

RESOLUTION NO. 14-41

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

TITLE:

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY
ADVISING TIOGA ENERGY ABC 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

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;

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*");

WHEREAS, in connection with Tranche I, the Authority and 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*") entered into certain agreements;

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;

WHEREAS, Tioga Morris 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;

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 was initially 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 (initially the hereinafter defined Short Term Manager, and ultimately, the “*New Parent Company*”);

WHEREAS, shortly after the Initial Assignment to ABC, Tioga Energy ABC secured the services of Sustainable Power Group to operate and maintain Tranche I, at a contract price of \$10,000 per month (the “*O&M Contract*”);

WHEREAS, because the Authority desires to ensure Tranche I is properly staffed in order to protect the interests of the Parties and to maintain the success of Tranche I until a permanent solution can be achieved, the Authority initially desired to select, pursuant to, among other provisions of applicable New Jersey law, N.J.S.A. 19:44A-20.1 *et seq.* and N.J.S.A. 40A:11-4.1(k) through a fair and open, competitive contracting process, a short term manager/owner that would own all of the membership interests of Tioga Morris and ensure that all of Tioga Morris’ obligations under the Program Documents are provided for (the “*Short Term Manager*”) on an interim basis (the “*Short Term Remedy*”) until the selection of a New Parent Company; and

WHEREAS, on July 17, 2013, the Authority adopted a resolution pursuant to the Act and all other applicable law, seeking proposals from qualified solar developers for the sale of Tioga Energy ABC to a to be determined Short Term Manager/Owner entitled “RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY AUTHORIZING THE SALE OF TIOGA ENERGY ASSIGNMENT FOR THE

BENEFIT OF CREDITORS TO A TO BE DETERMINED NEW PRIVATE DEVELOPER 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" (the "*Original RFP Authorizing Resolution*");

WHEREAS, the Original RFP Authorizing Resolution authorized, among other things, the issuance of a request for proposal (the "*Original RFP*"), the execution of an agreement setting forth the terms of the sale of Tioga Energy ABC (the "*Consent No. 4*") to the Short Term Manager, and the issuance of a subsequent request for proposals (the "*New Parent RFP*"), from entities desiring to undertake the further assignment of the Short Term Manager's membership interest in and to Tioga Morris and become the New Parent Company for Tioga Morris;

WHEREAS, due to a failed Original RFP, on October 2, 2013, the Authority adopted a resolution pursuant to the Act and all other applicable law, recommending Tioga Energy ABC reject all bids and, if so authorized by Tioga Energy ABC issue a second request seeking proposals from qualified solar developers (the "*Second RFP*") for the sale of Tioga Energy ABC to a to be determined Short Term Manager/Owner entitled "RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY ADVISING TIOGA ENERGY ABC TO REJECT ALL PROPOSALS RECEIVED IN CONNECTION WITH THE REQUEST FOR PROPOSALS FOR A SHORT TERM MANAGER/OWNER OF PHOTOVOLTAIC SYSTEMS WITH RESPECT TO CERTAIN LOCAL GOVERNMENT FACILITIES IN THE COUNTY OF MORRIS, NEW JERSEY 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" (the "*Second RFP Authorizing Resolution*" and together with the Original Authorizing Resolution, the "*Authorizing Resolutions*");

WHEREAS, on October 30, 2013 the Authority adopted a resolution entitled, "RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY DETERMINING THE SUCCESSFUL RESPONDENT TO THE REQUEST FOR PROPOSALS FOR A SHORT TERM MANAGER/OWNER OF PHOTOVOLTAIC SYSTEMS WITH RESPECT TO CERTAIN LOCAL GOVERNMENT FACILITIES IN THE COUNTY OF MORRIS, NEW JERSEY 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" (the "*Determination Resolution*") recommending to Tioga Energy ABC that it sell its membership interests in Tioga Morris to Morris Solar 1, LLC, an entity established by Sustainable Power Group, the successful respondent under the Second RFP. The only other respondent to the Second RFP was Nautilus Solar, LLC ("*Nautilus*");

