

BOROUGH OF TOTOWA

MINUTES OF THE MAYOR AND COUNCIL

September 27, 2022

PRESENT: Mayor John Coiro, presiding, Council President Lou D'Angelo, Councilwoman Debra Andriani, Councilman Anthony Picarelli, Councilman William Bucher, Councilman Patrick Fierro, Municipal Clerk Joseph Wassel and Municipal Attorney Kristin Corrado.

ABSENT: Councilman John Capo.

Mayor John Coiro called the meeting to order and asked the Municipal Clerk to call the roll.

Municipal Clerk Wassel recited the Prayer of the Meeting followed with the Pledge of Allegiance to the Flag with the public participating.

Mayor Coiro asked the Clerk to read the statement of the meeting.

Municipal Clerk Wassel read the following statement: This meeting of the Mayor and Council held on this day is being held in accordance with Chapter 231, P.L. 1975 of the State of New Jersey as amended. The agenda for this meeting has been prepared and distributed to the Mayor and Council and a copy has been on file in the Office of the Municipal Clerk.

Mayor Coiro asked if any members of the Council, the Municipal Clerk or the Municipal Attorney wished to address the Council.

Councilwoman Andriani: 1) Reminded everyone that our Blood Drive is tomorrow at The Barnyard & Carriage House from 2:00 – 8:00 p.m.; 2) Announced that installation of our Military Tribute Banners has begun and said they look great and thanked the DPW and Library Director Anne Krautheim for their assistance with the program.

CITIZENS HEARD:

There were no citizens who wished to be heard.

There was a motion by Councilman D'Angelo, seconded by Councilwoman Andriani to approve the Minutes of the Mayor and Council for the meeting of September 13, 2022. On roll call vote, all members of the Council present voted in the affirmative.

COMMITTEE ON FINANCE:

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to approve Resolution No. 2022-20 for the payment of bills. On roll call vote, all members of the Council present voted in the affirmative.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following resolution authorizing the Treasurer to issue refunds to various property owners due to overpayment of 3rd Quarter 2022 taxes. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION

WHEREAS, there has been an overpayment of 3rd quarter 2022 taxes on the property listed below; and

WHEREAS, the taxpayer is entitled to a refund; and

WHEREAS, the chart sets forth the refund as follows:

Block	Lot	Property Owner	Payable To:	Overpayment
40	5	24 Hudson Ave. Robert & Janet Petronzi	Corelogic Attn:Refund Dept. PO Box 9202 Coppell, TX 75019-9760	\$2,106.77

78	21	87 Sutton Ave. Anthony & Georgia Crescenzo	Corelogic Attn:Refund Dept. PO Box 9202 Coppell, TX 75019-9760	\$1,652.32
116	8	238 Grant Ave. Syed J Ali	Corelogic Attn:Refund Dept. PO Box 9202 Coppell, TX 75019-9760	\$2,807.88
146	22	1 Knollwood Rd. Jose & Stephanie Morel	Corelogic Attn:Refund Dept. PO Box 9202 Coppell, TX 75019-9760	\$2,373.40

NOW, THEREFORE, BE IT RESOLVED, that the overpayment shall be refunded to the taxpayer, as stated above, and the Treasurer is authorized to issue separate checks for the refunds, which shall be paid to the stated property or taxing authority.

There was a motion by Councilman Picarelli, seconded by Councilman D'Angelo to adopt the following resolution to effectuate the redemption of Tax Sale Certificate Number 20-00006 for 8 Floyd Drive, Block 173, Lot 21.11. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION

Tax Sale Certificate Number 20-00006
Block 173, Lot 21.11
Property: 8 Floyd Drive, Totowa, New Jersey 07512
Owner: Anthony Convertino

WHEREAS, at the Municipal Tax Sale on October 21, 2021, a lien was sold on Block 173, Lot 21.11; and

WHEREAS, this lien known as Tax Sale Certificate Number 20-00006, was sold to Christiana T C/F CE1/FirstTrust for a 17% redemption fee and no premium; and

WHEREAS, Anthony Convertino, the owner of the property, has effected redemption of Tax Sale Certificate Number 20-00006 in the amount of \$2,061.74 as of September 27, 2022.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize the Treasurer to issue a check in the amount of \$2,061.71 payable to Christiana T C/F CE1/FirstTrust for the redemption of Tax Sale Certificate Number 20-00006.

COMMITTEE ON PUBLIC SAFETY:

There was a motion by Councilman D'Angelo, seconded by Councilman Bucher to approve a grade increase for Patrol Officer Jack Pohlman from Grade 2 to Grade 1. On roll call vote, all members of the Council present voted in the affirmative.

There was a motion by Councilman D'Angelo, seconded by Councilman Bucher to approve payment of the annual contribution for 2022 to the Borough Of Totowa First Aid Squad, Inc. On roll call vote, all members of the Council present voted in the affirmative.

