

RESOLUTION NO. 13-36

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

TITLE:

**RESOLUTION ACCEPTING A PROPOSAL AND AUTHORIZING AN
AMENDMENT TO THE EXISTING SERVICES AGREEMENT WITH GABEL
ASSOCIATES IN CONNECTION WITH THE TIOGA ENERGY, INC
ASSIGNMENT FOR THE BENEFIT OF CREDITORS 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
THERE TO**

WHEREAS, the Morris County Improvement Authority (the "*Authority*") has been duly created by resolution no. 42 entitled "Resolution of the Board of Chosen Freeholders of Morris County, New Jersey creating the Morris County Improvement Authority" duly adopted by the Board of Chosen Freeholders (the "*Morris County Board of Freeholders*") of the County of Morris (the "*Morris County*") in the State of New Jersey (the "*State*") on April 10, 2002 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 (as codified at N.J.S.A. 40:37A-44 *et seq.*, the "*Act*"), and other applicable law;

WHEREAS, the Authority has developed a program (the "*Original 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 or other work required or convenient for the installation of such systems (collectively, the renewable energy capital equipment and facilities, the "*Original 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*"), all as an authorized purpose under N.J.S.A. 40:37A-54(a) of the Act;

WHEREAS, for the reasons set forth therein, on November 30, 2009 the Authority adopted Resolution No. 09-51 (the "*Original 2010 Consulting Energy Engineer Authorizing Resolution*"), authorizing the execution of a Services Agreement

(as defined in the Original 2010 Consulting Energy Engineer Authorizing Resolution, but defined herein as the “*Original 2010 Services Agreement*”) on a non-fair and open basis in accordance with N.J.S.A. 19:44A-20.4 *et seq.*, with the Consulting Energy Engineer (as defined in the Original 2010 Consulting Energy Engineer Authorizing Resolution) to perform Consulting Energy Engineering Services (as defined in the Original 2010 Consulting Energy Engineer Authorizing Resolution, but defined herein as the “*Original 2010 Consulting Energy Engineering Services*”) for the one year term set forth therein; and

WHEREAS, the Authority utilized the Consulting Energy Engineer as a construction manager (the “*Series 2009A Construction Manager Services*”) in connection with the application of the primary portion of the proceeds of the Authority’s \$21,600,000 aggregate principal amount of “County of Morris Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2009A” dated February 18, 2010 (the “*Series 2009A Bonds*”;

WHEREAS, by Authority resolution no. 10-017 adopted April 20, 2010 and entitled “RESOLUTION AMENDING THE SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTING ENERGY ENGINEER IN CONNECTION WITH THE AUTHORITY’S RENEWABLE ENERGY PROGRAM” (the “*First Supplemental 2010 Consulting Energy Engineer Authorizing Resolution*”), the Authority authorized the amendment of the scope of the Original 2010 Consulting Energy Engineering Services to be performed by the Consulting Energy Engineer under the Original 2010 Services Agreement to include the Series 2009A Construction Manager Services (as so amended, the “*First Amended 2010 Consulting Energy Engineering Services*”);

WHEREAS, by Authority resolution no. 10-027 adopted June 16, 2010 and entitled “RESOLUTION AUTHORIZING THE FURTHER AMENDMENT OF THE CONSULTING CONTRACT WITH THE AUTHORITY’S CONSULTING ENERGY ENGINEER IN CONNECTION WITH THE AUTHORITY’S RENEWABLE ENERGY PROGRAM” (the “*Second Supplemental 2010 Consulting Energy Engineer Authorizing Resolution*” and together with the First Supplemental 2010 Consulting Energy Engineer Authorizing Resolution, the “*Supplemental 2010 Consulting Energy Engineer Authorizing Resolutions*”), the Authority further amended the Original 2010 Services Agreement (as so amended, the “*Amended 2010 Services Agreement*”) to reflect the proposed scope and pricing for the First Amended 2010 Consulting Energy Engineering Services to be performed by the Consulting Energy Engineer (as so amended, the “*Second Amended 2010 Consulting Energy Engineering Services*” and together with the First Amended 2010 Consulting Energy Engineer Services, the “*Prior Consulting Energy Engineer Services*”), all in accordance with the proposal of Gabel Associates dated, April 13, 2010 (the “*2010 Proposal*”), a copy of which was attached to the Second Supplemental 2010 Consulting Energy Engineer Authorizing Resolution;

WHEREAS, the Authority utilized the Consulting Energy Engineer as a construction Manager (the “*Series 2011A Construction Manager Services*”, and together with the Series 2009A Construction Manager Services, the “*Construction Manager*”

Services”) in connection with the oversight of the application of the primary portion of the proceeds of the Authority’s \$33,100,000 aggregate principal amount of County of Morris Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011A [Federally Taxable] dated December 8, 2011 (the “*Series 2011A Bonds*”);

