

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

TITLE:

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY
AUTHORIZING THE ADVANCE PAYMENT TO SUBCONTRACTORS RELATED TO
EMERGENCY WORK PERFORMED IN FURTHERANCE OF TRANCHE I OF THE
AUTHORITY'S RENEWABLE ENERGY PROGRAM**

WHEREAS, the Morris County Improvement Authority (the “*Authority*”) has been duly created by resolution of the County of Morris (the “*County*”), State of New Jersey (the “*State*”) and exists in good standing as a public body corporate and politic under and pursuant to all applicable law, including the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, as amended from time to time (codified at N.J.S.A. 40:37A-44 et seq., the “*Act*”);

WHEREAS, on November 12, 2008 the Authority issued the “REQUEST FOR PROPOSALS - For a Developer of Photovoltaic Systems with Respect to Certain Local Government Facilities in the County of Morris, New Jersey (the “*2009A RFP*”) 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, 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 July 15, 2009 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 “*Project Company*” or “*Tioga Morris*,” and together with the Authority and the Series 2009 Local Units, the “*Parties*”) was awarded the contract, pursuant to the 2009A RFP, as the solar developer in connection with the Series 2009A Program; and

WHEREAS, on April 30, 2013, Tioga Energy, Inc., the managing member of Tioga Morris made a general assignment for the benefit of creditors (the “*Initial Assignment*”) to Tioga Energy (Assignment for the Benefit of Creditors), LLC (“*Tioga Energy ABC*”), including its membership interests in Tioga Morris; and

WHEREAS, shortly after the Initial Assignment, Tioga Energy ABC secured the services of Sustainable Power Group to operate and maintain the solar electric generating facilities (“*SGFs*”) constructed as part of the Series 2009A Program, at a contract price of \$10,000 per month (the “*O&M Contract*”); and

WHEREAS, on February 19, 2014, extreme weather conditions caused snow and ice to accumulate on certain of the *SGFs* constructed as part of the Series 2009A Program, causing damage to same and creating an emergency condition with respect to the areas in the immediate vicinity thereto; and

WHEREAS, the Authority was in contact with Sustainable Power Group to ensure that necessary steps were taken to mitigate the then existing dangerous condition and to mitigate further damage to the *SGFs*; and

WHEREAS, Sustainable Power Group, in turn, directed two subcontractors, William F. Lubeck Co., Inc. (“*Lubeck*”) and Pro-Tech Energy Solutions (“*Pro-Tech*,” together with Lubeck, the “*Subcontractors*”), respectively, to respond to the emergency situation and to secure the integrity and safety of the systems (the “*Emergency Work*”); and

WHEREAS, in performing the Emergency Work, Lubeck undertook work totaling at \$113,356.50 and Pro-Tech undertook work totaling at \$31,729.25; and

WHEREAS, following completion of the Emergency Work, a claim (the “*Insurance Claim*”) was submitted to Tioga Energy ABC’s insurer of the *SGFs*, Marsh Risk and Insurance Services (“*Marsh*”), to secure payment for the Emergency Work;

WHEREAS, although the Authority is attempting to facilitate payment of the Insurance Claim, the amount of time since completion of the Emergency Work caused the Subcontractors to appeal to the Authority for direct payment for such work;

WHEREAS, pursuant to the Local Public Contracts Law’s emergency provision, N.J.S.A. 40A:11-6, the Authority is authorized to hire subcontractors without bidding when an emergency affecting the public health, safety or welfare requires the immediate performance of services; and

WHEREAS, pursuant to the emergency appropriation provision of the Local Budget Law, N.J.S.A. 40A:4-46, the Authority is authorized to make an emergency appropriation after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof; and

WHEREAS, in light of the foregoing circumstances, it is in the best interests of the Authority to make an advance totaling no more than \$50,000 to the Subcontractors (the “*Advance Payment*”) to be allocated pro-rata between them, with \$39,050.00 payable to Lubeck and \$10,950.00 payable to Pro-Tech from funds available to the Authority, and which shall be reimbursed to the Authority upon payment of the Insurance Claim.

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

Section 1. The Chair of the Authority, the Vice-Chair of the Authority, the Treasurer of the Authority, or their designee (each an “*Authority Authorized Officer*”) are hereby severally authorized to (a) execute an agreement with the Subcontractors and Tioga Energy ABC to secure an assignment of a portion of the proceeds from the Insurance Claim as reimbursement for the Advance Payment (the “*Advance Agreement*”); and (b) release \$50,000 to the Subcontractors, on a pro-rata basis with \$39,050.00 payable to Lubek and \$10,950.00 payable to Pro-Tech from funds available to the Authority, following, or simultaneous with, the execution of the Advance Agreement.

Section 2. All actions taken to date by the Authority Authorized Officers, the Authority’s special energy and bond counsel, Inglesino, Wyciskala & Taylor, LLC, through their Agent, Pearlman & Miranda, LLC, and the Authority’s special energy consultant Gabel Associates, Inc., with respect to the matters set forth in or contemplated by this resolution are hereby ratified, confirmed, and approved.

Section 3. The Authority Authorized Officers and the Authority’s special energy and bond counsel, Inglesino, Wyciskala & Taylor, LLC, through their Agent, Pearlman & Miranda, LLC, are hereby authorized to take all such further actions in connection herewith, and to execute and deliver such other documents, certificates, and instruments necessary, desirable, or convenient to implement the transaction in accordance with all applicable law.

Section 4. 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
Roe				
Pinto				
Ramirez				
Sandman				
Bonanni				

ATTESTATION:

This Resolution was acted upon at the Special Meeting of the Authority held on July 16, 2014 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this 16th day of July, 2014

By: _____

Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of July 16, 2014

By: _____

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