There was a motion by Councilman D'Angelo, seconded by Councilman Bucher to approve the fireman's application, the purchase of fireman's equipment and authorize a fireman's physical for Iram D. Granados for Lincoln Fire Company. On roll call vote, all members of the Council present voted in the affirmative.

A letter from St. James of the Marches Church thanking Patrol Officer Nicholas Macaluso for his assistance on Friday, September 16, 2022 was received and filed with a copy to be placed in his personnel file.

COMMITTEE ON PUBLIC WORKS:

There was a motion by Councilman Bucher, seconded by Councilman Fierro to accept the following bids for the FY2022 NJDOT Municipal Aid & 2022 Road Program. On roll call vote, all members of the Council present voted in the affirmative.

<u>Company</u>	<u>Total Bid</u>
AJM Contractors Clifton, NJ 07011	\$636,415.50

Mike Fitzpatrick Contractors
Oakridge, NJ 07438

\$874,514.55

Upon the recommendation of the Engineer, there was a motion by Councilman Bucher, seconded by Councilman Fierro to adopt the following resolution to award the contract to the lowest responsible bidder for the FY2022 NJDOT Municipal Aid & 2022 Road Program. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 112-2022

RESOLUTION AWARDING CONTRACT FOR THE FY2022 NJDOT
MUNICIPAL AID AND 2022 ROAD PROGRAM

WHEREAS, the Municipal Engineer for the Borough of Totowa has recommended improvements to streets throughout the municipality including sections of Cumberland Avenue, Hamilton Trail and Stirling Terrace as part of the FY2022 New Jersey Department of Transportation ("NJDOT") Municipal Aid Road Program; and

WHEREAS, in addition to the roads covered under the NJDOT grant, the Borough of Totowa under its 2022 Road Program will also pave Fellner Place, Mountainwood Court and Huntington Terrace; and

WHEREAS, by Resolution No. 88-2022 dated July 12, 2022, the Mayor and Council of the Borough of Totowa authorized the Borough of Totowa Municipal Engineer, Richard A. Alaimo Engineering Associates, to provide design services, prepare bid documents, assist in the bidding process and supervise construction of the FY2022 NJDOT Municipal Aid And 2022 Road Program; and

WHEREAS, the Mayor and Council of the Borough of Totowa did advertise for receipt of sealed bids in accordance with the specifications entitled "Specifications, Proposal and Contract Documents for Borough of Totowa FY 2022 N.J.D.O.T. Municipal Aid Program And 2022 Local Road Program, Passaic County, New Jersey, Contract No. 2022-1"; and

WHEREAS, the Borough of Totowa did receive sealed bids at its Municipal Building on September 22, 2022; and

WHEREAS, the apparent low bid was submitted by AJM Contractors, Inc., 300 Kuller Road, Clifton, New Jersey 07011 in the amount of \$636,415.50, a copy of which is on file in the office of the Borough of Totowa Municipal Clerk; and

WHEREAS, the Municipal Engineer has reviewed the bids submitted and advised that the contractor is capable of completing the project; and

WHEREAS, the Mayor and Council of the Borough of Totowa have determined that the bid submitted by AJM Contractors, Inc. be accepted as the lowest responsible bid.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby accept the bid of AJM Contractors, Inc. for the FY2022 NJDOT Municipal Aid and 2022 Road Program as the lowest responsible bid for the total sum of \$636,415.50

BE IT FURTHER RESOLVED, that the Municipal Council of the Borough of Totowa does hereby authorize the Mayor and Municipal Clerk to execute any and all necessary instruments relating thereto.

BE IT FURTHER RESOLVED, that the award of this contract is subject to the approval of the New Jersey Department of Transportation.

COMMITTEE ON ENGINEERING & PUBLIC PROPERTY:

There was a motion by Councilwoman Andriani, seconded by Councilman D'Angelo to adopt the following Resolution Authorizing The Purchase And Installation Of A New PLC For The Lackawanna Sewer Pump Station. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 113-2022

RESOLUTION AUTHORIZING THE PURCHASE AND INSTALLATION OF
A NEW PLC FOR THE LACKAWANNA SEWER PUMP STATION

WHEREAS, the Borough of Totowa Department of Public Works Superintendent has advised the Mayor and Council of the Borough of Totowa that the PLC at the Lackawanna Sewer Pump Station has failed and must be replaced as soon as possible; and

WHEREAS, the Pump Station services the residents of the Borough of Totowa by collecting sanitary sewerage waste from individual users throughout the municipality where it is processed and conveyed to the Passaic Valley Sewerage Commissioners located in Newark, New Jersey for proper treatment and disposal; and

WHEREAS, the Borough of Totowa Department of Public Works Superintendent has recommended that the Borough of Totowa remove the existing PLC components and replace with new equipment; and

