

**RESOLUTION OF THE MAYOR AND BOROUGH COUNCIL
OF THE BOROUGH OF MOUNT ARLINGTON,
IN THE COUNTY OF MORRIS, NEW JERSEY,
AUTHORIZING THE EXECUTION OF A SITE ACCESS
AGREEMENT BETWEEN HESP SOLAR LLC AND
THE BOROUGH OF MOUNT ARLINGTON**

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris, State of New Jersey, that the Mayor and Borough Clerk are authorized to execute a Site Access Agreement between HESP Solar LLC and the Borough of Mount Arlington.

I hereby certify this to be an accurate and true resolution as approved by the Mayor and Borough Council at a Meeting held on September 13, 2016.



Linda DeSantis, RMC
Borough Clerk

SITE ACCESS AGREEMENT

This Site Access Agreement (the "Agreement") is made as of the 14 day of September, 2016 by and between the **BOROUGH OF MOUNT ARLINGTON** (hereinafter referred to as the "Borough"), a public body corporate and politic of the State of New Jersey, with offices located at 419 Howard Boulevard, Mount Arlington, New Jersey 07856 and **HESP SOLAR LLC**, a New York limited liability company, with principal offices located at 400 Rella Boulevard, Suite 160, Suffern, New York 10901 ("HESP") (The Borough and HESP may each be referred to herein as a "Party" and together, the "Parties").

RECITALS

WHEREAS, the Borough is the owner of real property located at Berkshire Avenue, Mount Arlington, Morris County, New Jersey identified on the official tax map of the Borough of Mount Arlington as Block 8, Lot 3, containing approximately 35.64 acres and commonly known as the "Mount Arlington Landfill" (the "Property"); and

WHEREAS, pursuant to a resolution adopted on June 24, 2015, the Borough designated the Property as an "area in need of redevelopment" pursuant to the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"); and

WHEREAS, pursuant to Ordinance No. 11-15, finally adopted on October 6, 2015, the Borough adopted the "Mount Arlington Landfill Redevelopment Plan" dated as of September 1, 2015 (the "Redevelopment Plan"), which Redevelopment Plan provides for the installation of a solar energy generating facility on the existing disturbed area of the Property (the "Project"); and

WHEREAS, pursuant to Resolution 2016-76, adopted on April 12, 2016, the Borough has appointed HESP as the "redeveloper" of the Property, subject to negotiation and execution of, among other things, a redevelopment agreement (the "Redevelopment Agreement"); and

WHEREAS, in anticipation of execution of a Redevelopment Agreement, and in order to commence preliminary site work necessary to effectuate the Project (the "Work"), the Borough wishes to provide site access to HESP to perform such work.

NOW THEREFORE, for good and valuable consideration and the mutual promises and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Recitals are incorporated herein as if set forth at length.
2. **Site Access.** The Borough hereby grants permission to HESP to enter the Property, at no cost to the Borough, solely in order to complete the Work. All access to the Property by HESP shall be conducted during normal business hours on business days upon no less than one (1) day advance notice to the Borough. The Borough shall have the right, but not the obligation, to have representatives present during each such access to the Property in order to observe all Work; however, neither such Borough representative nor the Borough shall be

deemed to have approved or accepted any of the Work completed while such Borough representative is present. All Work performed by HESP, and/or its contractors, sub-contractors, agents or designees (collectively, the "HESP Designated Agents") shall be undertaken in a good and workmanlike manner, and shall not cause any permanent damage to the Property. HESP shall be responsible, if requested by the Borough, to restore the Property to the reasonably same condition as it is in as of the date of this Agreement.

3. **Release.** As consideration for being afforded access to the Property, HESP hereby waives, releases and discharges the Borough, any parent and/or subsidiaries, affiliates and their respective stakeholders, directors, officers, members and agents from any and all present or future claims, causes of action, or demands that HESP now has or may hereafter accrue on account of or in any way growing out of any and all known and unknown, or foreseen and unforeseen, any one or more of bodily or personal injuries (including death) or property damage and the consequences thereof resulting, or which may result, from the Work, presence upon the Property or the use of any equipment or procedures while on, entering or leaving the Property. The provisions of this paragraph shall survive the termination of this Agreement.

4. **Indemnity.** HESP shall indemnify, defend and hold harmless the Borough, their directors, officers, employees, members and affiliates from and against any and all liabilities, losses, damages, costs and expenses (including attorneys' fees and court costs) which the Borough and its directors, officers, employees, members and affiliates hereafter may suffer in connection with any claim, demand, action or right of action (whether at law or in equity) brought or asserted by any third party because of any bodily or personal injury (including death) or property damage and the consequences thereof to the extent caused by HESP's or HESP Designated Agents' negligent acts, errors, omissions, or willful misconduct related to the Work or its respective subcontractors' performance of any Work or services on the Property, or while entering or leaving the Property. The provisions of this paragraph shall survive the termination of this Agreement.

5. **Insurance.** HESP and its agents and/ or its respective subcontractors' hereby agree to carry and maintain in full force and effect, for the duration of this Agreement, and any supplement thereto, appropriate insurance coverage as described in Attachment 1 hereto.

HESP shall provide the Borough with the respective insurance certificates prior to HESP or the HESP Designated Agents first accessing the Property and prior to commencement of the Work or any time thereafter until the expiration of this Agreement. All insurance certificates shall name the individual Borough as an additional insured and certificate holders on the policy. Each policy shall provide that it cannot be canceled without ten (10) days prior written notice. The policies shall be issued by an insurance company authorized to do business in the State of New Jersey.

