

RESOLUTION NO. 14-

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

TITLE:

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY
AUTHORIZING THE PURCHASE AND SALE OF SRECS IN CONNECTION WITH
TRANCHE I OF THE MORRIS COUNTY RENEWABLE ENERGY PROGRAM AND
CERTAIN OTHER MATTERS RELATED THERETO

WHEREAS, the Morris County Improvement Authority (including any successors and assigns, the “*Authority*”) has been duly created by resolution duly adopted by the Board of Chosen Freeholders (the “*Board of Freeholders*”) of the County of Morris (the “*County*”) in the State of New Jersey (the “*State*”) as a public body corporate and politic of 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, and the acts amendatory thereof and supplemental thereto (the “*Act*”), and other applicable law;

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, in connection with Tranche I, the County and the Authority entered into that certain “County Guarantee Agreement (Morris County Renewable Energy

Program, Series 2009A,” dated February 1, 2010 (the “*County Guarantee*”) pursuant to which the County guaranteed the payment of all principal of and interest on the Series 2009A Bonds;

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 was initially 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, shortly after the Initial Assignment to ABC, Tioga Energy ABC secured the services of Sustainable Power Group to operate and maintain Tranche I, at a contract price of \$10,000 per month (the “*O&M Contract*”);

WHEREAS, on February 19, 2014, extreme weather conditions caused snow and ice to accumulate on certain of the solar electric generating facilities (“*SGFs*”) constructed as part of the Series 2009A Program, causing damage to same and creating an emergency condition with respect to the areas in the immediate vicinity thereto; and

WHEREAS, the Authority was in contact with Sustainable Power Group to ensure that necessary steps were taken to mitigate the then existing dangerous condition and to mitigate further damage to the SGFs (the “*Emergency Work*”); and

WHEREAS, following completion of the Emergency Work, a claim (the “*Insurance Claim*”) was submitted to Tioga Energy ABC’s insurer of the SGFs, Marsh Risk and Insurance Services (“*Marsh*”), to secure payment for the Emergency Work and also to secure funds to complete the non-emergent repairs to the SGFs; and

WHEREAS, due to delays in processing the Insurance Claim and other factors, there have been significant delays in completing the non-emergent repairs to the SGFs (the “*Remaining Work*”);

WHEREAS, Tioga Energy ABC has recently received the insurance proceeds and is therefore able to pay for the Remaining Work;

WHEREAS, upon completion of the Remaining Work, Tioga Energy ABC will have limited funds on hand to deal with any contingency which may arise this winter with respect to the SGFs;

WHEREAS, the Tioga Energy ABC has a number of unmonetized solar renewable energy certificates (“*SRECs*”), which it is unable to monetize on the SREC market because counterparties view it as not credit worthy due to its status as an “*ABC Co.*”;

WHEREAS, it is in the best interests of the Authority for the Authority to facilitate the sale of SRECs on behalf of the Tioga Energy ABC to ensure that it has sufficient funds on hand to deal with any emergent or non-emergent damage to the SGFs which may arise this winter;

WHEREAS, it is in the best interests of the Authority for a construction manager to oversee the Remaining Work;

WHEREAS, the professional services agreement between the Authority and its Consulting Energy Engineer (as defined in that certain “RESOLUTION ACCEPTING A PROPOSAL AND AUTHORIZING EITHER AN AMENDMENT TO THE EXISTING SERVICES AGREEMENT OR A NEW SERVICES AGREEMENT WITH GABEL ASSOCIATES IN CONNECTION WITH THE AUTHORITY’S SERIES 2011 RENEWABLE ENERGY PROGRAM AND CERTAIN OTHER MATTERS RELATED THERETO,” duly adopted by the Authority on May 21, 2014) includes construction management services related to the Tranche I of the Morris County Renewable Energy Program;

WHEREAS, pursuant to the Program Documents, the costs of such construction management services are payable by Tioga Morris as Additional Lease Payments;

WHEREAS, it is in the best interests of the Authority for its Consulting Energy Engineer to perform construction management services with respect to the Remaining Work;

WHEREAS, pursuant to that certain “RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY ADVISING TIOGA ENERGY ABC 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,” duly adopted by the Authority on November 17, 2014, the Authorized Officer (as defined herein) is authorized to enter negotiations with Sustainable Power Group to reduce its monthly management fee under the O&M Contract;

WHEREAS, it may be in the best interests of the Authority to recommend that Tioga Energy ABC procure a different entity to operate and maintain Tranche I, should the Sustainable Power Group be unwilling to reduce its monthly management fee.

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

Section 1. The Authority hereby agrees to purchase SRECs from Tioga Energy ABC for an amount equal to the sale price the Authority can obtain for said SRECs on the SREC market, with the proceeds to be remitted as agreed between Tioga Energy ABC and the Authority.

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 to execute and deliver such certificates, instruments or documents, as deemed necessary, convenient or desirable by the Authorized Officer, in consultation with counsel, to effectuate the actions contemplated by Sections 1 above.

Section 3. The Authority hereby authorizes an amendment to the professional services agreement with its Consulting Energy Engineer to reflect a cap of \$10,000 to perform construction management services with respect to the Remaining Work, with such final form of the professional services agreement to be determined by the Authorized Officer, after consultation with counsel, to be in the best interests of the Authority. The Authorized Officer is hereby further authorized to take all such further actions in connection therewith in accordance with all applicable law, including without limitation the execution of such other certificates, instruments or documents, as any such Authorized Officer, in consultation with counsel, shall deem necessary, convenient or desirable by any such Authorized Officer to implement the amendment to the professional services agreement.

Section 4. The Authority Officer is hereby authorized to recommend to Tioga Energy ABC that it replace Sustainable Power Group as the entity operating and maintaining Tranche I, if determined by the Authorized Officer, in his sole discretion, to be in the best interests of the Authority.

Section 5. All actions taken to date by the Authority, the Authorized Officers and the Authority’s consultants with respect to the matters set forth in or contemplated by this resolution, are hereby ratified, confirmed and approved.

Section 6. Reserved.

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Section 7. Subject to the second sentence of this section, this resolution shall take effect immediately. 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
Gallopo				
Kovalcik				
Ramirez				
Sandman				
Bonanni				

ATTESTATION:

This Resolution was acted upon at the Regular Meeting of the Authority held on December 22, 2014 at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this ____ day of _____, 2014

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of December 22, 2014

By: _____
Stephen B. Pearlman, Esq., Partner
Pearlman & Miranda, LLC
Counsel to the Authority