

**RESOLUTION OF THE BOARD OF COMMISSIONERS
MORRIS COUNTY IMPROVEMENT AUTHORITY**

TITLE:

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY
ADVISING TIOGA ENERGY ABC TO REJECT ALL PROPOSALS RECEIVED
IN CONNECTION WITH THE REQUEST FOR PROPOSALS FOR A SHORT
TERM MANAGER/OWNER OF PHOTOVOLTAIC SYSTEMS WITH RESPECT
TO CERTAIN LOCAL GOVERNMENT FACILITIES IN THE COUNTY OF
MORRIS, NEW JERSEY IN CONNECTION WITH THE MORRIS COUNTY
IPROVEMENT AUTHORITY'S COUNTY OF MORRIS GUARANTEED
RENEWABLE ENERGY PROGRAM LEASE REVENUE BONDS, SERIES 2009A
AND CERTAIN OTHER MATTERS RELATED THERETO**

WHEREAS, the Morris County Improvement Authority (the "*Authority*") has been duly created by ordinance of the Morris County Board of Chosen Freeholders (the "*Board*"), as public body corporate and politic of the State of New Jersey 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 (the "*Act*");

WHEREAS, the Authority has developed a program (the "*Renewable Energy Program*") for the financing, design, permitting, acquisition, construction, installation, operation and maintenance of renewable energy capital equipment and facilities such as solar panels, wind turbines, and hydro-electric, bio-diesel, geothermal, and bio-mass facilities, including any related electrical modifications, work related to the maintenance of roof warranties, or other work required, desirable or convenient for the installation of such systems (collectively, the renewable energy capital equipment and facilities, the "*Renewable Energy Projects*") for and on behalf of the County and local governmental units within the County, including without limitation municipalities, boards of education for school districts, local authorities and any other local government instrumentalities, public bodies or other local government entities; collectively, including the County, the "*Local Units*");

WHEREAS, pursuant to that certain resolution entitled "RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE BONDS, SERIES 2009A AND ADDITIONAL BONDS OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY" adopted by the governing body of the Authority on June 10, 2009, as amended and supplemented from time to time in accordance with its terms, including by

a Certificate of an Authorized Officer of the Authority dated February 18, 2010 (the “*Bond Resolution*”; capitalized terms used herein and not otherwise defined herein, for all purposes of this Resolution, shall have the meanings ascribed to such terms in the Bond Resolution), the Act and other applicable law and official action, the Authority issued its “County of Morris Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2009A” dated February 18, 2010, in the aggregate principal amount of \$21,600,000 (the “*Series 2009A Bonds*”) to finance the Renewable Energy Projects for the Series 2009A Local Units as set forth in the various Program Documents in connection with the initial tranche of the Authority’s Renewable Energy Program (“*Tranche I*”);

WHEREAS, in connection with Tranche I, the Authority and Tioga Solar Morris County 1, LLC, a limited liability company organized and existing under the laws of the State of Delaware, duly authorized to conduct business in the State (including any successors and assigns, the “*Company*” or “*Tioga Morris*”, and together with the Authority, the Series 2009 Local Units, the “*Parties*”) entered into certain agreements;

WHEREAS, Tioga Morris was selected by the Authority pursuant to a competitive process pursuant to (a) the competitive contracting provisions of the Local Public Contracts Law (N.J.S.A. 40A:11-4.1(k)), (b) the State Pay to Play Law, N.J.S.A.19:44A-20.1 *et seq.*, (c) with respect to the Board of Education Series 2009A Local Units, the Public Schools Contracts Law (N.J.S.A. 18A:18A-4.1(k)) of the State, and (d) on behalf of the County Series 2009A Local Units, the State College Contracts Law (N.J.S.A. 18A:64-52 *et seq.*), all pursuant to (i) Local Finance Board Notice 2008-20, December 3, 2008, *Contracting for Renewable Energy Services* (“*LFB Notice 2008-20*”), (ii) the Board of Public Utilities protocol for measuring energy savings in PPA Agreements (*Public Entity Energy Efficiency and Renewable Energy Cost Savings Guidelines, Dated February 20, 2009*), (iii) Local Finance Board Notice 2009-10 dated June 12, 2009, *Contracting for Renewable Energy Services: Update on Power Purchase Agreements* (the “*LFB Notice 2009-10*”, and together with LFB Notice 2008-20, the “*Local Finance Board Notices*”) and applicable law;

WHEREAS, on April 30, 2013 Tioga Energy, Inc., the managing member of Tioga Morris assigned (the “*Initial Assignment to ABC*”) all of its membership interest in Tioga Morris to Tioga Energy (Assignment for the Benefit of Creditors) LLC (“*Tioga Energy ABC*”), and Tioga Energy ABC is now looking to sell or otherwise transfer all of its controlling membership interest in and to Tioga Morris (the “*ABC Assignment*”) to a to be determined private entity (initially the hereinafter defined Short Term Manager, and ultimately, the “*New Parent Company*”);

WHEREAS, the Authority desires to ensure Tranche I of the Renewable Energy Program is properly staffed in order to protect the interests of the Parties and provide a short term remedy to maintain the success of Tranche I of the Renewable Energy Program until a permanent solution can be achieved, and therefore the Authority desires to select, pursuant to, among other provisions of applicable New Jersey law, N.J.S.A. 19:44A-20.1 *et seq.* and N.J.S.A. 40A:11-4.1(k) through a fair and open, competitive contracting, process, a short term manager/owner that would own all of the membership interests of Tioga Morris and ensure that all of Tioga Morris’ obligations under the

Program Documents are provided for (the “*Short Term Manager*”) on an interim basis (the “*Short Term Remedy*”) until the selection of a New Parent Company;