WHEREAS, North Jersey Waste Water Cooperative Pricing System Contract No. B331-8 has been awarded to Precision Electric Motor Works, Inc., 18 Sebago Street, Clifton, New Jersey 07013 for various PLC components; and

WHEREAS, Precision Electric Motor Works, Inc. has submitted a proposal for the removal of the existing PLC components and installation of new equipment in the amount of \$44,680.00, a copy of which is on file on the office of the Borough of Totowa Municipal Clerk; and

WHEREAS, the Mayor and Council of the Borough of Totowa desire to authorize the purchase and installation of a new PLC at the Lackawanna Sewer Pump Station; and

WHEREAS, pursuant to the applicable New Jersey State laws, these professional services may be awarded without public bidding.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby accept the proposal submitted by Precision Electric Motor Works, Inc., for the purchase and installation of a new PLC at the Lackawanna Sewer Pump Station in the amount of \$44,680.00.

BE IT FURTHER RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize Precision Electric Motor Works, Inc. to provide the labor and materials for the purchase and installation of a new PLC at the Lackawanna Sewer Pump Station as set forth in their proposal.

There was a motion by Councilwoman Andriani, seconded by Councilman D'Angelo to adopt the following Resolution Authorizing The Purchase And Installation Of A New PLC For The South End Sewer Pump Station. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 114-2022

RESOLUTION AUTHORIZING THE PURCHASE AND INSTALLATION OF
A NEW PLC FOR THE SOUTH END SEWER PUMP STATION

WHEREAS, the Borough of Totowa Department of Public Works Superintendent has advised the Mayor and Council of the Borough of Totowa that the PLC at the South End Sewer Pump Station has failed and must be replaced as soon as possible; and

WHEREAS, the Pump Station services the residents of the Borough of Totowa by collecting sanitary sewerage waste from individual users throughout the municipality where it is processed and conveyed to the Passaic Valley Sewerage Commissioners located in Newark, New Jersey for proper treatment and disposal; and

WHEREAS, the Borough of Totowa Department of Public Works Superintendent has recommended that the Borough of Totowa remove the existing PLC components and replace with new equipment; and

WHEREAS, North Jersey Waste Water Cooperative Pricing System Contract No. B331-8 has been awarded to Precision Electric Motor Works, Inc., 18 Sebago Street, Clifton, New Jersey 07013 for various PLC components; and

WHEREAS, Precision Electric Motor Works, Inc. has submitted a proposal for the removal of the existing PLC components and installation of new equipment in the amount of \$44,680.00, a copy of which is on file on the office of the Borough of Totowa Municipal Clerk; and

WHEREAS, the Mayor and Council of the Borough of Totowa desire to authorize the purchase and installation of a new PLC at the South End Sewer Pump Station; and

WHEREAS, pursuant to the applicable New Jersey State laws, these professional services may be awarded without public bidding.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby accept the proposal submitted by Precision Electric Motor Works, Inc., for the purchase and installation of a new PLC at the South End Sewer Pump Station in the amount of \$44,680.00.

BE IT FURTHER RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize Precision Electric Motor Works, Inc. to provide the labor and materials for the purchase and installation of a new PLC at the South End Sewer Pump Station as set forth in their proposal.

A letter was received from the Totowa Seniors requesting permission to use the Municipal Parking Lot on Monday, October 17, 2022 for a trip to Wind Creek Casino, Bethlehem, PA. There was a motion by Councilwoman Andriani, seconded by Councilman D'Angelo to grant permission. On roll call vote, all members of the Council present voted in the affirmative.

COMMITTEE ON LIAISON & INSPECTION:

There was a motion by Councilwoman Andriani, seconded by Councilman Bucher to adopt the following Resolution Authorizing The Issuance Of Non-Recourse Redevelopment Area Bond (Data Center Project) Of The Borough Of Totowa, In The County Of Passaic, New Jersey In An Aggregate Principal Amount Of \$1,200,000. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 115-2022

RESOLUTION AUTHORIZING THE ISSUANCE OF NON-RECOURSE REDEVELOPMENT AREA BOND (DATA CENTER PROJECT) OF THE BOROUGH OF TOTOWA, IN THE COUNTY OF PASSAIC, NEW JERSEY IN AN AGGREGATE PRINCIPAL AMOUNT OF \$1,200,000

WHEREAS, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law" or the "Act"), and that certain redevelopment plan adopted on February 23, 2016 (as amended and as the same may be amended from time to time, the "Redevelopment Plan") by ordinance of the Council (the "Borough Council") of the Borough of Totowa, a public body corporate and politic of the State of New Jersey (the "Borough"), the Borough and NJDC Urban Renewal, LLC ("NJDC") entered into that certain Redevelopment Agreement dated June 15, 2017, as amended by that certain First Amendment to Redevelopment Agreement, dated January 24, 2018, as further amended by that certain Second Amendment to Redevelopment Agreement, dated February 26, 2019, as further amended by that certain Third Amendment to Redevelopment Agreement, dated August 19, 2019 (as the same may be further amended from time to time, the "Redevelopment Agreement") with respect to certain property within the Borough, including the property identified as Block 154, Lot 19.07, C0002 on the Borough's tax map (the "Project Site"), which is located within an area designated by resolution of the Borough Council as an "area in need of redevelopment" in accordance with the Redevelopment Law; and

