

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

TITLE:

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY
RECOMMENDING PAYMENT OF EXPENSES BY TIOGA ENERGY
(ASSIGNMENT FOR THE BENEFIT OF CREDITORS), LLC RELATED TO
TRANCHE I OF THE AUTHORITY'S RENEWABLE ENERGY PROGRAM**

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, since the Initial Assignment to ABC, Tioga Energy ABC has rendered services related to the management of Tioga Morris, which services were necessary to the continued operations and maintenance of Tranche I, and Tioga Energy ABC will continue to perform such management services until the ABC Assignment to the New Parent Company;

WHEREAS, Tioga Energy ABC has submitted an invoice, attached hereto as Exhibit A, in the amount of \$60,000 (the “*Tioga ABC Invoice*”), for services rendered and to be rendered through October 31, 2014, and has requested a recommendation from the Authority that such invoice be paid from funds currently available, or to become available, to Tioga Morris;

WHEREAS, additional expenses have accrued as a result of the annual maintenance of Tranche I, which was performed by the Tranche I operations and maintenance provider, William F. Lubeck Co., Inc. (“*Lubeck*”), and Lubeck has submitted an invoice to Tioga Morris, attached hereto as Exhibit B, in the amount of \$54,380 for such services (the “*Lubeck O&M Invoice*”); and

WHEREAS, Tioga Energy ABC has requested a recommendation from the Authority that the Lubeck O&M Invoice be paid from funds currently available to Tioga Morris;

WHEREAS, as a result of the extreme weather conditions that occurred on or about February 9, 2014, which 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 (the "*Emergency Condition*"), damaged panels were required to be stored at certain locations, and additional expenses have been incurred related to the transport of such panels by Lubeck, as represented by the invoice attached hereto as Exhibit C in the amount of \$3,880 (the "*Lubeck Transport Invoice*"); and

WHEREAS, Tioga Energy ABC has requested a recommendation from the Authority that the Lubeck Transport Invoice be paid from funds currently available to Tioga Morris;

WHEREAS, as a result of the Emergency Condition, certain other services were performed to alleviate said condition (the "*Emergency Work*") and a claim (the "*Insurance Claim*") has been submitted to Tioga Energy ABC's insurer of the SGFs, Marsh Risk and Insurance Services ("*Marsh*"), to secure payment for the Emergency Work; and

WHEREAS, the claims adjuster for Marsh has indicated that he will recommend to Marsh that \$184,142.62 of the Insurance Claim be paid by Marsh (the "*Undisputed Portion*"), but at this time, he cannot recommend payment of the remaining \$97,003.26 (the "*Disputed Portion*") due to deductibles and the insufficiency of certain documentation related to the Emergency Work; and

WHEREAS, it may be in the best interests of the Authority to recommend to the Tioga Energy ABC that the Disputed Portion be paid from funds to be available to Tioga Morris.

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

Section 1. The Authority hereby recommends to Tioga Morris that it immediately satisfy, from funds on hand, the Lubeck O&M Invoice and the Lubeck Transport Invoice.

Section 2. The Chairperson, Vice-Chairperson and the Treasurer of the Authority (including their designees, each an "*Authorized Officer*") are each hereby severally authorized to recommend to Tioga Morris that it satisfy the Tioga ABC Invoice no later than October 31, 2014. The Authorized Officers are further authorized, in their reasonable discretion, to recommend that the Tioga ABC Invoice be paid in installments and that additional invoices of Tioga Energy ABC for services rendered beyond October 31, 2014, if any, in a reasonable amount not to exceed \$10,000 per month, be satisfied from funds then available to Tioga Morris.

Section 3. The Authorized Officers of the Authority are hereby authorized to recommend to Tioga Morris that the Disputed Portion be paid from funds available to Tioga Morris, to the extent such Authorized Officers determine, after diligent pursuit of same, in their reasonable discretion, that payment of the Disputed Portion by Marsh is not likely to be secured.

Section 4. The Authorized Officers of the Authority are hereby authorized to take all such further actions in connection with the transactions contemplated herein, and to execute and deliver such other documents, certificates and instruments necessary, desirable or convenient, in accordance with all applicable law.

Section 5. 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 6. Reserved.

Section 7. 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
Gallopo				
Kovalcik				
Ramirez				
Sandman				
Bonanni				

ATTESTATION:

This Resolution was acted upon at the Regular Meeting of the Authority held on September 24, 2014 at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 24th day of September, 2014

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of September 24, 2014

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