



Resolution No. 108-2021
Adoption Date Nov. 10, 2021

Sufficiency of Funds Pete Taylor
Form and Legality David Minchella

RESOLUTION APPROVING COUNTY GUARANTEED REVENUE BOND FOR THE RENEWABLE ENERGY PROGRAM PROJECT

WHEREAS, the Union County Improvement Authority (the “*Authority*”) has been duly created by an ordinance of the Board of Chosen Freeholders (subsequently renamed as the “*Board of County Commissioners*”) of the County of Union, New Jersey (the “*County*”), as a public body corporate and politic of the State of New Jersey (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, as amended and supplemented from time to time (codified at N.J.S.A. 40:37A-44 *et seq.*, the “*Authorities Law*” or “*Act*”); and

WHEREAS, on August 31, 2010, the Authority issued a request for solar developer proposals (the “*Original 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 owned by certain participating local governmental units (the “*Local Units*”) located throughout the County; and

WHEREAS, pursuant to the competitive contracting provisions of the Local Public Contracts Law (codified at N.J.S.A. 40A:11-1 *et seq.*, the “*Contracts Law*”) and other applicable law, the Authority selected and designated Tioga Solar Union County 1, LLC (the “*Company*”), as the successful respondent to the Original RFP, and the Authority and the Company thereafter entered into that certain “Lease Purchase Agreement (Union County Renewable Energy Program, Series 2011)” dated as of May 1, 2011 (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

Commissioner	Motion	Second	Yes/Aye	No-Nay	Abstain	Absent
David Barnett			x			
Steve Hockaday			x			
Terri Riley Hudak		x	x			
Debra Marshall			x			
Andrea Mojica			x			
Ahmed Shehata	x		x			
Ricardo Sosa			x			
Scott Huff, Vice Chairman			x			
Christopher Kolibas, Chairman			x			



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WHEREAS, on May 18, 2011, the Authority issued its County of Union Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011 (Federally Taxable) (the “*Series 2011 Bonds*”), of which \$5,050,000 is outstanding (as of November 1, 2021), to finance all or a portion of the costs of the Renewable Energy Projects, with the Company financing any balance of such costs, all pursuant to the renewable energy program promulgated by the Authority (the “*Renewable Energy Program*”); and

WHEREAS, pursuant to Section 3.01 of the Lease Agreement, the Company is required to make lease payments to the Authority in amounts equal to, among other things, the payment of the principal of and interest due on, the Series 2011 Bonds (the “*Lease Payments*”); and

WHEREAS, Tioga Energy, Inc. (“*Tioga Energy*”), the sole member and managing member of the Company, in accordance with the terms of that certain “Guaranty Agreement” dated as of May 1, 2011 (the “*Tioga Energy Guarantee Agreement*”) by Tioga Energy to the Authority, has fully, unconditionally and irrevocably guaranteed the timely payment of the principal of and interest due on, the Series 2011 Bonds (the “*Tioga Energy Guarantee*”); and

WHEREAS, in accordance with the terms of that certain “County Guaranty Agreement (Union County Renewable Energy Program, Series 2011)” dated as of May 1, 2011 between the County and the Authority (the “*Series 2011 Guarantee Agreement*”), the Authorities Law, in particular Section 37 thereof (N.J.S.A. 40:37-80) and other applicable law, the County has fully, unconditionally, and irrevocably guaranteed the timely payment of the principal of and interest due on, the Series 2011 Bonds (the “*Series 2011 County Guarantee*”); and

