

RESOLUTION NO. 14-17

**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 AUTHORITY'S SERIES 2011 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 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 "*Board of Freeholders*") of the County of Morris ("*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 (the "*Act*") and other applicable law;

WHEREAS, the Authority has developed a program (the "*Morris 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 "*Morris Renewable Energy Projects*") for and on behalf of Morris County and local governmental units within Morris 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 Morris County, the "*Morris Local Units*");

WHEREAS, the County of Sussex, New Jersey, a political subdivision of the State ("*Sussex County*") has also developed a renewable energy program through the Authority (the "*Sussex Renewable Energy Program*" and together with the Morris Renewable Energy 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 “*Sussex Renewable Energy Projects*” and together with the Morris Renewable Energy Projects, the “*Renewable Energy Projects*”) for and on behalf of Sussex County and its affiliates, and the local governmental units within Sussex 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 Sussex County, the “*Sussex Local Units*” and together with the Morris Local Units, the “*Local Units*”);

WHEREAS, as of the date hereof, Sussex County has not created its own county improvement authority, and therefore pursuant to the Act, Sussex County may determine to utilize the services of another county improvement authority, including without limitation the Authority, with the consent of both Sussex County, a beneficiary county under the Act, and the Morris County Board of Freeholders, for any purpose for which an improvement authority shall exist, including those set forth in Section 11 of the Act (N.J.S.A. 40:37A-54, “*Section 11*”), which purposes include the development and implementation of the Renewable Energy Program;

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;

WHEREAS, the Authority (i) utilized the Consulting Energy Engineer as a construction manager (the “*Morris 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 “*Morris Series 2009A Bonds*”), issued to finance tranche I of the Authority’s Renewable Energy Program (“*Morris Renewable Energy Program Tranche I*”), (ii) was and continues to be in need of a construction manager (the “*Morris Series 2011A Construction Manager Services*”, and together with the Morris Series 2009A Construction Manager Services, the “*Morris 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 “*Morris Series 2011A Bonds*”), issued to finance tranche II of the Authority’s Renewable Energy Program (“*Morris Renewable Energy Program Tranche II*”), and (iii) was and continues to be in need of a construction manager (the “*Sussex Series 2011A Construction Manager Services*”, and together with the Morris 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 \$26,715,000 aggregate principal amount of “County of Sussex Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011A (Federally Taxable)” dated December 15, 2011 (the “*Sussex Series 2011A Bonds*”), issued to finance the Sussex Renewable Energy Program;

WHEREAS, the Morris Series 2009A Bonds were initially used to fund all of the engineering, legal, financial advisory, and other preliminary costs of the Renewable Energy Program necessary, desirable, or convenient for the development and implementation of the Renewable Energy Program (the “*Preliminary Program Costs*”), and upon issuance of the Morris Series 2011A Bonds, a portion of the proceeds thereof were utilized to amortize the Preliminary Program Costs across the Morris Renewable Energy Program Tranche II. The Authority hereby desires to ratify, confirm, and approve such amortization of costs across the Morris Renewable Energy Program Tranche II;

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, by Authority resolution no. 12-18, adopted June 19, 2012 and entitled “RESOLUTION AUTHORIZING THE FURTHER AMENDMENT OF THE CONSULTING CONTRACT WITH THE AUTHORITY’S CONSULTING ENERGY ENGINEER IN CONNECTION WITH THE AUTHORITY’S REENWABLE ENERGY PROGRAM” (the “*Supplemental 2012 Consulting Energy Engineer Authorizing Resolution*”), the Authority further amended the Original 2010 Services Agreement (as so amended, the “*Amended 2012 Services Agreement*,”) to reflect the proposed scope and pricing for the Prior Consulting Energy Engineer Services to include the 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 21, 2012 (the “*2012 Proposal*”), to a maximum fee of \$220,000 for the Morris Renewable Energy Program and \$230,000 for the Sussex Renewable Energy Program, a copy of which 2012 Proposal was attached to the Supplemental 2012 Consulting Energy Engineer Authorizing Resolution, all on a non-fair and open basis in accordance with N.J.S.A. 19:44A-20.4 *et seq.*;

WHEREAS, by resolution no. 13-12, adopted April 17, 2013 and entitled “RESOLUTION AUTHORIZING THE FURTHER AMENDMENT OF THE CONSULTING CONTRACT WITH THE AUTHORITY’S CONSULTING ENERGY ENGINEER WITH RESPECT TO DELAY-RELATED COSTS INCURRED BY THE AUTHORITY IN CONNECTION WITH THE AUTHORITY’S SERIES 2011 RENEWABLE ENERGY PROGRAM” (the “*Supplemental 2013 Consulting Engineer Authorizing Resolution*”), the Authority further amended the Original 2010 Services Agreement (as so amended, the “*Amended 2013 Services Agreement*,” and together with the Amended 2012 Services Agreement, the Amended 2010 Services Agreement and the Original 2010 Services Agreement, the “*Prior Services Agreement*”), to incorporate the understanding that the provisions of the Company Lease Agreements require payment by SunLight of Administrative Expenses as Additional Lease Payments, and, as such, any Consultant Costs incurred by the Authority for services provided by the Consulting Energy Engineer either specifically for a delay-related service or in excess of the \$220,000 and \$230,000 maximum fees cited above for the respective County Renewable Energy Programs, shall be passed through to SunLight for payment (the “*Delay-Related Cost Amendment*”);

