

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

TITLE:

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY CONSENTING TO THE UNDERTAKING BY AZIMUTH 180 SOLAR ELECTRIC, LLC OF VARIOUS CAPITAL IMPROVEMENTS IN CONNECTION WITH THE AUTHORITY'S RENEWABLE ENERGY PROGRAM, TRANCHE I

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 Chosen Freeholders (the "Board of Freeholders") 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 of Morris, New Jersey (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 has previously entered into an Operations and Maintenance Agreement dated as of July 1, 2020 (the "*O&M Agreement*") with Azimuth 180 Solar Electric, LLC ("*Azimuth*"), pursuant to which Azimuth is responsible to, among other things, annually prepare an operation and maintenance plan, including Scheduled Maintenance and Unscheduled Maintenance, each as defined in the O&M Agreement; and

WHEREAS, Azimuth has completed a review of all of the Renewable Energy Projects and has determined it is necessary to undertake the capital improvements set forth in Exhibit A (collectively, the "*Capital Improvements*"), which Capital Improvements (i) are anticipated to result in an increase in revenue production and/or (ii) are necessary to ensure public health, safety and welfare; and

WHEREAS, Azimuth has provided cost estimates for the Capital Improvements as set forth in Exhibit A; and

WHEREAS, pursuant to the O&M Agreement, the Authority is required to consent to Azimuth's undertaking of the Capital Improvements.

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

Section 1. The Authority hereby consents to the completion of the Capital Improvements by Azimuth, based on the cost estimates set forth in Exhibit A. In the event that the total cost of the Capital Improvements increases beyond the aggregate amount set forth in Exhibit A, Azimuth shall first be obligated to report such price increases to the Chairperson of the Authority. The Chairperson of the Authority is hereby authorized and directed, in consultation with the Authority's energy consultant, counsel and other professionals of the Authority, to review and approve any price increases not in excess of 10% of the total amount of the Capital Improvements. The Chairperson of the Authority is further directed to report in writing to the Authority from time to time, the date, description and final cost of each such Capital Improvement.

Section 2. The Chairperson of the Authority is hereby authorized and directed to take all further actions, and to execute such certificates, instruments or documents, deemed necessary, convenient or desirable by such Chairperson, in consultation with counsel, in connection with all matters set forth in or contemplated by this Resolution.

Section 3. Subject to the second sentence of this section, 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 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 Board of Freeholders a certification from the Clerk stating that the minutes of this meeting have not been vetoed by the Director of the Board of Freeholders.

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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 October 21, 2020 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this 21st day of October, 2020

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of October 21, 2020.

By: _____
Matthew D. Jessup, Member, McManimon, Scotland & Baumann, LLC
Counsel to the Authority
Resolution No. 20-28

Exhibit A

Capital Improvements