

RESOLUTION NO. 14-08

**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 SECOND 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 IMPROVEMENT
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 (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 is now is 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 (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, because the Authority desires to ensure Tranche I 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 until a permanent solution can be achieved, the Authority initially desired 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; and

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/Owner 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 IPROVEMENT 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, the Original RFP Authorizing Resolution authorized, among other things, the issuance of a request for proposal (the “*Original RFP*”), the execution of an agreement setting forth the terms of the sale of Tioga Energy ABC (the “*Consent No. 4*”) to the Short Term Manager, and the issuance of a subsequent request for proposals (the “*New Parent RFP*”), from entities desiring to undertake the further assignment of the Short Term Manager’s membership interest in and to Tioga Morris and become the New Parent Company for Tioga Morris;

WHEREAS, due to a failed Original RFP, on October 2, 2013, the Authority adopted a resolution pursuant to the Act and all other applicable law, recommending Tioga Energy ABC reject all bids and, if so authorized by Tioga Energy ABC issue a second request seeking proposals from qualified solar developers (the “*Second RFP*”) for the sale of Tioga Energy ABC to a to be determined Short Term Manager/Owner entitled “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” (the “*Second RFP Authorizing Resolution*” and together with the Original Authorizing Resolution, the “*Authorizing Resolutions*”);

WHEREAS, on October 30, 2013 the Authority adopted a resolution entitled, “RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY DETERMINING THE SUCCESSFUL RESPONDENT TO 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” (the “*Determination Resolution*”) recommending to Tioga Energy ABC that it sell its membership interests in Tioga Morris to Morris Solar 1, LLC, an entity established by Sustainable Power Group, the successful respondent under the Second RFP. The only other respondent to the Second RFP was Nautilus Solar, LLC (“*Nautilus*”).

WHEREAS, on November 13, 2013 in accordance with Section 13 (“*Section 13*”) of the Act (N.J.S.A. 40:37A-56), the Authority made a detailed report regarding the sale of Tioga Energy ABC to the Short Term Manager to the Board of Freeholders, which report included, without limitation, descriptions of the Second RFP, the Consent No. 4, and the Asset Purchase Agreement (the “*APA*”) and any other certificates required (the “*Sale Documents*”) in order to effectuate the transfer of 100% of Tioga Energy ABC’s membership interest in Tioga Morris to the Morris Solar I, LLC and such report was accepted by the County by resolution adopted by the Board of Freeholders pursuant to Section 13 and entitled, “RESOLUTION PROVIDING CONSENT OF THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MORRIS TO THE SELECTION OF A SHORT TERM MANAGER/OWNER OF PHOTOVOLTAIC SYSTEMS AND THE EXECUTION OF CERTAIN AGREEMENT IN CONNECTION THEREWITH ALL WITH RESPECT TO CERTAIN LOCAL GOVERNMENT FACILITIES IN THE COUNTY OF MORRIS, NEW JERSEY IN CONNECTION WITH THE MORRIS COUNTY IMPROVEMENT AUTHORITY’S COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE BONDS, SERIES 2009A AND CERTAIN OTHER MATTERS RELATED THERETO”;

WHEREAS, following preparation of the Authority’s report required by Section 13 of the Act, the Authority engaged in extensive negotiations first with Morris Solar 1, LLC, and later Nautilus, in efforts to agree upon the terms of the Consent No.4; however, the Authority has now determined that the procurement of a Short Term Manager is no longer in the best interests of the Authority. Accordingly, the Authority now desires to proceed directly with the issuance of the New Parent RFP;

WHEREAS, procurement of a New Parent Company through the issuance of the New Parent RFP will require substantial revisions to the Second RFP, and pursuant to N.J.S.A 40A:11-13.2(d), the Authority is authorized to reject all bids where it desires to substantially revise the specifications for the goods or services;

WHEREAS, pursuant to the Company Lease Agreement, a Basic Lease Payment in the amount of \$1,821,931.20 was due on March 15, 2014. Additionally, Administrative Expenses have accrued, and will continue to accrue, related to, among other things, the O&M Contract. The Company does not have sufficient funds available to make the Basic Lease Payment or pay the Administrative Expenses in their entirety and therefore, it may be in the best interests of the County and the Authority to utilize funds currently on deposit in the County Security Fund and/or Revenue Fund, as necessary to ensure that all financial obligations related to Tranche I are satisfied, including preventing a default on the future Bond Payments and securing payment of Administrative Expenses, including payments required under the O&M Contract;

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

Section 1. The Authority hereby determines to recommend to Tioga Energy ABC to reject the proposals by Morris Solar I, LLC and Nautilus to become Short Term Manager, pursuant to N.J.S.A. 40A:11-13.2(d).

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 issue the New Parent RFP, as previously authorized by the Original RFP Authorizing Resolution, and solicit proposals pursuant to the New Parent RFP from entities desiring to undertake the ABC Assignment and become the owner for Tioga Morris.

Section 3. Upon receipt of said Proposals for the New Parent Company, the Authorized Officers are each hereby further severally authorized to review and confirm all Program Document changes with respondents to the New Parent RFP, and thereafter award the New Parent Company to the successful respondent in accordance with the terms of the New Parent RFP; provided, however, that notwithstanding the foregoing, the New Parent Company shall: (i) represent that it shall provide Tioga Energy Morris with all services and supplies and other assistance, in whatever form (financial, managerial or otherwise) deemed necessary to continue to service Tranche I of the Renewable Energy Program, (ii) represent that it shall take all such necessary actions to preserve the assets of Tioga Morris, and (iii) represent that it shall provide the Authority with an accounting of assets of Tioga Morris, and such respective entity, upon acceptance of the ABC Assignment, as applicable. Each Authorized Officer is further severally authorized to negotiate such other terms of the ABC Assignment, as applicable, in consultation with the Consultants, as such Authorized Officer deems necessary, desirable and convenient and in the best interest of the Parties and the Renewable Energy Program.

Section 4. The Authorized Officers, together with the Consultants, are hereby authorized to prepare the New Parent RFP, post the New Parent RFP to the Authority’s website and otherwise comply with the requirements of applicable law to select the New Parent Company, 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 New Parent 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, the successful respondent pursuant to the New Company RFP in accordance with the selection provisions of the New Company RFP and applicable law.

Section 5. Notwithstanding the above, the Authorized Officers, together with the Consultants, are hereby authorized to procure a Short Term Manager, should such a selection of a Short Term Manager, in the discretion of the Authorized Officers, be deemed to be in the best interests of the County and the Authority.

Section 6. The Authorized Officers are each hereby severally authorized to enter an operations and maintenance contract, for a value of no greater than \$10,000 per

month, should Sustainable Power Group cease maintaining and operating Tranche I on behalf of Tioga Energy ABC pursuant to the O&M Contract.

Section 7. The Authorized Officers are each hereby severally authorized to allocate, at their discretion, funds from the County Security Fund and the Revenue Fund (including but not limited to the Aged Account) to secure satisfaction of Bond Payments, Administrative Expenses, or any other purpose authorized under the Bond Resolution, as may be in the best interests of the County and the Authority. The exercise of such discretion shall be manifested through the execution of a Notice of Direction to the attention of the Trustee.

Section 8. 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.

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Section 9. 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
Pinto				
Ramirez				
Roe				
Sandman				
Bonanni				

ATTESTATION:

This Resolution was acted upon at the Regular Meeting of the Authority held on March 19, 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 March 19, 2014

By: _____
Stephen B. Pearlman, Esq., Partner
Pearlman & Miranda, LLC
Counsel to the Authority
Agent for Inglesino, Wyciskala & Taylor, LLC