


**RESOLUTION OF THE MAYOR AND BOROUGH COUNCIL
OF THE BOROUGH OF MOUNT ARLINGTON,
IN THE COUNTY OF MORRIS, NEW JERSEY,
AUTHORIZING THE EXECUTION OF AN ESCROW AND
FUNDING 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 an Escrow and Funding 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

ESCROW AND FUNDING AGREEMENT

THIS ESCROW AND FUNDING 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").

WITNESSETH:

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, the Parties have agreed that HESP shall fund an escrow to provide for certain Borough costs incurred in connection with the development and implementation of the Project, including but not limited to the negotiation and execution of the Redevelopment Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Escrow Deposit. As of date hereof, HESP has paid the amount of seventy-five thousand dollars (\$75,000) to the Borough (together with all additional deposits made hereunder, the "Escrow Deposit"), which the Borough has deposited into an interest bearing escrow account established by it for the payment of its reasonable and necessary Interim Costs (as defined herein). If, when and as often as may occur that the escrow account is drawn down to fifteen thousand dollars (\$15,000), then HESP, upon the Borough's written request, shall within fifteen (15) business days thereafter, provide to the Borough for deposit funds sufficient to replenish the escrow account to the amount of seventy-five thousand dollars (\$75,000) for use in accordance with these terms, unless such time period shall be extended for good reason by the Borough in its

sole discretion. In the event this Agreement is terminated by the Borough or HESP, then all escrowed monies and the interest earned thereon shall be returned to the HESP following the payment from the fund of the Interim Costs incurred up to the time of said termination. In the event that the Borough and the Redeveloper execute a Redevelopment Agreement, then any remaining escrowed funds shall be applied in accordance with the requirements of the Redevelopment Agreement.

2. Interim Costs. (a) HESP shall reimburse the Borough, through the Escrow Account (as defined herein), for payment of all out-of-pocket costs incurred by the Borough on or after June 6, 2016 in connection with the Project, whether incurred prior to or subsequent to the date of this Agreement, including but not limited to all fees, costs and disbursements charged by any professional, consultant, contractor or vendor retained by the Borough in connection with the Project (each, a "Borough Professional" and collectively, the "Borough Professionals"), compliance with this Agreement, the drafting of amendments to the Redevelopment Plan, if any, and drafting and negotiation of a Redevelopment Agreement with HESP (collectively, the "Interim Costs"). The hourly rates and costs paid to the Borough Professionals shall be at such Borough Professionals' contracted rates with the Borough from time-to-time. A schedule of such rates shall be provided to HESP upon request. The Borough represents that as of the date hereof, the accrued Interim Costs for which HESP is required to reimburse the Borough pursuant to the terms hereof is no more than \$_____.

(b) The Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Borough, the Borough planning board, land use board, zoning board or other such boards, including but not limited to those application fees and escrow deposits required under the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.*, as and to the extent applicable.

3. Deposit and Administration of Escrow Funds. The Escrow Deposit and all additions thereto shall be held by the Borough in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, interest bearing account referenced to this Agreement (the "Escrow Account").

4. Payments from the Escrow Account. (a) The Escrow Account shall be used to pay the Interim Costs as set forth herein.

(b) HESP shall not be charged, and amounts shall not be paid from the Escrow Account, for any fees, costs and/or expenses not associated with the Interim Costs. The only costs and/or expenses that shall be included shall be Interim Costs submitted and approved in accordance with this Agreement.

(c) Each payment for professional services charged to the Escrow Account shall be pursuant to a voucher from the Borough indicating each professional, identifying the personnel performing the Interim Costs, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying properly reimbursable expenses. The Borough shall require that the Borough Professionals shall

simultaneously send an informational copy of each voucher or statement submitted to the Borough to HESP; provided, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters.

(d) HESP may dispute the propriety or reasonableness of charges set forth in each voucher or statement in accordance with Section 8 below.

