioga Solar Morris County 1, LLC (the "Company") as the successful respondent, 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**, the Renewable Energy Projects procured under the Renewable Energy Program (as defined in the Lease Agreement) generate 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 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 constituted an Event of Default pursuant to Section 1001 of the Lease Agreement; and

**WHEREAS**, as a result of the incurrence and continuance of the Events of Default by the Company, the Authority exercised 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, dated as of December 1, 2019 (the "Default Agreement"), by and among the Authority, the Company and the Assignee, neither the Company nor the Assignee contested that the Events of Default have occurred and are continuing, nor did 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, dated as of December 1, 2019 (the "Assignment"), from the Company to the Authority, the Company has assigned (and the Authority has assumed) 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**, the Authority entered into a license and access agreement with the Board of Education of the Town of Boonton (the "Boonton BOE") dated February 1, 2010 (the "Boonton BOE License and Access Agreement"); and

**WHEREAS**, pursuant to Exhibit A of the Boonton BOE License and Access Agreement, the Boonton Local Unit Facilities (as defined in the Boonton BOE License and Access Agreement) include Boonton High School, John Hill School, and School Street School (the "Boonton BOE Facilities"); and

**WHEREAS**, the Authority entered into a license and access agreement with the Board of Education of Parsippany-Troy Hills Township (the "Parsippany BOE") dated February 1, 2010 (the "Parsippany BOE License and Access Agreement"); and

**WHEREAS**, pursuant to Exhibit A of the Parsippany BOE License and Access Agreement, the Parsippany-Troy Hills Local Unit Facilities (as defined in the Parsippany BOE License and Access Agreement) includes Brooklawn Middle School (the "Parsippany BOE Facility"); and

**WHEREAS**, the Authority entered into a license and access agreement with the Board of Education of West Morris Regional High School District (the "West Morris BOE" and, together with Boonton BOE and Parsippany BOE, the "Local Units") dated February 1, 2010 (the "West Morris BOE License and Access Agreement" and together with the Boonton BOE License and

Access Agreement and Parsippany BOE License and Access Agreement, the “License and Access Agreements); and

**WHEREAS**, pursuant to Exhibit A of the West Morris BOE License and Access Agreement, the West Morris Local Unit Facilities (as defined in the West Morris BOE License and Access Agreement) includes West Morris Central High School (the “West Morris BOE Facility”, and together with the Boonton BOE Facilities and the Parsippany BOE Facility, the “Decommissioned Facilities”); and

**WHEREAS**, Section 3.7 of the Power Purchase Agreement provides for the obligations of the Authority, as successor to the Company, upon termination, which directs the Authority to “remove all of its tangible property comprising such Renewable Energy Projects from the Local Unit Facility by a mutually convenient date but in no case later than one hundred eighty (180) days after the end of the Initial Term”; and

**WHEREAS**, based on an assessment of the current condition of each of the Renewable Energy Projects at the Decommissioned Facilities, and in light of the end of the term of each License and Access Agreement, the Authority has determined to decommission and remove the Renewable Energy Projects at the Decommissioned Facilities, prior to the end of the term of the applicable License and Access Agreement; and

**WHEREAS**, by Resolution 24-12, adopted on April 17, 2024, the Authority authorized the preparation and issuance of a request for proposals to engage the services of a company (the “Decommissioning Services Company”) to decommission and remove the Renewable Energy Projects from the Decommissioned Facilities pursuant to the terms of Section 3.7(b) of the Power Purchase Agreement (the “Decommissioning Services”); and

**WHEREAS**, the Authority wishes to decommission and remove the Renewable Energy Projects at the Decommissioned Facilities, and the Authority and the Local Units further wish to enter into Modification Agreements to memorialize the terms of such decommissioning and removal, and to terminate the applicable License and Access Agreement, the Power Purchase Agreement and any other document necessary to effectuate the terms of such Modification Agreements as such agreements and documents relate to each Decommissioned Facility only.

**NOW THEREFORE BE IT RESOLVED** by the Board of Commissioners of the Authority as follows:

**Section 1.** The aforementioned recitals are incorporated herein as though fully set forth at length.

**Section 2.** The Modification Agreement in the form set forth on file in the office of the Secretary of the Authority is hereby approved. The Chairperson of the Authority (including such officer’s designees, each an “Authorized Officer”), is hereby authorized and directed, in consultation with counsel to the Authority, to execute and deliver a Modification Agreement with each of the Local Units, with such additions, modifications or deletions recommended by counsel to the Authority.

**Section 3.** The Secretary of the Authority is hereby authorized to attest to the execution of each Modification Agreement and affix the Authority seal onto same.

**Section 4.** Each Authorized Officer of the Authority is hereby authorized to execute any document, certificate, agreement or instrument and to take and all action deemed necessary, useful or convenient in connection with the foregoing and in furtherance of the Modification Agreements and the Decommissioning Services at each Decommissioned Facility.

**Section 5.** Subject to the second sentence of this Section 5, 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 Board of County Commissioners, 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 Board of County Commissioners a certification from said Clerk stating that the minutes of this meeting have not been vetoed by the Director of the Board of County Commissioners.

**MOVED/SECONDED:**

Resolution moved by Commissioner \_\_\_\_\_.

Resolution seconded by Commissioner \_\_\_\_\_.

**VOTE:**

<b>Commissioner</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
Leary				
Ramirez				
Bauer				
Sandman				
Gallop				

This Resolution was acted upon at the Regular Meeting of the Authority held remotely and in person on July 3, 2024 by audio and video in accordance with notice promulgated by the Authority in accordance with applicable law.

Attested to this 3rd day of July, 2024

By: \_\_\_\_\_  
Secretary of the Authority

**FORM and LEGALITY:**

This Resolution is approved as to form and legality as of July 3, 2024.

By: \_\_\_\_\_  
Matthew D. Jessup, Member, McManimon, Scotland & Baumann, LLC  
Counsel to the Authority  
Resolution No. 24-26