6. **Compliance with Laws.** HESP shall perform all of the Work at no cost to the Borough and in compliance with all applicable laws. While on the property, HESP shall take necessary precautions for the safety of the HESP Designated Agents, and all such HESP Designated Agents shall comply with all applicable federal, state and local laws and regulations (including occupational safety and environmental protection statutes and regulations) in

performing Work hereunder, and shall comply with any directions of governmental agencies and the Borough relating to the Property, safety, security, traffic or other like matters.

7. **Standard of Care.** As necessary, HESP is required to and responsible for obtaining a mark-out of all utilities at the Property, including but not limited to public and private subsurface utilities, prior to the commencement of any Work. All Work shall be performed in a professional and workmanlike manner. While performing the Work, HESP's Agents shall exercise that degree of care and skill ordinarily exercised under similar circumstances by members of the environmental and engineering consulting professions, as applicable, performing the kind of Work being performed hereunder and practicing in the same or similar locality during the same general period of time.

8. **Testing Results Reports.** At no cost to the Borough, HESP shall concurrently provide the Borough with a copy of all results of the Work, reports and testing monitoring results within 7 days of HESP's receipt of the same.

9. **Handling, Disposal, and Liability for Hazardous and Waste Materials.** HESP's and/or its agents shall ensure the proper handling, transportation, and off-site disposal of all materials used during the Work including without limitation, groundwater testing purge water, and any hazardous substances or hazardous wastes (together "Waste Materials") generated during the Work in strict compliance with all applicable environmental laws, rules and regulations at facilities licensed to accept such Waste Materials. HESP shall be considered the sole generator, arranger, transporter, and disposer of the Waste Materials generated by its Work at the Property.

10. **Assignment of Agreement.** HESP shall not assign its rights of access according to the terms of this Agreement without the prior written consent of the Borough.

11. **Revocation of Access Rights.** It is hereby understood and agreed that the Borough reserves the right to revoke the access rights provided to HESP under the terms of this Agreement at any time, for any reason whatsoever, upon giving not less than five (5) days prior written notice to HESP (the "Borough Termination"). In the event that the Borough exercises its right to Borough Termination, HESP shall retain no other rights or access to the Property and this Agreement shall be terminated. This Agreement shall terminate upon the earlier of (i) Borough Termination or (ii) execution by the Parties of a Ground Lease Agreement.

12. **Title, Ownership or Rights in the Property.** This Agreement is merely a license and does not give HESP any interest in the Property or any right of a lessee or tenant under any of the laws of the State of New Jersey or any other applicable federal, state, and local laws and ordinances. HESP shall not assert any action against the Borough that asserts the rights of a lessee or tenant.

13. **Governing Law, Forum Selection, and Waiver of Jury Trial.** The Parties agree that this Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to the jurisdiction of the Superior Court of New Jersey, Morris

County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated thereby. Each of the Parties hereto irrevocably consents to the jurisdiction of the Superior Court of New Jersey, Morris County, in any such suit, action or proceeding and to the laying of venue in such Court. Each Party hereto irrevocably waives any objection to the laying of venue or that any such action or proceeding brought in said Court has been brought in an inconvenient forum. The Parties further agree that any claims relating to or arising out of this Agreement and the transactions contemplated thereby shall be tried before a Judge and without a trial by jury.

14. **Notices.** Notices, other than a notice of default under this Agreement, shall be given by US Mail and may be simultaneously sent by email. Notices of default shall be served by UPS or Federal Express and may be simultaneously sent by email. Notice to each Party shall be as follows:

Borough of Mount Arlington
419 Howard Boulevard
Mount Arlington, New Jersey 07856
Attn: Carolyn Rinaldi, Administrator

With a copy to:
Matthew J. O'Donnell, Esq.
O'Donnell McCord, PC
15 Mount Kemble Avenue
Morristown, New Jersey 07960

With a copy to:
Matthew D. Jessup, Esq.
McManimon, Scotland & Baumann
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068

HESP Solar LLC
400 Rella Boulevard
Suite 160
Suffern, New York 10901
Attn: Susan Brodie

With a copy to:
James W. Scarrow, Esq.
James W. Scarrow PLLC
4631 Chesapeake Street, NW
Washington, D.C. 20016

15. **Parity.** Each Party warrants to the other that they have been represented by independent counsel. In light of this, the rule of construction that provides that this document shall be construed against the drafter shall not apply.

16. **Entire Agreement.** This Agreement constitutes the entire Agreement concerning the subject matter hereof and supersedes any and all prior representations, understandings, and agreements between HESP and the Borough with respect to such subject matter. If there is a conflict between and among this Agreement and any other documents or representations, this Agreement shall be the final expression of HESP's and the Borough's intent. Any Amendment to this agreement must be in writing and signed by both parties or it is void.


17. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart shall, for all purposes, be deemed an original instrument, but all such counterparts together shall constitute but one and the same agreement. Facsimile and electronic mail (in Adobe Portable Document Format ("PDF")) signatures of the undersigned Parties shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first above written.

Witness or Attest:

BOROUGH OF MOUNT ARLINGTON


Linda DeSantis, R.M.C.
Borough Clerk

By: 
Michael Stanzilis,
Mayor

Witness:

HESP SOLAR LLC

By: _____
Susan Brodie
EVP, Business Development

Attachment 1

Insurance Requirements