5. Accounting. Upon execution of the Redevelopment Agreement, or revocation of HESP's designation as "redeveloper" of the Property, or as reasonably requested by HESP, the Borough shall prepare and send to HESP a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the Escrow Account.

6. Closeout Procedures. Upon revocation of HESP's designation as "redeveloper" of the Property or HESP's voluntary relinquishment of its designation as "redeveloper", HESP may send written notice by certified mail to the Borough Administrator requesting that the remaining balance of the Escrow Account be refunded with a copy to the Borough Professionals. After receipt of such notice, the Borough Professionals shall render a final bill to the Borough within 30 days, and shall send an informational copy simultaneously to HESP. Within 30 days of receipt of the final bills, the Borough shall pay all outstanding bills in accordance with this Agreement and render a written final accounting to HESP detailing the uses to which the escrow funds were put. HESP will not be responsible for any additional charges once the final accounting has been rendered by the Borough in accordance with this in accordance with this Agreement. In the event that the Borough and the Redeveloper execute a Redevelopment Agreement, then any remaining escrowed funds shall be applied in accordance with the requirements of the Redevelopment Agreement.

7. 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.

8. Disputed Charges. (a) HESP may dispute the propriety of professional charges paid out of the Escrow Account by written notice to the Borough (the "Disputed Charge"). A copy of such notice shall be sent simultaneously to the Borough Professional(s) whose charges are the subject of the dispute. Such written notice of a Disputed Charge shall be given within 30 days from HESP's receipt of the informational copy of the professional's voucher, except that if the professional has not supplied HESP with an informational copy of the voucher, then HESP shall send notice within 30 days from receipt of the first statement of activity against the escrow

account containing the Disputed Charge. Failure to dispute a charge in writing within the prescribed time shall constitute HESP's acceptance of any charge and a waiver by HESP of all objections to any charge and to payment thereof out of the Escrow Account.

(b) During the pendency of a Disputed Charge, and if not already paid, the Borough shall not pay the Disputed Charge out of the Escrow Account, but may continue to pay undisputed charges out of the Escrow Account. If a dispute over a charge is resolved in HESP's favor after having been paid, HESP and the Borough shall agree to a true-up of the Escrow Account in the amount determined to be properly disputed and paid, based on the next invoice or invoices submitted by the Borough Professionals. The Borough, HESP and the Borough Professional(s) whose charges are the subject of the dispute shall attempt in good faith to resolve the Disputed Charge for a period of 30 days after which the Borough, HESP and/or the Borough Professional(s) whose charges are the subject of the dispute may resort to the courts for a determination. The Borough Professionals shall not charge the Escrow Account for any activities in regard to a Disputed Charge.

9. Borough Professionals as Third Party Beneficiaries. All Borough Professionals are third party beneficiaries of this Agreement and are hereby conferred the necessary rights and standing to participate in the resolution of any Disputed Charge in Section 8, the failure of HESP to replenish the Escrow Account and/or any related and/or resulting court action or like legal process.

10. Review by Counsel. Interpretation of this Agreement shall be made without regard to or any presumption against or other rule requiring construction against the entity drawing or causing this Agreement to be drawn, as HESP has been given the opportunity to have this Agreement reviewed by counsel, and/or as counsel for both HESP and the Borough have combined in their review and approval of same.

11. Entire Agreement; No Modification Unless in Writing. This Agreement contains the entire agreement of the Parties relative to the subject matter hereof. Any amendment hereto or modification or variation hereof shall be ineffective unless in writing signed by each of the Parties hereto.

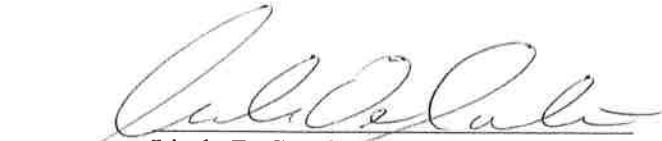
12. Counterparts. This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.


The balance of this page intentionally left blank; signatures appear on next page.

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