

RESOLUTION NO. 13-30

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

TITLE:

**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 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 (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 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 (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/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 execution of an agreement setting forth the terms of the sale of Tioga Energy ABC (the “*Consent No. 4*”) to the Short Term Manager;

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 “*RFP*”);

WHEREAS, on September 26, 2013, the amended due date for proposals pursuant to the RFP, the Authority received four (4) proposals (each a “*Proposal*”) in response to the 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 advised 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, 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 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, pursuant to the Second 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 “*Second RFP*” and together with the RFP, the “*RFP’s*”);

WHEREAS, on October 25, 2013, the amended due date for proposals pursuant to the RFP, the Authority received two (2) proposals (each a “*Second Proposal*”) in response to the RFP from: (1) Nautilus Solar (“*Nautilus*”) and (2) Sustainable Power Group (“*SPower*” and together with Nautilus, the “*Second Proposals from the Potential Solar Developer Respondents*”);

WHEREAS, upon review, each of the two (2) Second Proposals from the Potential Solar Developer Respondents were deemed compliant with the requirements of the RFP;

WHEREAS, the Authority’s Evaluation Team has evaluated the Second Proposals from the Second Potential Solar Developer Respondents in that certain “Solar Proposal Evaluation Report Morris County Renewable Energy Program Morris County Renewable Energy Program, Series 2009A Proposals of October 25, 2013 Prepared for Morris County Improvement Authority” dated October 28, 2013 (a copy of which is attached hereto as Exhibit A, the “*Second Evaluation Report*”) and has recommended the award of the Successful Respondent (as defined in the Second RFP) as named in the Second Evaluation Report; and

WHEREAS, the Authorizing Resolutions and the RFPs contemplated the Authority paying its RFP Consultants (as defined below) in an amount to be determined by an Authorized Officer (as defined below) of the Authority as an Administrative Expense from Project Revenues and billed to the Project Company at closing of the Temporary ABC Assignment and paid on such date from Tioga Morris assets from monies on deposit with the Trustee (the “*RFP Consultant Fees*”);

WHEREAS, prior to the execution of Consent No. 4 and the APA and in accordance with Section 13 (“*Section 13*”) of the Act (N.J.S.A. 40:37A-56), the Authority shall have made a detailed report regarding the sale of Tioga Energy ABC to the Short Term Manager to the Board of Freeholders, which report shall include, without limitation, descriptions of the Second RFP, the Consent No. 4, and if and as applicable, the Asset Purchase Agreement (the “*APA*”) in order to effectuate the transfer of 100% of Tioga Energy ABC’s interest in Tioga Morris to the Successful Respondent and any other transfer documents (collectively, the “*Sale Documents*”), and which report shall be accepted by the County by resolution adopted by the Board of Freeholders pursuant to Section 13.

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

Section 1. The Authority hereby determines that pursuant to the RFP Authorizing Resolutions and in accordance with the process contemplated in the preambles hereof, the Successful Respondent for the Second RFP shall be _____ in accordance with the Successful Respondent Proposal. This award shall not be binding on the Authority until the Sale Documents setting forth the terms of the arrangement, including without limitation the incorporation of the terms of the Successful Respondent Proposal, shall have been executed, adopted and delivered by the Authority and the other parties thereto. The Chairman of the Authority, the Secretary of the Authority or their designee (each an, *Authorized Officer*”), are hereby severally authorized to (a) execute and deliver to the other parties thereto the Sale Documents incorporating the terms of the Successful Respondent Proposal and (b) take such other action in connection with the matters set forth above, including without limitation the payment of the RFP Consultant Fees as directed by a certificate of an Authorized Officer, execution and delivery of such other certificates, instruments or other document in connection therewith or otherwise contemplated thereby, as the Authorized Officer, after consultation with counsel, energy consultant or financing consultant (the “*RFP Consultants*”), shall determine to be in the best interests of the Authority, the County, or the Series 2009A Local Units (as defined in the Second RFP) in implementing the Renewable Energy Program.

Section 2. The Authorized Officers are each hereby severally authorized and directed to deliver or cause to be delivered to the governing body of the County a detailed report describing the applicable Sale Documents and the sale of Tioga Energy ABC to the Short Term Manager, all in accordance with Section 13.

Section 3. Each Authorized Officer is hereby further authorized and directed to take all actions deemed necessary, convenient or desirable by any such Authorized Officer to obtain the resolution of the governing body of the County contemplated by Section 13 relating to the Sale Documents and the sale of Tioga Energy ABC to the Short Term Manager.

Section 4. All actions taken to date by the Authority, the Authorized Officers and the RFP 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 30, 2013 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this 30th day of October, 2013

By: _____

Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of October 30, 2013

By: _____

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

Exhibit A

Attach Second Evaluation Report