WHEREAS, NJDC, the Borough, and LIVIA Propco Totowa Urban Renewal, LLC, formerly known as Sycamore Totowa Urban Renewal LLC, an affiliate of NJDC (“LIVIA”), entered into that certain Amended and Restated Assignment and Assumption Agreement dated as of December 28, 2020 (the “Assignment”), pursuant to which NJDC assigned, and LIVIA assumed, with the Borough’s consent, all of the rights and obligations under the Redevelopment Agreement relating to the undertaking and completion of a senior living facility on the Project Site (the “Senior Living Facility Component”); and

WHEREAS, the owners of LIVIA and the Borough subsequently determined that, instead of the Senior Living Facility Component, a different use and redevelopment of the Project Site would be mutually more beneficial for all parties and for the residents, workforce, and visitors of the Borough, and as such LIVIA and the Borough agreed to terminate the Assignment, pursuant to that certain Termination and Release Agreement; and

WHEREAS, the Borough entered into a Subsequent Redevelopment Agreement (the “Subsequent Redevelopment Agreement”) with Minnisink Road Urban Renewal, LLC, an affiliate of NJDC (the “Entity”) dated July 15, 2022, which designates the Entity as the “redeveloper” (as that term is defined in the Redevelopment Law) of the Project Site and which specifies the respective rights and responsibilities of the Parties with respect to the development of the Project Site; and

WHEREAS, pursuant to the Subsequent Redevelopment Agreement, the Entity intends to construct, operate, and maintain on the Project Site, a data center consisting of approximately 1 to 2 stories and containing approximately 320,000 square feet (the “Project”); and

WHEREAS, the Entity is an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the “Exemption Law”); and

WHEREAS, the provisions of the Exemption Law and such other statutes as may be sources of relevant authority, authorize the Borough to accept, in lieu of real property taxes, annual service charges paid by the Entity to the Borough as set forth in such laws (the “Annual Service Charge”); and

WHEREAS, in accordance with the provisions of the Exemption Law, the Entity filed an application with the Borough seeking a tax exemption in connection with the Project; and

WHEREAS, the Borough and the Entity intend to enter into a financial agreement to memorialize the terms and conditions by which the Entity will pay the Annual Service Charge (the “Financial Agreement”); and

WHEREAS, pursuant to the Redevelopment Area Bond Financing Law, *N.J.S.A. 40A:12A-64 et seq.* (the “RAB Law”), a municipality may issue bonds to finance redevelopment projects pursuant to a redevelopment plan within an area in need of redevelopment, which bonds may be secured by an annual service charge; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-29(a)(3) and N.J.S.A. 40A:12A-67(g), the Borough Council authorized by resolution the application to the Local Finance Board (the “Application”) for the Borough’s issuance of a \$1,200,000 Non-Recourse Redevelopment Area Bond in support of the Project; and

WHEREAS, on September 7, 2022, the Local Finance Board met, reviewed and approved the Application; and

WHEREAS, as an inducement to the Entity to construct the Project, and in furtherance of the purposes of the Act and the RAB Law, the Borough intends to issue a Non-Recourse Redevelopment Area Bond (Data Center Project), in the principal amount of \$1,200,000 in one or more series (the “Bond”), which Bond shall be secured by a pledge of the Annual Service Charge; and

WHEREAS, the Bond is hereby authorized to be issued and executed and secured by a pledge of the Annual Service Charge for the payment of the principal of the Bond,

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF TOTOWA, NEW JERSEY AS FOLLOWS:

Section 1. Determination to Issue. To accomplish the purposes and objectives of the Act and the RAB Law, the Borough hereby determines to finance a portion of the costs associated with the Project. To finance a portion of the Project, the Bond is hereby authorized to be issued in the principal amount of \$1,200,000. The net proceeds from the sale of the Bond shall be paid to the Entity for the Project. The Bond shall be issued in one series, shall be dated its date of delivery, shall not bear interest and shall be payable as to principal as set forth therein. The Bond shall be issued in the form, shall mature and shall have such other details and provisions as are set forth in the form of the Bond attached hereto as Exhibit A. The first principal payment on the Bond shall be on a date which is after the payment of four (4) quarterly Annual Service Charge payments.

