



Resolution No. 110-2021  
Adoption Date Nov. 10, 2021

Sufficiency of Funds Pats Taylor  
Form and Legality David Minchelle

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY  
AUTHORIZING CERTAIN PRELIMINARY ACTIONS IN RELATION TO  
COUNTY GUARANTEED LEASE REVENUE BONDS, SERIES 2021  
(RENEWABLE ENERGY PROGRAM PROJECT) OF THE UNION  
COUNTY IMPROVEMENT AUTHORITY**

**WHEREAS**, on August 31, 2010, the Union County Improvement Authority (the “Authority”), a public body corporate and politic of the State of New Jersey (the “State”) created by the County of Union, New Jersey (the “County”) pursuant to the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960, as amended and supplemented from time to time (codified at N.J.S.A. 40:37A-44 et seq., the “Authorities Law”), 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 the participating local governmental units as delineated in **Exhibit A** attached hereto (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 bonds (“*Series 2011 Bonds*”), of which \$5,050,000 is presently outstanding, 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**, 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 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; 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 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

**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, Inc. (“*Tioga Energy*”), the sole member and managing member of the Company, 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



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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**, 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” 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



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2021 prior to the issuance of the Series 2021 Bonds 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 (collectively, as amended, the “*Program 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; 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 September 24, 2021, a new operator, exclusive of SREC management (the “*SREC Management Services*”), whom shall be selected by the Authority at a later date (the “*SREC Management Service Provider*”); and

**WHEREAS**, as part of the competitive contracting process, the Authority established a team to evaluate the 2021 Operator RFP responses, which team included the Authority’s Project Manager, Authority’s special energy counsel, Pearlman & Miranda, LLC (“*Renewable Energy Special Counsel*”), and the Authority’s renewable energy consultant, Gabel Associates, Inc. (“*Renewable Energy Consultant*”, and together with the Authority and the Renewable Energy Special Counsel, the “*Review Team*”); and

**WHEREAS**, as required by the Contracts Law, specifically N.J.S.A. 40A:11-4.5(d), the Review Team reviewed the 2021 Operator RFP responses and prepared a report, dated November 5, 2021, (the “*Competitive Contracting Report*”) recommending the award of the 2021 Operator RFP contract to Sunlight General Capital, LLC (including any relevant affiliates, the “*Operator*”) and provided said Competitive Contracting Report to the Authority; and



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**WHEREAS**, the Authority wishes to execute one or more services contracts with such Operator that shall incorporate the terms and conditions outlined in the 2021 Operator RFP (the

“O&M Agreement” and the “Asset Management Agreement,” and collectively, the “Services Contracts”); and

**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)” adopted November 10, 2021 (the “Series 2021 Bond Resolution”); and

**WHEREAS**, the Series 2021 Bonds shall be secured, in part, from the SRECs and PPA Payments, all part of the Pledged Property defined, provided for and pledged to the bond trustee (the “Trustee”) for the benefit of the holders thereof as set forth in the Series 2021 Bond 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 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 Series 2021 County Guaranty; and

**WHEREAS**, pursuant to the terms of that certain “County Guaranty Agreement (Union County Renewable Energy Program, Series 2021)” to be dated the first day of the month of issuance of the Series 2021 Bonds between the County, the Authority and the Trustee, 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; 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



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between the Authority and Wells Fargo Bank, N.A., the Authority shall defease and redeem the Series 2011 Bonds; and

**WHEREAS**, the Authority desires to authorize certain preliminary actions (collectively, the “*Preliminary Actions*”) to be undertaken in connection with the success of the Renewable Energy Program, so that upon the occurrence of the Preliminary Actions the Authority will be in

a position to adopt the respective Series 2021 Bond Resolution and proceed with the issuance of the Series 2021 Bonds.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF UNION, NEW JERSEY**, as follows:

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

**Section 2.** The Authority’s Project Manager, Chairman, or any other person authorized in writing as their respective designees (each an “*Authorized Officer*” and collectively, the “*Authorized Officers*”) are hereby each severally authorized and directed to take all actions and do all things, including, but not limited to, the entering and execution of any agreements or documents, in order to complete the 2021 Restructuring Plan on or before the 2021 Restructuring Plan Closing Date.

**Section 3.** The Authority shall cause a supplemental memo to be prepared and provided to each Local Unit that defines the new Operator and provides the process and timing of when the Local Units should begin receiving from and paying invoices to the new Operator, along with any and all other memos related to the successful implementation of the 2021 Restructuring Plan.