WHEREAS, the Renewable Energy Projects procured under the Renewable Energy Program are, in all material respects, complete, lien free, in service and generating energy and revenues, with such current and anticipated future revenues being principally derived from (i) the sale of electric energy to the Local Units making payments (the “*PPA Payments*”) for a price (the “*PPA Price*”) all pursuant to the terms and provisions of that certain “Power Purchase Agreement” dated as of May 1, 2011 (the “*Original Power Purchase Agreement*”), between the Company, the Authority and the Local Units, which also includes the Local Units subsequently added, specifically the Union County Vocational-Technical High School and the Berkeley Heights Board of Education, due to a change in sites who shall also be deemed parties to the Original Power Purchase Agreement, and (ii) the sale of Solar Renewable Energy Certificates (“*SRECs*”), as marketable environmental attributes of the Renewable Energy Projects; and



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WHEREAS, each Local Unit, the Company and the Authority entered into their respective “Site License Agreement” each dated as of May 1, 2011 (collectively, the “*Original Site License Agreements*”), among other things, to allow the Company to construct, operate and maintain the Renewable Energy Projects upon the site host properties of each respective Local Unit; and

WHEREAS, Tioga Energy, which had been 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 (the “*Assignee*”) pursuant to the laws of the State of California (the “*ABC Law*”), and thereby created an assignment estate (the “*Assignment Estate*”); and

WHEREAS, for several years, the Company failed to make Lease Payments then due and owing to the Authority pursuant to the terms of Section 3.01 of the Lease Agreement, each of which failure constitutes an Event of Default pursuant to Section 10.01 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 10.02 of the Lease Agreement; and

WHEREAS, in light of the foregoing, the Authority has devised a Renewable Energy Program restructuring plan (the “*2021 Restructuring Plan*”), with which the County concurs, pursuant to which the following, among other things, shall occur no later than the date of issuance (the “*2021 Restructuring Plan Closing Date*”) by the Authority of the hereinafter defined Series 2021 Bonds:

- (i) All rights, duties and obligations of the Company and the Assignee with respect to the Renewable Energy Projects and the Renewable Energy Program shall cease through the termination of the Lease Agreement pursuant to that certain “Default, Termination and Assignment Agreement”



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to be dated the first day of the month of issuance of the Series 2021 Bonds (the "*Lease Termination Agreement*") among the Authority, the Company and the Assignee; and

- (ii) Certain rights of the Company in and to the Renewable Energy Projects shall be assigned to the Authority, including without limitation the rights to receive SRECs and PPA Payments from Local Units, all pursuant to the terms of the Lease Termination Agreement and that certain "Amendment No. 1 to Site License Agreement and Power Purchase Agreement" each dated in 2021 prior to the issuance of the Series 2021 Bonds (collectively, the "*Amendments No. 1 to License and PPA*") by the Authority and the respective Local Units, each of which by its terms amends and supplements the Original Power Purchase Agreement and the Original Site License Agreements; and
- (iii) The Authority shall issue a series of revenue bonds in an amount not to exceed \$5,500,000 (the "*Series 2021 Bonds*") to (a) acquire, for federal tax purposes, and extinguish the Company's lease rights pursuant to the Lease Agreement, for State law purposes, in and to the Renewable Energy Projects at the Local Unit sites; (b) fund, together with other moneys if necessary, costs of issuance, reserves if any, and the defeasance all of the outstanding Series 2011 Bonds; and (c) fund certain capital improvements for the Renewable Energy Projects to assist in the revenue flow generated thereby, to the extent the Authority deems such improvements necessary, desirable or convenient, in addition to making such determination in view of the extent of funding available therefor (clause (iii) collectively, the "*Series 2021 Project*"); and
- (iv) The Authority shall provide for the continued billing and operation and maintenance of the Renewable Energy Projects by hiring, through a competitive contracting process under the Contracts Law, the Authorities Law, all other applicable law and the terms of a request for proposals (the "*2021 Operator RFP*") issued by the Authority and dated September 24, 2021, a new operator (the "*Operator*"), exclusive of SREC management, (the "*SREC Management Service Provider*"), which the Authority desires to engage pursuant to services contract with such Operator that shall incorporate the terms and conditions outlined in the 2021 Operator RFP (the "*Services Contract*"); and



