



Resolution No. 38-2022  
Adoption Date June 8, 2022

Sufficiency of Funds Bibi Taylor  
Form and Legality David Minchella

**AUTHORIZING NEGOTIATION OF EARLY TERMINATION  
PURCHASE PRICE WITH LOCAL UNIT UNDER POWER PURCHASE  
AGREEMENT IN CONNECTION WITH THE AUTHORITY'S  
RENEWABLE ENERGY PROGRAM**

**WHEREAS**, the Union County Improvement Authority (the “*Authority*”) has been duly created by ordinance as a public body corporate and politic of the State of New Jersey (the “*State*”) pursuant to and in accordance with the County Improvement Authority Law, N.J.S.A. 40:37A-44 et seq.; and

**WHEREAS**, the Authority developed a program (the “*Renewable Energy Program*”) that involves the financing, design, permitting, acquisition, construction, installation, operation, and maintenance of thirty (30) photovoltaic renewable energy projects, which consists of approximately 3.337 megawatts of capacity, initially installed in or about 2011 or 2012 across a total of thirty (30) Local Unit (as hereinafter defined) sites (the “*Renewable Energy Projects*”) throughout Union County (the “*County*”) for and on behalf of local government units within the County, including, without limitation, municipalities, boards of education, school districts, colleges, vocational schools, and jointure commissions (collectively, the “*Local Units*”); and

**WHEREAS**, in connection therewith: (i) Tioga Solar Union County 1, LLC (including any successors and assigns thereof, the “*Company*”), the Authority, and the Local Units entered into that certain Power Purchase Agreement, dated May 1, 2011 (the “*PPA*”); and (ii) the Company, the Authority, and each Local Unit entered into their respective Site License Agreement, each dated May 1, 2011 (the “*Site License Agreement*”); and

**WHEREAS**, the Renewable Energy Projects procured under the Renewable Energy Program generate energy and revenues, with such current and anticipated future revenues being principally derived from (i) the sale of electricity to the Local Units making payments (the “*PPA Revenues*”) for a price pursuant to the terms and provisions of the PPA, and (ii) the sale of Solar Renewable Energy Certificates, as marketable environmental attributes of the Renewable Energy Projects (the “*SREC Revenues*”, and together with the PPA Revenues, the “*Revenues*”); 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 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



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Tioga Energy (the “Assignee”) pursuant to the laws of the State of California, and thereby created an assignment estate; and

**WHEREAS**, each Local Unit entered into their respective Amendment No. 1 to Site License Agreement and Power Purchase Agreement with the Authority, each dated in 2021 (the “*Amendment No. 1*”), which, automatically upon the Authority’s acquisition of the Company’s interests in the Renewable Energy Project, would transfer and assign all rights and obligations of the Company under the PPA and the Site License Agreement to the Authority with respect to the Renewable Energy Projects, leaving all remaining terms and conditions of the PPA and Site License Agreement in full force and effect; and

**WHEREAS**, on December 23, 2021, the Authority, the Company, and the Assignee executed that certain Default, Termination and Assignment Agreement, which, in accordance with Amendment No. 1, transferred and assigned all rights, duties, and obligations of the Company and the Assignee with respect to the Renewable Energy Projects and the Renewable Energy Program to the Authority, including, without limitation, the rights to the Revenues; and

**WHEREAS**, Section 2.5(b) of the PPA provides an option for Local Units to terminate the PPA at any time after the Commercial Operation Date, as such term is defined therein, for any reason upon thirty (30) days’ written notice to the Authority and upon the payment of, as liquidated and ascertained damages and not as a penalty, an “Early Termination Purchase Price”, as such term is defined therein (the “*Termination Option*”); and

**WHEREAS**, the Termination Option of the PPA also contemplates the termination of the PPA insofar as it relates to the subject Local Unit and the subject Local Unit’s Renewable Energy Project (the “*PPA Termination Provision*”); and

**WHEREAS**, the Termination Option of the PPA also contemplates, upon a Local Unit’s payment to the Authority of the Early Termination Purchase Price, that all of the Authority’s right, title, and interests in and to, and warranties for, the subject Renewable Energy Project shall pass to the subject Local Unit, free and clear of any liens and encumbrances, and the PPA shall terminate automatically insofar as it applies to the subject Renewable Energy Project and the subject Local Unit (the “*Ownership Transfer Provision*”); and