Section 2. Bond Constitutes a Special, Limited Obligation. The Bond shall be a special, limited obligation of the Borough, payable solely out of the Annual Service Charge and all such Annual Service Charge is hereby irrevocably pledged to the payment of the Bond. The payment of the principal of the Bond shall be secured by the pledge of the Annual Service Charge and certain rights of the Borough as provided in the Financial Agreement. Neither the members of the Borough Council nor any person executing the

Bond issued pursuant to this Resolution, the Act and the RAB Law shall be liable personally for the Bond by reason of the issuance thereof. The Bond shall not be in any way a debt or liability of the Borough other than to the limited extent set forth herein. NEITHER THE FULL FAITH AND CREDIT NOR TAXING POWER OF THE BOROUGH IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THE BOND.

Section 3. Authorization and Execution of Bond. (a) The Bond shall mature not more than thirty (30) years from the date of its issuance and, in any event, not prior to the termination of the Financial Agreement, and shall be issued in an aggregate principal amount of \$1,200,000. The Bond shall not bear interest. A certificate evidencing the terms of the sale of the Bond to the purchaser (the "Purchaser") shall be executed by the Chief Financial Officer (the "Award Certificate").

(b) The Mayor, Borough Clerk and Chief Financial Officer (each an "Authorized Officer") are each hereby authorized to execute and deliver the Bond on behalf of the Borough. The Bond shall be executed by the Mayor, the Chief Financial Officer and the Borough Clerk and shall be issued in the form of one physical certificate registered in the name of the Purchaser.

Section 4. Delivery of the Bond. Following execution of the Bond, each Authorized Officer is hereby authorized to deliver the Bond to the Purchaser against receipt of the purchase price or unpaid balance thereof (the "Closing"). At the Closing, the Borough shall distribute the net proceeds from the sale and issuance of the Bond to the Entity in order to pay costs associated with the Project.

Section 5. Conditions Precedent to Issuance of the Bonds. The obligations of the Borough and the Purchaser to consummate the transactions contemplated hereby are subject to (i) the execution and delivery of the Bond, the Financial Agreement, the Subsequent Redevelopment Agreement, and any instruments executed in connection herewith or therewith, and all amendments and modifications thereto, which shall be in full force and effect on and as of the date of issuance of the Bond and shall be in form and substance satisfactory to the Borough and the Purchaser and no default or event of default (however denominated) shall exist under any such documents and (ii) such financing statements, legal opinions, certificates and other documents as the Purchaser and bond counsel to the Borough may reasonably deem necessary to evidence compliance by the Borough and the Purchaser with the Bond, Financial Agreement and Subsequent Redevelopment Agreement.

Section 6. Transfer of Bond. The Bond may only be transferred to (a) an affiliate of the Purchaser, (b) a trust or custodial arrangement established by the Purchaser or one of its affiliates, the owners of the beneficial interests in which are limited to qualified institutional buyers, as defined in Rule 144A promulgated under the Securities Act of

1933, as amended, or (c) to a Person that is a qualified institutional buyer and a commercial bank having capital and surplus of \$5,000,000,000 or more; each of which has executed and delivered to the Borough an Investor Letter in the form of Exhibit B attached hereto.

Section 7. Limitations of Liability of Borough. The Borough shall not incur any responsibility with respect to the Bond other than in connection with the duties or obligations explicitly set forth herein, in the Bond and in the Financial Agreement. No provision of this Resolution, the Bond, the Financial Agreement or any agreement, document, instrument or certificate executed, delivered, or approved in connection with the issuance, sale, delivery or administration of the Bond shall require the Borough to expend or risk its own general funds, the obligations and liabilities of the Borough hereunder being payable solely from the Annual Service Charge.

In the event of any default by the Borough hereunder, the liability of the Borough to any person who shall be the registered owner of the Bond (the "Bondholder") shall be enforceable only against the Annual Service Charge that may be made available for such purposes under the RAB Law, and there shall be no other recourse for damages by the Bondholder against the Borough, its officers, members, agents and employees, or any of the property now or hereafter owned by it or them.

Section 8. Certain Actions of the Borough. The Borough covenants to take such action as the Bondholder shall reasonably request, in order that the Bondholder may realize the benefits of the right to receive the Annual Service Charge; such actions may include, but shall not be limited to, conducting an *in rem* tax foreclosure action in accordance with the provisions of N.J.S.A. 54:5-1 et seq.

Upon the happening and continuance of any Default as defined in the Financial Agreement, upon receipt of the written request of the Bondholder, the Borough shall proceed to protect and enforce its rights and the rights of the Bondholder under the laws of the State of New Jersey and the terms of the Financial Agreement, by such suits, actions or special proceedings in equity or at law, including, without limitation, directing the Borough to commence an *in rem* tax foreclosure pursuant to the Financial Agreement or mandamus, or by proceedings in the office of any board or office having jurisdiction, either for the specific performance of any covenant, condition or agreement contained in the Bond or the Financial Agreement or for the enforcement of any proper legal or equitable remedy. Only the Borough can undertake the sale of tax sale certificates, and in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to all applicable laws (including bankruptcy laws) necessary to realize the collection of the pledged Annual Service Charge remaining unpaid in accordance with the Financial Agreement.