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WHEREAS, the Series 2021 Bonds shall be issued pursuant to the Authorities Law, other applicable law and the terms of that certain County Guaranteed Revenue Bond Resolution (Renewable Energy Program Project) (the “*Resolution*”); and]

WHEREAS, the Series 2021 Bonds shall be secured, in part, from the SRECs and PPA Payments, all part of the Trust Estate provided for and pledged to Manufacturers and Traders Trust Company, Iselin, New Jersey, the bond trustee (the “*Trustee*”) for the benefit of the holders thereof as set forth in the Resolution and as set forth in that certain “Revenue and Collection Agreement (Union County Renewable Energy Program, Series 2021)” (the “*Collection Agreement*”) to be dated the first day of the month of issuance of the Series 2021 Bonds between the Authority and the Trustee; and

WHEREAS, pursuant to the terms of that certain “County Deficiency Agreement” to be dated the first day of the month of issuance of the Series 2021 Bonds between the County and the Trustee (the “*County Deficiency Agreement*”), the Authorities Law, in particular Section 36 thereof (N.J.S.A. 40:37-79) and other applicable law, the County has covenanted to provide an amount equal to, among other things, the projected deficiency of the payment of the principal of and interest due on, the Series 2011 Bonds, in order to avoid a draw on the hereinafter defined County Guaranty; and

WHEREAS, pursuant to the terms of that certain “County Guaranty Agreement” to be dated the first day of the month of issuance of the Series 2021 Bonds by and among the Authority, the County and the Trustee (the “*Guaranty Agreement*”), the Authorities Law, in particular Section 37 thereof (N.J.S.A. 40:37-80) and other applicable law, the County has fully, unconditionally, and irrevocably guaranteed the timely payment of the principal of and interest due on, the Series 2021 Bonds (the “*County Guaranty*”); and

WHEREAS, pursuant to the terms of that certain “Escrow Deposit Agreement (Renewable Energy Program)” to be dated the first day of the month of issuance of the Series 2021 Bonds between the Authority and Wells Fargo Bank, N.A. (the “*Escrow Agreement*”), the Authority shall defease and redeem the Series 2011 Bonds.

WHEREAS, in accordance with Section 13 (“*Section 13*”) of the Act (N.J.S.A. 40:37A-56), prior to the issuance of the Series 2021 Bonds, the Authority shall make a detailed report with respect to such financing to the Board of County Commissioners of the County, which report shall include copies or a description of, without limitation, the various financing documents; and



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WHEREAS, in accordance with N.J.S.A 40A:5A-6 and N.J.S.A. 40:37A-80 the Authority shall make application, on behalf of the Authority and the County to the Local Finance Board in the Division of Local Government Services of the Department of Community Affairs of the State (the “*Local Finance Board*”) for the Local Finance Board’s review of the financing, including, *inter alia*, this Resolution, the Amendments No. 1 to License and PPA, the Collection Agreement, the County Guaranty and County Deficiency Agreement; and

WHEREAS, in accordance with the terms of Section 37 of the Act (N.J.S.A. 40:37A-80) and the County Guaranty, the County shall be obligated, if necessary, to levy *ad valorem* taxes upon all the taxable property within the County without limitation as to rate or amount to make the timely payment of the principal of (including mandatory sinking fund installments, if any) and interest on the Series 2021 Bonds; and

WHEREAS, the Authority believes: (i) it is in the public interest to accomplish such purpose; (ii) said purpose is for the health, wealth, convenience or betterment of the inhabitants of the County; (iii) the amounts to be expended for said purpose are not unreasonable or exorbitant; and (iv) the proposal is an efficient and feasible means of providing for the needs of the inhabitants of the County and will not create an undue financial burden to be placed upon the County.

NOW, THEREFORE, BE IT RESOLVED BY THE UNION COUNTY IMPROVEMENT AUTHORITY that the attached bond resolution in its entirety be hereby adopted.