WHEREAS, by resolution dated June 19, 2012 the Authority further amended the Services Agreement (the “*Amended 2012 Services Agreement*” and together with the Amended 2010 Services Agreement and the Original 2010 Services Agreement, the “*Prior Services Agreement*”) to reflect the proposed scope and pricing for the Prior Consulting Energy Engineer Services to include the Series 2011A Construction Manager Services (the “*2012 Consulting Energy Engineering Services*” and together with the Prior Consulting Energy Engineering Services, the “*Consulting Energy Engineering Services*”) to be performed by the Consulting Energy Engineer in accordance with the proposal of Gabel Associates dated, May 31, 2012 (the “*2012 Proposal*” and together with the 2010 Proposal, the “*Prior Proposals*”), all on a non-fair and open basis in accordance with N.J.S.A. 19:44A-20.4 *et seq.*

WHEREAS, in connection with the Series 2009A Bonds, 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 “*Parties*”) entered into certain agreements;

WHEREAS, on April 30, 2013 Tioga Energy, Inc., the managing member of Tioga Morris assigned 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 desires to select a short term manager/owner (the “*Short Term Manager*”) on an interim basis (the “*Short Term Remedy*”) until the selection of a New Parent Company.

WHEREAS, during the period for which the Short Term Manager is overseeing Tranche I of the Authority’s Renewable Energy Program, the Authority further desires to determine a long term solution to the filing of the general assignment for the benefit of creditors and therefore select a New Parent Company to own 100% (or a controlling percentage) of the membership interests of Tioga Morris (the “*Long Term Remedy*” and together with the Short Term Remedy (the “*Tioga ABC Remedy*”);

WHEREAS, Gabel Associates submitted to the Authority a proposal entitled, “Proposal to Provide Energy Consulting Services to Morris County Improvement

Authority” dated August 21, 2013 with respect to the Tioga ABC Remedy and all services related thereto including but not limited to determining the best course of action to pursue (the “*Gabel Tioga ABC Proposal*”) a copy of which is attached hereto as **Exhibit A**;

WHEREAS, the Authority desires to further amend the Prior Services Agreement (the “*2013 Services Agreement Amendment*”) to reflect the proposed scope and pricing for the Gabel Tioga ABC Proposal to be performed by the Consulting Energy Engineer in accordance with the Gabel Tioga ABC Proposal for work commencing on January 1, 2013;

WHEREAS, due to the (i) unique nature of the services rendered by Gabel Associates, (ii) long history of providing services in connection with the Authority’s Renewable Energy Program, specifically with respect to the Series 2009A Bonds, and (iii) time sensitive nature of the Tioga ABC Remedy, the Authority desires to accept the Gabel Tioga ABC Proposal, subject to receipt of the requisite forms, on a non-fair and open basis in accordance with N.J.S.A. 19:44A-20.4 *et seq.* and award the contract pursuant to N.J.S.A. 40A:11-5(1)(A)(ii) and the applicable regulations regarding the procurement of extraordinary unspecifiable services (collectively, the “*EUS Law*”)

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

Section 1. Pursuant to the EUS Law the Gabel Tioga ABC Proposal is hereby accepted to include the responsibilities set forth on **Exhibit A** for the fees as set forth therein up to a not to exceed fee of \$25,000.00.

Section 2. The Chairperson, Vice-Chairperson and the Treasurer of the Authority (including their designees, each an “*Authorized Officer*”) are hereby severally authorized and directed to execute either the 2013 Services Agreement Amendment, as deemed necessary, desirable and convenient and determined to be in the best interest of the Authority and the County by the Authorized Officer, after consultation with Inglesino, Pearlman, Wyciskala & Taylor, LLC (the “*Consultant*”), all in accordance with applicable law and upon receipt of all requisite forms to comply with a non-fair and open basis in accordance with N.J.S.A. 19:44A-20.4 *et seq.* and (b) take such actions as are required in connection with the EUS Law to effect such contract, including without limitation publication thereof.

Section 3. All actions taken to date by the Authority and the Consultant in connection with the Tioga ABC Proposal are hereby ratified, confirmed and approved, and the Authorized Officers and the Consultant are hereby severally authorized and directed to research, develop and implement the best course of action with respect to the Tioga ABC and the Gabel Tioga ABC Proposal.

Section 4. 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 Morris

County Board of Freeholders, by the end of the fifth business day following this meeting or as soon as possible thereafter, a copy of the minutes of this meeting. The Secretary is hereby further authorized and directed to obtain from the Clerk of the Morris County Board of Freeholders stating that the minutes of this meeting have not been vetoed by the Director of the Morris County Board of Freeholders.

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Section 5. This resolution shall be effective immediately, unless it has been vetoed in accordance with N.J.S.A. 40:37A-50(e) of the Act.

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 August 27, 2013 at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 21ST day of November, 2013

By: _____

Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of November 21, 2013

By: _____

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

EXHIBIT A

[Attach Form of Gabel Tioga ABC Proposal]