If the Bondholder shall have proceeded to enforce the rights of the Bondholder under the Bond and the Financial Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Bondholder, then the Bondholder shall be restored to its position and rights hereunder, and all rights, remedies and powers of the Bondholder shall continue as though no such proceedings had taken place.

Section 9. Incidental Action. Each Authorized Officer is hereby authorized to execute and deliver such other papers, instruments, certificates, opinions, affidavits and documents, and to take such other action as may be necessary or appropriate in order to carry out the purpose of this Resolution, including effectuating the execution and delivery of any closing certificates required in connection with the issuance of the Bond, and the issuance and sale of the Bond, all in accordance with the foregoing sections hereof.

Section 10. Independent Determination by Purchaser. The Bond authorized herein is being issued to the Purchaser with the understanding that it is being held for the Purchaser's own account and that the Purchaser has made its own independent investigation and judgment about the credit and security for the payment of such Bond. Any sale or assignment by the Purchaser of such Bond shall be on the same terms and conditions as set forth herein. The Borough will act as the paying agent for the Bond. Pursuant to the terms of the Financial Agreement, the Borough will collect the Annual Service Charge in quarterly installments on February 1, May 1, August 1 and November 1 and, on each date and upon receipt of each such quarterly installment, will deposit one-fourth of the principal amount of the Bond due on the next succeeding principal payment date into a separate trust account for the benefit of the Purchaser or subsequent Bondholder, as the case may be. The Borough shall make payment to the Purchaser, or subsequent Bondholder, as the case may be, of the principal amount of the Bond due, out of the Annual Service Charge. In the event of a Default (as defined in the Financial Agreement) resulting from the failure of the Entity to pay the Annual Service Charge payment then due and owing, the Borough will determine the amount of the Annual Service Charge shortfall and shall deposit a pro rata amount of the quarterly Annual Service Charge into the trust account for the benefit of the Purchaser, or subsequent Bondholder, as the case may be; subject to payment of the County Share (as such term is defined in the Financial Agreement).

Section 11. Construction. If any one or more of the provisions of this Resolution or the Bond issued hereunder shall for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, and the Bond shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 12. Effective Date. This Resolution shall take effect immediately upon adoption.

There was a motion by Councilwoman Andriani, seconded by Councilman Bucher to adopt the following Resolution Authorizing The Execution Of A Community Benefits Agreement With Minnisink Road Urban Renewal, LLC. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 116-2022

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY BENEFITS AGREEMENT WITH MINNISINK ROAD URBAN RENEWAL, LLC

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the “Redevelopment Law”), provides a process for municipalities to participate in the redevelopment and improvement of areas designated by the municipality as in need of redevelopment; and

WHEREAS, the Borough of Totowa (the “Borough”) Municipal Council (the “Borough Council”), in accordance with the criteria set forth in the Redevelopment Law, designated property located in the Borough, then commonly known as the former North Jersey Developmental Center Project and then identified as Block 154, Lot 19 and Block 154.01, Lot 1 on the Tax Maps of the Borough, as an “area in need of redevelopment” (the “Redevelopment Area”); and

WHEREAS, the Borough subsequently adopted a redevelopment plan for the Redevelopment Area entitled the “North Jersey Developmental Center Redevelopment Plan”, which plan was amended on April 25, 2017 and on June 28, 2022 (and as may be further amended from time to time, the “Redevelopment Plan”); and

WHEREAS, the Redevelopment Area was subdivided into four (4) lots identified as Block 154, Lots 19.01, 19.02, 19.03, and 19.04; and

WHEREAS, thereafter, Block 154, Lot 19.03 was subdivided into three (3) lots, identified as Block 154, Lots 19.05, 19.06, and 19.07; and

WHEREAS, pursuant to N.J.S.A. 40A:12-4, the Borough determined to act as the “redevelopment entity” (as such term is defined at N.J.S.A. 40A:12A-3 of the Redevelopment Law) for the Redevelopment Area; and

WHEREAS, the Redevelopment Law authorizes the Redevelopment Entity to arrange or contract for the planning, construction, or undertaking of any development project or redevelopment work in an area designated as an “area in need of redevelopment” pursuant to N.J.S.A. 40A:12A-8; and

WHEREAS, the Borough undertook a competitive process to identify and select a redeveloper for the Redevelopment Area and following such process entered into a Redevelopment Agreement dated as of June 15, 2017, as amended by that certain First Amendment to Redevelopment Agreement dated as of January 24, 2018, that certain Second Amendment to Redevelopment Agreement dated February 26, 2019, and that certain Third Amendment to Redevelopment Agreement, dated August 19, 2019 (collectively, the “Redevelopment Agreement”) with NJDC Urban Renewal, LLC (“NJDC”); and

