

RESOLUTION OF THE BOARD OF COMMISSIONERS
MORRIS COUNTY IMPROVEMENT AUTHORITY

TITLE:

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY
AUTHORIZING THE TRANSFER OF FUNDS 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 (including any successors and assigns, the "*Authority*") has been duly created by resolution duly adopted by the Board of Chosen Freeholders (the "*Board of Freeholders*") of the County of Morris (the "*County*") in the State of New Jersey (the "*State*") 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; and

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*"); and

WHEREAS, 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*") 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; and

WHEREAS, in connection with Tranche I, the County and the Authority entered into that certain “County Guarantee Agreement (Morris County Renewable Energy Program, Series 2009A,” dated February 1, 2010 (the “*County Guarantee*”) pursuant to which the County guaranteed the payment of all principal of and interest on the Series 2009A Bonds; and

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 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 (the “*New Parent Company*”); and

WHEREAS, pursuant to the Company Lease Agreement, a Basic Lease Payment in the amount of \$360,172.80 is payable by Tioga Morris on September 15, 2014; and

WHEREAS, it is anticipated that Tioga Morris may have insufficient funds available to it to satisfy its September 15, 2014 Basic Lease Payment obligation when such Basic Lease Payment becomes due; and

WHEREAS, it is anticipated that Tioga Morris may have insufficient funds available to it at the closing of the ABC Assignment to satisfy certain Administrative Expenses, including, but not limited to, those that have accrued in relation to the Authority’s procurement of a New Parent Company; and

WHEREAS, there is currently approximately \$2,189,970.51 on deposit in the County Security Fund; and

WHEREAS, it may be in the best interest of the County and the Authority to utilize funds currently on deposit in the County Security Fund and/or Revenue Fund, as necessary to ensure that all financial obligations related to Tranche I are satisfied, including the payment of Administrative Expenses and preventing a default on future Bond Payments.

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

Section 1. The Chairperson, Vice-Chairperson and the Treasurer of the Authority (including their designees, each an “*Authorized Officer*”) are each hereby severally authorized to allocate, at their discretion, funds from the County Security Fund and the Revenue Fund (including but not limited to the Aged Account) to secure satisfaction of Basic Lease Payments, Bond Payments, Administrative Expenses, or any other purpose authorized under the Bond Resolution, as may be in the best interests of the County and the Authority.

- A. Specifically with respect to the Basic Lease Payment due September 15, 2014, the Authorized Officers are hereby authorized to transfer up to a maximum of \$360,172.80 to satisfy said payment, the final amount to be determined by the Authorized Officers in consultation with the County.

Section 2. The 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 3. All actions taken to date by the Authority, the Authorized Officers and the Authority’s Consultants with respect to the matters set forth in or contemplated by this resolution, are hereby ratified, confirmed and approved.

Section 4. Reserved.

Section 5. Subject to the second sentence of this section, this resolution shall take effect immediately. 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
Kovalcik				
Pinto				
Ramirez				
Sandman				
Bonanni				

ATTESTATION:

This Resolution was acted upon at the Regular Meeting of the Authority held on August 20, 2014 at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 20th day of August, 2014

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of August 20, 2014

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