

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY

TITLE:

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING THE PREPARATION AND ISSUANCE OF A REQUEST FOR PROPOSALS FOR DECOMMISSIONING AND REMOVAL SERVICES 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, Section 3.7 of the Power Purchase Agreement further provides that upon removing the Renewable Energy Projects, the Decommissioned Facilities shall be returned to the state and condition existing prior to construction and installation of the Renewable Energy Projects, reasonable wear and tear excluded; and

WHEREAS, based on an assessment of the current condition of the Decommissioned Facilities and in light of the end of the term of the License and Access Agreements, the MCIA has determined to decommission and remove the Decommissioned Facilities; and

WHEREAS, such decommission and removal shall include, but not be limited to, disconnection of all equipment, and removal of all racking, modules, ballast blocks, and inverters (the “Decommissioning and Removal Services”) and be completed with the consent of each Local Unit, notwithstanding the provisions of the applicable License and Access Agreement or any provision of any other agreement to the contrary; and

WHEREAS, the Authority desires to engage the services of a company capable to provide the Decommissioning and Removal Services at the Decommissioned Facilities; and

WHEREAS, the Authority desires to prepare and publicly advertise a Request for Proposals for the Decommissioning and Removal Services in accordance with the procedures of a fair and open process established by N.J.S.A. 19:44A-20.4 *et seq.*

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

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The General Counsel to the Authority, along with other representatives of the Authority, are hereby authorized and directed to prepare and publicly advertise a Request for

Proposals for the Decommissioning and Removal Services in accordance with the procedures of a fair and open process established by N.J.S.A. 19:44A-20.4 *et seq.*

3. Subject to the second sentence of this Section 3, 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:

Commissioner	Yes	No	Abstain	Absent
Leary				
Ramirez				
Bauer				
Sandman				
Gallop				

This Resolution was acted upon at the Regular Meeting of the Authority held in a hybrid fashion, both virtually and in person, on April 17, 2024 by audio and video in accordance with notice promulgated by the Authority in accordance with applicable law.

Attested to this 17th day of April, 2024

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of April 17, 2024.

By: _____
Matthew D. Jessup, Member, McManimon, Scotland & Baumann, LLC
Counsel to the Authority
Resolution No. 24-12