WHEREAS, NJDC, the Borough, and LIVIA Propco Totowa Urban Renewal, LLC, formerly known as Sycamore Totowa Urban Renewal LLC, an affiliate of Redeveloper (“LIVIA”), entered into that certain Amended and Restated Assignment and Assumption Agreement dated as of December 28, 2020 (the “Assignment”), pursuant to which NJDC assigned, and LIVIA assumed, with the Borough’s consent, all of the rights and obligations under the Redevelopment Agreement relating to the undertaking and completion of an approximately 307,000 square foot senior living facility on a portion of the Redevelopment Area identified as Block 154, Lot 19.07, C0002 (the “Project Site”) (the “Senior Living Facility Component”); and

WHEREAS, the owners of LIVIA and the Borough subsequently determined that, instead of the Senior Living Facility Component, a different use and redevelopment of the Project Site would be mutually more beneficial for all Parties and for the residents, workforce, and visitors of the Borough, and as such LIVIA and the Borough agreed to terminate the Assignment, pursuant to that certain Termination and Release Agreement; and

WHEREAS, Minnisink Road Urban Renewal, LLC (the “Redeveloper”), an affiliate of NJDC and as subsequent redeveloper, intends to construct, operate, and maintain on the Project Site, a data center consisting of approximately 1 to 2 stories and containing approximately 320,000 square feet (the “Project”); and

WHEREAS, in connection with such transfer and in order to effectuate the Redevelopment Plan as to the Project Site, and to permit the redevelopment by Redeveloper of the Project Site with the Project, the Borough Council entered into a Subsequent Redevelopment Agreement with Redeveloper, dated July 15, 2022 (the “Subsequent Redevelopment Agreement”), which designates Redeveloper as the “redeveloper” of the Project as that term is defined in the Redevelopment Law and which specifies the respective rights and responsibilities of the Parties with respect to the Project; and

WHEREAS, the Redeveloper and the Borough seek to maximize the benefits of the Project to residents of the Borough; and

WHEREAS, N.J.S.A. 40A:12A-39(b) of the Redevelopment Law permits any public body, with or without consideration, to cause parks, educational facilities and water, sewer or drainage facilities to be furnished in connection with redevelopment projects; and

WHEREAS, the Redevelopment Plan stipulates that one-third (1/3) of the Redevelopment Area shall be maintained as open space green area and a passive recreation park and trail, along the waterway, shall be provided or in lieu thereof, the Borough may, in its sole discretion, to determine that the provisions for open space green areas and passive recreation would be better served outside of the Redevelopment Area and further provides the Redeveloper may be provided relief from this requirement, pursuant to a written agreement; and

WHEREAS, in accordance with the Redevelopment Law and the Redevelopment Plan, the Borough has determined that the open space green areas and passive recreation areas would be better suited outside of the Redevelopment Area and the Redeveloper has agreed to provide a \$1,200,000 community benefit to the Borough, in lieu of providing same on site, for the purposes of providing and maintaining recreational space outside of the Redevelopment Area (the “Community Benefit”); and

NOW THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Totowa, in the County of Passaic, New Jersey, as follows:

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

Section 2. The Borough Council hereby authorizes the Borough to enter into a Community Benefits Agreement with Minnisink Road Urban Renewal, LLC.

Section 3. The Borough Council authorizes the Mayor to execute any and all documents necessary to enter into a Community Benefits Agreement with Minnisink Road Urban Renewal, LLC.

Section 4. This resolution shall take effect immediately.

There was a motion by Councilwoman Andriani, seconded by Councilman Bucher to adopt the following Resolution Authorizing An Addendum To The Developer's Agreement Between The Borough Of Totowa And Digital Totowa, LLC. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 117-2022

RESOLUTION AUTHORIZING AN ADDENDUM TO THE DEVELOPER'S AGREEMENT BETWEEN THE BOROUGH OF TOTOWA AND DIGITAL TOTOWA, LLC

WHEREAS, Digital Totowa, LLC is the owner of real property commonly known and designated as Block 173, Lot 17 on the official Tax and Assessment Map of the Borough of Totowa and is located at 701 Union Boulevard in the I-3 Restricted Industry District; and

WHEREAS, Digital Totowa, LLC had filed an application for development with the Borough of Totowa Planning Board for preliminary and final site plan approval for the 701 Union Boulevard property; and

WHEREAS, the Borough of Totowa Planning Board at its public meetings held on April 11, 2013, April 25, 2013 and May 9, 2013 granted preliminary and final site plan approval for the application filed by Digital Totowa, LLC for the 701 Union Boulevard property, subject to certain conditions and restrictions; and

WHEREAS, Digital Totowa, LLC received approval to permit the construction of two data center buildings on the site inclusive of a substation with two electrical feeds in order to provide power to the proposed buildings on the site; and