WHEREAS, on November 13, 2013 in accordance with Section 13 ("*Section 13*") of the Act (N.J.S.A. 40:37A-56), the Authority made a detailed report regarding the sale of Tioga Energy ABC to the Short Term Manager to the Board of Freeholders, which report included, without limitation, descriptions of the Second RFP, the Consent No. 4,

and the Asset Purchase Agreement (the “APA”) and any other certificates required (the “*Sale Documents*”) in order to effectuate the transfer of 100% of Tioga Energy ABC’s membership interest in Tioga Morris to the Morris Solar I, LLC and such report was accepted by the County by resolution adopted by the Board of Freeholders pursuant to Section 13 and entitled, “RESOLUTION PROVIDING CONSENT OF THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MORRIS TO THE SELECTION OF A SHORT TERM MANAGER/OWNER OF PHOTOVOLTAIC SYSTEMS AND THE EXECUTION OF CERTAIN AGREEMENT IN CONNECTION THEREWITH ALL WITH RESPECT TO CERTAIN LOCAL GOVERNMENT FACILITIES IN THE COUNTY OF MORRIS, NEW JERSEY 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, following preparation of the Authority’s report required by Section 13 of the Act, the Authority engaged in extensive negotiations first with Morris Solar 1, LLC, and later Nautilus, in efforts to agree upon the terms of the Consent No.4; however, the Authority subsequently determined that the procurement of a Short Term Manager was no longer in the best interests of the Authority, and proceeded directly with the issuance of the New Parent RFP, all in accordance with the Authority resolution adopted March 19, 2014, entitled “RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY ADVISING TIOGA ENERGY ABC TO REJECT ALL PROPOSALS RECEIVED IN CONNECTION WITH THE SECOND REQUEST FOR PROPOSALS FOR A SHORT TERM MANAGER OF PHOTOVOLTAIC SYSTEMS WITH RESPECT TO CERTAIN LOCAL GOVERNMENT FACILITIES IN THE COUNTY OF MORRIS, NEW JERSEY 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 Authority issued the New Parent RFP on August 8, 2013, the only response to which was submitted by Nautilus;

WHEREAS, since the issuance of the New Parent RFP and receipt of Nautilus’ response thereto, Tioga Energy ABC indicated a willingness to remain as the sole member of Tioga Morris;

WHEREAS, it is in the best interests of the Authority for the membership interest in Tioga Morris to remain with Tioga Energy ABC, as transferring the membership interest requires: 1) extensive negotiations with Nautilus to ensure that upon any transfer it would continue to perform the obligations of Tioga Morris substantially in accordance with the Program Documents, but would likely require the transfer of significant financial benefits to Nautilus, which, if the membership interest remains with Tioga Energy ABC, could inure to the benefit of the County and Authority; and 2) amendments to the Program Documents to memorialize any deviations from the terms thereof and to ensure that the transfer is performed in accordance with applicable law, each of which deviates

resources which could otherwise be allocated toward the payment of debt service on the Series 2009A Bonds;

WHEREAS, in connection with the maintenance and operation of Tranche I, Tioga Morris has incurred and will continue to incur certain fees and expenses, including payment of a monthly asset management fee to Sustainable Power Group in an amount not to exceed \$10,000 and payment of a management fee to Tioga Energy ABC in an amount not to exceed \$10,000, in accordance with the Authority resolution adopted September 24, 2014, entitled “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,” and the continued payment of such fees is in the best interests of Tranche I;

WHEREAS, on February 19, 2014, extreme weather conditions caused snow and ice to accumulate on certain of the solar electric generating facilities (“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 three subcontractors, William F. Lubeck Co., Inc. (“Lubeck”) Pro-Tech Energy Solutions (“Pro-Tech”), and Whitman Engineering (“Whitman,” together with Lubeck and Pro-Tech, 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, Pro-Tech undertook work totaling at \$31,729.25, and Whitman undertook work totaling \$5,337;

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, due to delays in processing the Insurance Claim, the Authority made an advance totaling \$50,000 (the “Advance Payment”), \$39,050.00 of which was payable to Lubeck and \$10,950.00 of which was payable to Pro-Tech from funds available to the Authority, and which shall be reimbursed to the Authority upon payment of the Insurance Claim, all in accordance with Authority resolution adopted July 16, 2014, entitled “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, notwithstanding the Advance Payment, the following amounts remain due with respect to the Emergency Work: \$74,306 to Lubeck, \$20,779.25 to Pro-Tech, and \$5,337 to Whitman;

WHEREAS, notwithstanding that a portion of the Insurance Claim has recently been approved (\$184,000) but the proceeds thereof have not yet been received by Tioga Morris, due to a recent payment from the sale of solar renewable energy certificates (“SRECs”), Tioga Morris now has sufficient funds on hand to make payment in full to the Subcontractors;

WHEREAS, additional work as a result of the emergency condition remains to be completed, and such work is estimated to cost approximately \$134,550 for work to be performed at Mennen Arena and \$13,500 for work to be performed at Boonton High School;

WHEREAS, Tioga Morris has sufficient funds on hand to complete the work at Boonton High School, but requires receipt of the approved portion of the Insurance Claim proceeds, or must monetize additional SRECs currently held in its possession, before it will have sufficient funds on hand to complete the repairs at Mennen Arena;