**WHEREAS**, Section 2.2 of the Site License Agreement states that the Site License Agreement is intended to be coterminous with the PPA insofar as the PPA is in effect with respect to the respective Local Unit, and if the PPA is terminated with respect to a Local Unit for any reason, the Site License Agreement shall terminate concurrently with the PPA (the “*Site License Termination Provision*”, and together with the PPA Termination Provision, the “*Termination Provisions*”); and



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**WHEREAS**, the Roselle Board of Education (the “*Roselle BOE*”), a Local Unit under the PPA and Site License Agreement, is contemplating whether to exercise the Termination Option and inquired as to what the Early Termination Purchase Price would be for the Roselle BOE to terminate the PPA and to remove its Renewable Energy Project from the Renewable Energy Program; and

**WHEREAS**, the Authority desires to authorize (i) negotiations with the Roselle BOE regarding the Early Termination Purchase Price under the Termination Option; (ii) to the extent the negotiations are in the best interests of the Authority, as determined herein, both the implementation of the Termination Provisions; and (iii) the implementation of the Ownership Transfer Provision, all in accordance with the PPA; and

**WHEREAS**, the Authority desires to provide a framework consistent with that authorized herein for Roselle BOE should any other Local Unit desire to exercise the Termination Option.

**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, commencing and/or proceeding with negotiations with the Roselle BOE for purposes of determining a fair and appropriate Early Termination Purchase Price under the Termination Option, and subject to satisfaction of Section 3 hereof, implementing the Termination Provisions, and implementing the Ownership Transfer Provision, all in accordance with the PPA.

**Section 3.** Each Authorized Officer is hereby severally authorized and directed to take all actions and do all things, on behalf of the Authority, to enter into negotiations with the Roselle BOE in order to effectuate the Termination Option, implement the Termination Provisions, and implement the Ownership Transfer Provision, all in accordance with the PPA, including, but not limited to, determining an Early Termination Purchase Price, with such Early Termination Purchase Price to be no less than an amount which compensates the Authority for losses of any nature and kind sustained or to be sustained by the Authority by reason of the early termination of the PPA insofar as it relates to the Roselle BOE’s Renewable Energy Project, which shall include lost Revenues for the remainder of the term of the PPA, and shall contemplate any other reasonable and functionally related components, whether they be additions to or deletions from the foregoing. For avoidance of doubt, this Section 3 provides the Authorized Officers dispositive authority to release the Roselle BOE from its rights and obligations under the PPA and authorize the conveyance of the Roselle BOE’s Renewable Energy Project under the terms of Section 2.5(b) of



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the PPA upon the Roselle BOE's payment of the Early Termination Purchase Price to the Authority in an amount satisfactory to the Authorized Officer, after consultation with the Authority's Renewable Energy Special Counsel, that such agreed upon Early Termination Purchase Price is consistent with the terms of this resolution, including the methodology specified in this Section 3, and by definition therefor in the best interests of the Authority.

**Section 4.** In the event estimates are used to determine the Early Termination Purchase Price, the Authorized Officers are hereby authorized to rely on Revenue or other estimates provided by Sunlight General Capital, LLC (including any relevant affiliates) in its role as either or both Asset Manager and/or O&M Provider

**Section 5.** The Authorized Officers are hereby severally authorized to take such other action in connection with the Termination Option, which includes the Termination Provisions and the Ownership Transfer Provision, as such person, in their sole discretion, after consultation with the Authority's Renewable Energy Special Counsel, shall determine to be necessary, desirable, or convenient to implement the transaction contemplated hereby.

**Section 6.** To the extent an agreed upon Early Termination Purchase Price is agreed upon by the Authority and Roselle BOE and the Ownership Transfer Provisions have been implemented, the Authorized Officers are each hereby severally further authorized to negotiate an Early Termination Purchase Price consistent with the Roselle BOE methodology with any other Local Units making inquiry regarding the Termination Option and/or Termination Provisions; provided, however, that the implementation of any such Ownership Transfer Provisions must be either authorized or ratified and confirmed by the governing body of the Authority.

**Section 7.** This resolution shall take effect immediately, with the transfer of the Roselle BOE's Renewable Energy Project, pursuant to the Ownership Transfer Provision, and the effectuation of the Termination Provisions, to take effect if and when the Roselle BOE exercises the Termination Option and the Authority receives the Early Termination Purchase Price payment in an amount that satisfies the requirements of this resolution, including Section 3 hereof.



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