WHEREAS, on July 17, 2013, the Authority adopted a resolution pursuant to the Act and all other applicable law, seeking proposals from qualified solar developers for the sale of Tioga Energy ABC to a to be determined Short Term Manager entitled “RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING THE SALE OF TIOGA ENERGY ASSIGNMENT FOR THE BENEFIT OF CREDITORS TO A TO BE DETERMINED NEW PRIVATE DEVELOPER WITH RESPECT TO THE MORRIS COUNTY IMPROVEMENT AUTHORITY’S COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE BONDS, SERIES 2009A AND CERTAIN OTHER MATTERS RELATED THERETO” (the “*Original RFP Authorizing Resolution*”);

WHEREAS, pursuant to the Original RFP Authorizing Resolution, the Authority issued that certain “Request for Proposals for a For a Short Term Manager/Owner of Photovoltaic Systems with Respect to Certain Local Government Facilities in the County of Morris, New Jersey” dated September 4, 2013 (as amended and supplemented, the “*Original RFP*”);

WHEREAS, on September 26, 2013, the amended due date for proposals pursuant to the Original RFP, the Authority received four (4) proposals (each a “*Proposal*”) in response to the Original RFP from: (1) Vanguard Energy Partners (“*Vanguard*”), (2) SunLight General Capital (“*SunLight*”), (3) Nautilus Solar (“*Nautilus*”) and (4) Sustainable Power Group (“*SPower*” and together with the Proposals from Vanguard, SunLight and Nautilus, the “*Proposals from the Potential Solar Developer Respondents*”);

WHEREAS, on September 30, 2013, the Morris County Evaluation Team (the “*Evaluation Team*”) released its a Solar Proposal Evaluation Report (the “*Original Report*”);

WHEREAS, subsequent to the issuance of the Original Report each of the four (4) Proposals from the Potential Solar Developer Respondents were deemed non-compliant with the requirements of the Original RFP and in accordance with the privileged and confidential memo from Inglesino, Pearlman, Wyciskala & Taylor, LLC, counsel to the Authority (“*Counsel*”) a copy of which is on file with the Authority (the “*Evaluation Memo*”), the Authority has been advised to recommend to Tioga Energy ABC to reject all Proposals from the Potential Solar Developer Respondents pursuant to N.J.S.A. 40A:11-13.2(e), which permits the rejection of all bids where the purposes and/or provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1, *et seq.* are being violated; and

WHEREAS, further pursuant to the Evaluation Memo, Counsel hereby advises the Evaluation Team to supplement the Original Report (the “*Supplemental Report*”) based on the findings set forth therein.

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

Section 1. Upon review of the Evaluation Memo prepared by Counsel, the Authority hereby determines to recommend to Tioga Energy ABC to reject all Proposals from the Potential Solar Developer Respondents pursuant to *N.J.S.A. 40A:11-13.2(e)* and, if directed to do so by Tioga Energy ABC, post a copy of the Supplemental Report on the Authority's website.

Section 2. The Chairperson, Vice-Chairperson and the Treasurer of the Authority (including their designees, each an "*Authorized Officer*") are each hereby severally authorized and directed, if so directed or consent to such action is provided by, Tioga Energy ABC, to issue a second request for proposals (the "*Second Short Term RFP*") and solicit proposals pursuant to the Second Short Term RFP (the "*Second Short Term Proposals*") from entities desiring to undertake the ABC Assignment and become the Short Term Manager for Tioga Morris within the same parameters as set forth in the Original RFP Authorizing Resolution. In carrying out their obligations pursuant to this resolution, the Authorized Officers are each severally authorized to consult with the Authority's energy consulting team (bond counsel, financial advisor and energy consultant; collectively, the "*Consultants*"), on an as needed basis to implement this transaction, and the Consultants are each hereby severally authorized to provide such assistance pursuant to their respective contracts with the Authority.

Section 3. The Authorized Officers, together with the Consultants, are hereby authorized to prepare the Second Short Term RFP, post the Second Short Term RFP to the Authority's website and otherwise comply with the requirements of applicable law to select the Short Term Manager, which selection shall not occur until the Authority's receipt of a letter from Tioga Energy ABC authorizing and/or confirming/ratifying the Authority's undertaking of this process on behalf of Tioga Energy ABC. Upon compliance with the terms of the Second Short Term RFP and applicable law, the Authorized Officers are each severally authorized to award, on behalf of the Authority and as applicable subject to the approval/confirmation/ratification of Tioga Energy ABC with respect to the Second Short Term RFP (the Second Short Term RFP should include a provision such that the Short Term Manager will agree to the subsequent New Parent Assignment), the successful respondents from the respective Proposals received pursuant to the Second Short Term RFP in accordance with the selection provisions of such Second Short Term RFP and applicable law.

Section 4. All actions taken to date by the Authority, the Authorized Officers, Counsel and the Consultants, with respect to the matters set forth in or contemplated by this resolution, are hereby ratified and approved

Section 5. This resolution shall take effect immediately. Notwithstanding the prior sentence, 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 Freeholders, 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 Freeholders a certification from the Clerk stating that the minutes of this meeting have not been vetoed by the Director of the Board of Freeholders.

MOVED/SECONDED:

Resolution moved by Commissioner _____.

Resolution seconded by Commissioner _____.

VOTE:

Commissioner	Yes	No	Abstain	Absent
Pinto				
Ramirez				
Roe				
Sandman				
Bonanni				

ATTESTATION:

This Resolution was acted upon at a Special Meeting of the Authority held on October 2, 2013 at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 2nd day of October, 2013

By: _____

Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of October 2, 2013

By: _____

**Stephen B. Pearlman, Esq., Partner
Inglesino, Pearlman, Wyciskala & Taylor, LLC
Counsel to the Authority**

Resolution #13-27