WHEREAS, by Resolution No. 65-2013 dated May 14, 2013, the Mayor and Council of the Borough of Totowa authorized the Municipal Attorney of the Borough of Totowa to prepare the Developer's Agreement with Digital Totowa, LLC; and

WHEREAS, by Resolution NO. 76-2013 dated June 25, 2013, the Mayor and Council of the Borough of Totowa authorized the Borough of Totowa to enter into the Developer's Agreement; and

WHEREAS, thereafter Digital Totowa, LLC sought approval for modifications to one of the buildings on the site which is also referred to as Building B and the Borough of Totowa Zoning Board at its public meetings held on November 4, 2020 and November 19, 2021 granted preliminary and final site plan approval for Building B; and

WHEREAS, by Resolution No. 125-2021 dated December 14, 2021, the Mayor and Council of the Borough of Totowa authorized the Municipal Attorney to prepare an Addendum to the Developer's Agreement between the Borough of Totowa and Digital Totowa, LLC; and

WHEREAS, by Resolution NO. 27-2022 dated January 25, 2022, the Mayor and Council of the Borough of Totowa authorized the Borough of Totowa to enter into an Addendum to the Developer's Agreement; and

WHEREAS, thereafter Digital Totowa, LLC sought approval for modifications to one of the buildings on the site which is also referred to as Building A and the Borough of Totowa Zoning Board at its public meetings held on August 10, 2021 and September 14, 2022 granted amended preliminary and final site plan approval for Building A; and

WHEREAS, one of the conditions of the approval granted by the Borough of Totowa Zoning Board was the requirement that Digital Totowa, LLC enter into an Addendum to the Developer's Agreement with the Borough of Totowa.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Totowa do hereby authorize the Addendum to the Developer's Agreement between the Borough of Totowa and Digital Totowa, LLC.

BE IT FURTHER RESOLVED, that the Municipal Council of the Borough of Totowa does hereby authorize the Mayor and Municipal Clerk to execute any and all necessary instruments relating thereto.

COMMITTEE ON LEGISLATION & ORDINANCES:

There was a motion by Councilman Fierro, seconded by Councilman Picarelli to adopt the following Resolution Authorizing The Renewal Of Division Of Alcoholic Beverage Control Liquor License Number 1612-33-003-004 For The 2022 – 2023 License Term. On roll call vote, all members of the Council present voted in the affirmative.

RESOLUTION NO. 118-2022

RESOLUTION AUTHORIZING THE RENEWAL OF DIVISION OF ALCOHOLIC
BEVERAGE CONTROL LIQUOR LICENSE NUMBER 1612-33-003-004
FOR THE 2022 – 2023 LICENSE TERM

WHEREAS, Division of Alcoholic Beverage Control (ABC) liquor licenses that have been issued by the Borough of Totowa during the 2021 – 2022 license term expired on June 30, 2022; and

WHEREAS, State and Municipal regulations require that ABC liquor licenses be renewed prior to July 1, 2022; and

WHEREAS, state regulations further requires that all licensees must have filed their renewal applications online through POSSE ABC, have received their Alcoholic Beverage Retail Licensee Clearance Certificate and have paid their State and Municipal fees prior to renewing any liquor license; and

WHEREAS, Anthony Murphy, Inc., license number 1612-33-003-004 timely filed the renewal application and paid the State and Municipal fees, but the licensee did not receive a Tax Clearance Certificate prior to June 28, 2022 which was the last Council Meeting before the June 30, 2022 expiration date; and

WHEREAS, on June 28, 2022, Anthony Murphy, Inc. filed an application and received an Ad Interim Permit to operate from July 1 to July 30, 2022; and

WHEREAS, on July 28, 2022, Anthony Murphy, Inc. filed an application and received an Ad Interim Permit to operate from July 31 to August 29, 2022; and

WHEREAS, on August 29, 2022, Anthony Murphy, Inc. filed an application and received an Ad Interim Permit to operate from August 30 to September 28, 2022; and

WHEREAS, on September 27, 2022, the Borough of Totowa did receive a Tax Clearance Certificate for Anthony Murphy, Inc.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Totowa that the Municipal Clerk be authorized to renew the ABC Plenary Retail Consumption License For 2022 – 2023 License Term to Anthony Murphy, Inc., license number 1612-33-003-004 and that the Municipal Clerk upload a copy of this resolution and complete the renewal process on the POSSE ABC website.

There was a motion by Councilman Fierro, seconded by Councilman Picarelli to approve Raffle License Application Nos. 2278 & 2279 for the St. Elizabeth School for a Tricky Tray and On-Premise 50/50 to be held on Saturday, October 22, 2022 at The Barnyard & Carriage House. On roll call vote, all members of the Council present voted in the affirmative.

There being no further business to come before the Council, there was a motion by Councilman D'Angelo, seconded by Councilwoman Andriani that the meeting be adjourned. On roll call vote, all members of the Council present voted in the affirmative.

Joseph Wassel, RMC
Municipal Clerk