

RESOLUTION NO. 14-09

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

TITLE:

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 GRID SUPPLY PROCEEDINGS AT THE NEW JERSEY BOARD OF PUBLIC UTILITIES WITH RESPECT TO THE MORRIS COUNTY IMPROVEMENT AUTHORITY'S RENEWABLE ENERGY PROGRAM AND CERTAIN OTHER MATTERS RELATED THERETO

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, 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*");

WHEREAS, by resolution dated August 27, 2013 adopted a resolution entitled, "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 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 THERETO" to either (i) further amend the Prior Services Agreement (the "*2013 Tioga 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 or (ii) execute a new agreement (the "*Gabel Tioga ABC Services Agreement*") setting forth the terms of the Gabel Tioga ABC Proposal;

WHEREAS, Gabel Associates submitted to the Authority a proposal entitled, "Proposal to Provide Energy Consulting Services to Morris County Improvement Authority") to provide regulatory consulting services with respect to the "grid supply" proceeding at the New Jersey Board of Public Utilities (BPU); with the goal of ensuring a healthy and stable SREC market (the "*Gabel BPU Proposal*");

WHEREAS, the Authority desires to either (i) further amend the Prior Services Agreement (the "*2014 BPU Services Agreement Amendment*"), to reflect the proposed scope and pricing for the Gabel BPU Proposal to be performed by the Consulting Energy

Engineer in accordance with the Gabel BPU Proposal or (ii) execute a new agreement (the “*Gabel BPU Services Agreement*”) setting forth the terms of the Gabel BPU Proposal;

WHEREAS, due to the (i) unique nature of the services rendered by Gabel Associates and (ii) long history of providing services in connection with the Authority’s Renewable Energy Program, specifically with respect to the SREC Market, the Authority desires to accept the Gabel BPU 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 BPU Proposal is hereby accepted to include the responsibilities set forth in **Exhibit A** attached hereto for the fees as set forth therein.

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 (a) execute either the 2014 BPU Services Agreement Amendment or a new BPU Services Agreement, 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 Pearlman & Miranda, 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 BPU 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 Gabel BPU 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.

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 March 19, 2014 at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 19th day of March, 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**

EXHIBIT A

[Attach Form of Gabel BPU Proposal]