WHEREAS, SunLight and the Consulting Energy Engineer agreed to certain modifications to the Prior Services Agreement related to payment for the delay-related services or those services in excess of the \$220,000 and \$230,000 maximum fees cited above for the respective County Renewable Energy Programs; specifically, SunLight and the Consulting Energy Engineer agreed that the Consulting Energy Engineer would be compensated on an hourly basis for work performed in accordance with the Prior Services Agreement, rather than based upon the fixed amount per month as outlined in the Prior Services Agreement. The Authority now desires to ratify, confirm, and approve the adjustment from fixed fee to hourly billing, such invoices being payable by SunLight.

WHEREAS, the Consulting Energy Engineer submitted to the Authority proposals dated May 13, 2014 to provide energy consulting services to the Authority related to the completion of the Renewable Energy Project (the “2014 Proposal”);

WHEREAS, in view of the fact that (i) the Consulting Energy Engineer was originally obtained through a “fair and open” process in accordance with State Pay to Play Law; (ii) the Consulting Energy Engineer possesses the unique knowledge and experience set forth in the Original 2010 Consulting Energy Engineer Authorizing Resolution; and (iii) to procure a new consultant would be at great expense to the Authority because of both procurement costs and the significant time required for a new consultant to familiarize itself with the facts and circumstances surrounding the Renewable Energy Program, as partially discussed in the Supplemental 2013 Consulting Energy Engineer Authorizing Resolution, the Authority desires to retain the Consulting Energy Engineer under substantially the same terms and conditions as the Prior Services Agreement under a non-fair and open process, through the earlier of one year from the date hereof or the completion of all Consulting Energy Engineering Services;

WHEREAS, the Authority desires to either (i) further amend the Prior Services Agreement (the “2014 Services Agreement Amendment”), to reflect the proposed scope and pricing for the 2014 Proposal to be performed by the Consulting Energy Engineer in accordance with the 2014 Proposal or (ii) execute a new agreement (the “Gabel Services Agreement”) setting forth the terms of the 2014 Proposal, all on a non-fair and open basis in accordance with N.J.S.A. 19:44A-20.4 *et seq.*;

WHEREAS, the Consulting Energy Engineer, previously procured through the professional exception services exception to the Local Public Contracts Law; now being awarded 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”), due to the facts and circumstances of the remaining services to be provided;

WHEREAS, all work to be performed by the Consulting Energy Engineer in accordance with the 2014 Proposal shall constitute a delay-related service or service in excess of the \$220,000 and \$230,000 maximum fees cited above for the respective County Renewable Energy Programs, and shall therefore be passed through to SunLight in accordance with the Delay-Related Cost Amendment.

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

Section 1. Pursuant to the EUS Law, the 2014 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 each hereby severally authorized and directed to negotiate, execute and deliver the 2014 Services

Agreement Amendment or the Gabel Services Agreement with the Consulting Energy Engineer, which shall incorporate the Delay-Related Cost Amendment, with such final form to be determined by the Authorized Officer, after consultation with counsel, to be in the best interests of the Authority, and such 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 Services Agreement. The 2014 Services Agreement Amendment or the Gabel Services Agreement, as applicable, shall be entered into in accordance with all rules and regulations involving a non-fair and open award in accordance with N.J.S.A. 19:44A-20.4 *et seq.*

Section 3. The Secretary and the Assistant Secretary of the Authority are hereby authorized and directed, where required, to affix the corporate seal of the Authority and to attest to the signature of the Authorized Officer on any such Services Agreement, including such other certificates, instruments or documents contemplated herein. Thereafter the Authorized Officer is hereby authorized and directed to deliver any such fully authorized, executed, delivered, and if applicable, attested and sealed certificates, instruments and documents to any interested party.

Section 4. All actions taken to date by the Authority in connection with the use of a portion of the proceeds of the Morris Series 2011A Bonds to amortize Preliminary Program Costs across the Morris Renewable Energy Program Tranche II, are hereby ratified, confirmed, and approved.

Section 5. All actions taken to date by the Authority and the Consulting Energy Engineer in connection with the Prior Services Agreement, the 2014 Services Agreement Amendment, or the Gabel Services Agreement, including, but not limited to, the adjustment from flat fee to hourly billing, 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 2014 Proposal.

Section 6. 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 7. Reserved

Section 8. 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 May 21, 2014 at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 21st day of May, 2014

By: _____

Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of May 21, 2014.

By: _____

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

EXHIBIT A

[Attach Form of 2014 Proposal]