**Section 4.** Each Authorized Officer is hereby authorized and directed to take all actions and do all things, on behalf of the Authority, including, but not limited to, acquiring the Renewable Energy Projects from the Company and the entering and execution of any agreements or documents, in connection therewith.

**Section 5.** The Authority further authorizes and directs the Authorized Officers to terminate all rights, duties, and obligations of the Company and the Assignee with respect to the Renewable Energy Projects and the Renewable Energy Program through the execution and delivery of the Lease Termination Agreement on behalf of the Authority, in substantially the form attached hereto as **Exhibit B**, subject to such additions, deletions, or modifications as such Authorized Officer, after consultation with the Authority’s Renewable Energy Special Counsel,





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shall deem necessary, desirable, or convenient. All actions taken to date in connection therewith are hereby ratified and confirmed.

**Section 6.** Each Authorized Officer is hereby authorized and directed to take all actions and do all things, on behalf the Authority, which they, or any of them, may deem necessary, desirable, or convenient, to monetize the SRECs generated by the Authority's Renewable Energy Program and to gain access to the Generation Attributes System account or any and all other accounts needed in order to successfully implement the 2021 Restructuring Plan.

**Section 7.** The Authority hereby deems that the termination date of the Program Agreements shall be the date of the final maturity of the Series 2021 Bonds, plus any reasonable period of time, deemed necessary, desirable, or convenient by the Authority, to remove, if applicable, the Renewable Energy Projects from their respective Local Unit sites (the "Termination Date").

**Section 8.** The Authority hereby determines to award the Services Contracts to the Operator. Each Authorized Officer is hereby authorized and directed to execute and deliver, on behalf of the Authority, the Services Contracts with the Operator, incorporating the terms of the 2021 Operator RFP, the Operator proposal, and such other terms as the Authorized Officer, after consultation with the Authority's Renewable Energy Special Counsel and Renewable Energy Consultant, shall be necessary, desirable, or convenient to implement the transaction contemplated by the 2021 Operator RFP. Forms of the Services Contracts are attached hereto as **Exhibit C** and **Exhibit D**, respectively. All actions taken to date in connection therewith are hereby ratified and confirmed.

**Section 9.** The Authority hereby approves the Competitive Contracting Report in the form attached hereto as **Exhibit E**. All actions taken to date in connection therewith are hereby ratified and confirmed.

**Section 10.** The Authorized Officers are hereby each severally authorized and directed, on behalf of the Authority, to take all actions and do all things, including, but not limited to, the execution of any other agreements or documents, which they, or any of them, may deem necessary, desirable, or convenient to accomplish the purposes of this resolution, not inconsistent with the provisions hereof.

**Section 11.** The Authorized Officers are hereby and severally authorized and directed, on behalf of the Authority, upon consultation with the Authority's Renewable Energy Special Counsel and Renewable Energy Consultant, to apply all or a portion of the net proceeds from the issuance of the Series 2021 Bonds toward the initial and continuing capital needs of the Renewable Energy



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Projects in such amounts, and for such Renewable Energy Projects of such Local Units, as such Authorized Officer shall in their sole discretion determine based on need, or such other factors necessary, desirable, or convenient to effect the 2021 Restructuring Plan. Such Authorized Officers are further each severally authorized and directed to determine the O&M Holdback as defined in, and for the term of, the Collection Agreement.

**Section 12.** The Authorized Officers are hereby each severally authorized and directed, on behalf of the Authority, to select and purchase insurance for the Renewable Energy Program through the Operator, the Authority, or such other means that, in the sole and unilateral discretion of such Authorized Officer, is deemed to be the most economical, administratively efficient, or

necessary, desirable, or convenient to effect the 2021 Restructuring Plan, from the Authority's acquisition of the Renewable Energy Projects through the Termination Date.

**Section 13.** The Authorized Officers are hereby each severally authorized and directed, on behalf of the Authority, to execute and deliver the Collection Agreement, substantially in the form attached hereto as **Exhibit F**, subject to such additions, deletions, or modifications as such Authorized Officer, after consultation with the Authority's Renewable Energy Special Counsel, shall deem necessary, desirable, or convenient. The Authorized Officers are further hereby severally authorized pursuant to the provisions of the Collection Agreement, to, at any point until the Termination Date, require one or all Local Units to make payments under the Program Agreements either directly to the Trustee or to a separate Authority account, for any one or all periods, for administrative convenience or such other purpose necessary, desirable, or convenient to effect the 2021 Restructuring Plan.

**Section 14.** This resolution shall take effect immediately.