

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

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***TITLE:***

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING THE PAYMENT OF CERTAIN ADMINISTRATIVE EXPENSES AND COMPANY OPERATING EXPENSES 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 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 and Azimuth 180 Solar Electric, LLC (the "*O&M Provider*") entered into that Operations and Maintenance Agreement dated as of July 1, 2020, for the operation and maintenance by the O&M Provider of the Renewable Energy Projects; and

**WHEREAS**, the Authority has funds on deposit in an account (the "*Renewable Energy Program Account*") to be used from time to time to pay expenses incurred in connection with the operation, maintenance and management of the Renewable Energy Projects (the "*Renewable Energy Expenses*"); and

**WHEREAS**, the funds on deposit in the Renewable Energy Program Account are not "Revenues" as defined in the Authority's "Resolution Authorizing the Issuance of County Guaranteed Revenue Refunding Bonds, Series 2019 (Renewable Energy Program Project) of the Morris County Improvement Authority and Determining Other Matters Related Thereto" (the "*General Bond Resolution*") and if constituted "Revenues" would be on deposit in the General Fund (as defined in the General Bond Resolution) and

eligible for distribution pursuant to the terms of Section 502 of the General Bond Resolution; and

**WHEREAS**, the Authority has incurred such Renewable Energy Expenses in the aggregate amount of \$40,708.32, consisting of the administrative expenses set forth in Exhibit A attached hereto in the amount of \$3,195.00, and the operating expenses and capital repair costs incurred by the O&M Provider set forth in Exhibit B attached hereto in the amount of \$37,513.32; and

**WHEREAS**, the Authority desires to approve such Renewable Energy Expenses.

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

**Section 1.** The Chairperson and the Treasurer of the Authority (including their designees, each an "*Authorized Officer*") are hereby authorized and directed to make payment from the Renewable Energy Program Account for the payment of the following Renewable Energy Expenses as set forth in Exhibit A and Exhibit B attached hereto, in aggregate amounts not to exceed \$40,708.32, provided that the Authorized Officer is presented with invoices reflecting that the amounts have been properly incurred.

**Section 2.** The Authorized Officers are hereby authorized and directed to take all further actions, and to execute such certificates, instruments or documents, deemed necessary, convenient or desirable by any such Authorized Officer, 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 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 the Clerk stating that the minutes of this meeting have not been vetoed by the Director of the Board of County Commissioners.

[Remainder of page intentionally left blank]

**Exhibit A**

<b>VENDOR</b>	<b>INVOICE #</b>	<b>INVOICE DATE</b>	<b>INVOICE AMOUNT</b>
McManimon, Scotland & Baumann, LLC	174451	08/31/20	\$202.50
McManimon, Scotland & Baumann, LLC	175311	09/30/20	\$652.50
McManimon, Scotland & Baumann, LLC	176190	10/29/20	\$405.00
McManimon, Scotland & Baumann, LLC	177025	11/30/20	\$1,845.00
McManimon, Scotland & Baumann, LLC	177550	12/29/20	\$90.00
Total			\$3,195.00

**Exhibit B**  
**O&M Provider Expenses**

**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>
Gallopo				
Bauer				
Ramirez				
Sandman				
Bonanni				

This Resolution was acted upon at the Regular Meeting of the Authority held on February 17, 2021 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this \_\_\_\_ day of February, 2021

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

**FORM and LEGALITY:**

This Resolution is approved as to form and legality as of February 17, 2021.

By: \_\_\_\_\_  
Matthew D. Jessup, Member, McManimon, Scotland & Baumann, LLC  
Counsel to the Authority  
Resolution No. 21-08