WHEREAS, additional expenses related to Tranche I have accrued which are payable either from funds currently on deposit in the Administrative Expense Account or from funds currently available to Tioga Morris, including the Authority’s Administrative Fee in the amount of \$20,000 for each of 2013 and 2014, totaling \$40,000, counsel fees payable to Inglesino, Wyciskala, & Taylor, LLC (“IWT”), the Authority’s former bond and special energy counsel, and IWT’s former agent and now Authority bond and special energy counsel, Pearlman & Miranda, LLC, in an amount to be specified upon the proper submission of outstanding invoices, and fees to the Authority’s energy consultant, Gabel Associates, Inc., in an amount to be specified upon the proper submission of outstanding invoices; and

WHEREAS, it is in the best interests of the Authority for Tioga Morris to satisfy all outstanding invoices related to the operation, maintenance, and administration of Tranche I and to undertake to complete all outstanding repairs.

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

Section 1. The Authority hereby determines to recommend to Tioga Energy ABC that it maintain its membership interest in Tioga Morris, until such time as the Authority determines to recommend that it transfer same.

Section 2. The Authority hereby determines to recommend to Tioga Energy ABC that Tioga Morris satisfy, from currently available funds, the invoices outstanding with respect to the Emergency Work, consisting of the following payments: \$74,306 to Lubeck, \$20,779.25 to Pro-Tech, and \$5,337 to Whitman.

Section 3. The Authority hereby determines to recommend to Tioga Energy ABC that Tioga Morris immediately undertake the completion of repairs at Boonton High School, estimated to cost \$13,500, and that Tioga Morris undertake the completion of repairs at Mennen Arena upon receipt of the proceeds of the Insurance Claim, or upon the monetization of SRECs currently held by Tioga Morris in an amount sufficient to cover such costs.

Section 4. The Authority hereby determines to recommend to Tioga Energy ABC that Tioga Morris satisfy additional outstanding fees associated with Tranche I, and continue to satisfy such additional amounts as they come do, including, but not limited to: the Authority Administrative Fees for 2013 and 2014 totaling \$40,000; counsel fees payable to IWT, the Authority's former bond and special energy counsel, and IWT's former agent and now Authority bond and special energy counsel, Pearlman & Miranda, LLC, in an amount to be specified upon the proper submission of outstanding invoices; fees to the Authority's energy consultant, Gabel Associates, Inc., in an amount to be specified upon the proper submission of outstanding invoices; the management fee to Tioga Energy ABC in an amount no greater than \$10,000 per month; and the asset management fee to Sustainable Power Group in an amount no greater than \$10,000 per month, all from amounts on deposit in the Administrative Expense Account or from funds available to Tioga Morris, as determined in the sole and reasonable discretion of the Authorized Officers (as defined herein), after consultation with counsel.

Section 5. 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 execute and deliver such certificates, instruments or documents, as deemed necessary, convenient or desirable by the Authorized Officer, in consultation with counsel, to effectuate the actions contemplated by Sections 1 – 4 hereof, including, but not limited to, execution of requisitions for payment of outstanding invoices from the Administrative Expense Account, and transmission of notice to Nautilus that it will not be recommended as the Successful Respondent pursuant to the New Parent RFP.

Section 6. The Authorized Officers are hereby authorized, in their reasonable discretion, after consultation with counsel and the Authority's energy consultant Gabel Associates, Inc., to recommend to Tioga Morris that it monetize SRECs in an amount sufficient to cover existing and/or ongoing expenses of Tioga Morris, including, but not limited to, the payment of debt service, to the extent such monetization is deemed, by such Authorized Officers, in the best interests of the Authority.

Section 7. The Authorized Officers and the Authority's counsel, Pearlman & Miranda, LLC, are hereby authorized to enter negotiations with each of Tioga Energy ABC and Sustainable Power Group to attempt to reduce their respective monthly management fees, each of which are payable by Tioga Morris, to the extent practicable. The Authorized Officers are further authorized to execute and deliver such certificates, instruments or documents, as deemed necessary, convenient or desirable by the Authorized Officer, in consultation with counsel, to memorialize any such reductions to

the respective monthly management fees, and the commitment of Tioga Energy ABC to continue as the sole member of Tioga Morris.

Section 8. 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 9. Reserved.

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Section 10. 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 November 17, 2014 at the Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 17th day of November, 2014

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of November 17, 2014

By: _____
Stephen B. Pearlman, Esq., Partner
Pearlman & Miranda, LLC
Counsel to the Authority