

ORDINANCE 01-2021

**AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE
BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE
OF NEW JERSEY, PROVIDING FOR AID TO THE LANDFILL SOLAR
REDEVELOPMENT PROJECT LOCATED IN THE MOUNT ARLINGTON LANDFILL
REDEVELOPMENT AREA IN AND BY THE BOROUGH OF MOUNT ARLINGTON,
IN THE COUNTY OF MORRIS, NEW JERSEY, APPROPRIATING \$4,750,000
THEREFOR AND AUTHORIZING THE ISSUANCE OF \$4,750,000 BONDS OR NOTES
OF THE BOROUGH TO FINANCE THE COST THEREOF**

WHEREAS, on October 6, 2015, the Borough Council of the Borough of Mount Arlington, in the County of Morris, New Jersey (the "Borough") adopted Ordinance No. 11-15, approving and adopting the Mount Arlington Landfill Redevelopment Plan (as the same may be amended and supplemented from time to time, the "Redevelopment Plan") in accordance with the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented (the "Redevelopment Law"); and

WHEREAS, the Redevelopment Plan relates to certain property within the Borough, specifically Block 8, Lot 3 on the Tax Map of the Borough (the "Redevelopment Area"); and

WHEREAS, on November 5, 2015, the Borough issued a Request for Proposals, soliciting responses from redevelopers interested in the redevelopment of the Redevelopment Area; and

WHEREAS, on December 1, 2015, Redeveloper submitted a proposal regarding the Redevelopment Area to the Borough, that the Borough desired to further explore (the "Redeveloper Response"); and

WHEREAS, on April 12, 2016, the Borough Council, acting in its capacity as "redevelopment entity" for the Borough (the "Redevelopment Entity"), adopted Resolution 2016-76 designating HESP Solar, LLC as redeveloper of the Redevelopment Area (the "Redeveloper"); and

WHEREAS, on February 5, 2019, the Borough Council adopted Resolution 2019-49, approving the form and authorizing the execution of a redevelopment agreement by and between the Borough and the Redeveloper; and

WHEREAS, the Borough and Redeveloper entered into a Redevelopment Agreement dated as of May 17, 2019 (the "Redevelopment Agreement"), which Redevelopment Agreement designates Redeveloper as the "redeveloper" of the hereinafter defined Redevelopment Project in accordance with the Redevelopment Law, and which specifies the respective rights and responsibilities of the parties with respect to the Redevelopment Project; and

WHEREAS, pursuant to the terms of the Redevelopment Agreement, the Redeveloper shall undertake the following actions in accordance with the terms of the Redevelopment Agreement and the Redevelopment Plan: (i) design, develop, finance, construct, operate and maintain a grid-connected photovoltaic solar power system in the Redevelopment Area with an output of approximately 1.6 megawatts (MW) (direct current) of power, as approved by PJM, including but not limited to all solar energy panels, mounting systems, carports, tracking devices, inverters, switches, meters, conduits, wires, controls, integrators, security systems and other related equipment and components installed in the Redevelopment Area, electric lines and conduits required to connect such equipment to the delivery point, protective and associated equipment, improvements, and other tangible and intangible assets, contracts, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of same; and (ii) construct all necessary on- and off-site infrastructure improvements (as more specifically described in the Redevelopment Agreement as the "Project", the "Redevelopment Project"); and

WHEREAS, pursuant to the terms of Section 5.06 of the Redevelopment Agreement, the Redeveloper has requested that the Borough provide Redeveloper with short-term financing of the Redevelopment Project through the issuance by the Borough of a one-year bond anticipation note (the "Borough Note"), the proceeds of which will be loaned to the Redeveloper and used by the Redeveloper to pay for the costs to construct the Redevelopment Project, and which loan to the Redeveloper shall be secured by a letter of credit provided by the Redeveloper from a financial institution rated A+ or better by A.M. Best, in an amount equal to the principal of and interest due on the Borough Note and for a term equal to the term of the Borough Note, and which loan to the Redeveloper shall be repaid to the Borough ten (10) days prior to the maturity date of the Borough Note; and

WHEREAS, upon issuance of the Borough Note and closing on the loan to the Redeveloper, Redeveloper shall pay to the Borough a financing fee equal to (x) the interest due on the Borough Note at an interest rate of 6.20% less (y) the interest due on the Borough Note issued by the Borough to fund the loan at the then prevailing interest rate and less (z) the fee paid by the Redeveloper to the letter of credit bank for the letter of credit issued to secure the loan; and

WHEREAS, the Borough desires to authorize the issuance of the Borough Note in an amount not to exceed \$4,750,000 in order to make the loan to the Redeveloper pursuant to the terms of the Redevelopment Agreement and the terms hereof.

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The recitals to this bond ordinance are hereby incorporated as if set forth in full herein.

Section 2. The improvement described in Section 4 of this bond ordinance is hereby authorized to be undertaken by the Borough as a general improvement. For the improvement or purpose described in Section 4, there is hereby appropriated the sum of \$4,750,000. No down payment is required pursuant to N.J.S.A. 40A:12A-37(c) as this bond ordinance authorizes obligations for the purpose of aiding the Redevelopment Entity with respect to the Redevelopment Project within the Borough.

Section 3. In order to finance the cost of the improvement or purpose, negotiable bonds are hereby authorized to be issued in the principal amount of \$4,750,000 pursuant to the Redevelopment Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Redevelopment Law.

Section 4. (a) The improvement hereby authorized and the purpose for which the bonds are to be issued is to aid in the Redevelopment Project described in the Redevelopment Plan and Redevelopment Agreement, including, but not limited to, (i) the design, development, financing, construction, operation and maintenance of a grid-connected photovoltaic solar power system in the Redevelopment Area with an output of approximately 1.6 megawatts (MW) (direct current) of power, as approved by PJM, including but not limited to all solar energy panels, mounting systems, carports, tracking devices, inverters, switches, meters, conduits, wires, controls, integrators, security systems and other related equipment and components installed in the Redevelopment Area, electric lines and conduits required to connect such equipment to the delivery point, protective and associated equipment, improvements, and other tangible and

intangible assets, contracts, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of same; and (ii) construction of all necessary on- and off-site infrastructure improvements.

(b) The estimated maximum amount of bonds or bond anticipation notes to be issued for the improvement or purpose is as stated in Section 3 hereof.

(c) The estimated cost of the improvement or purpose is equal to the amount of the appropriation herein made therefor.

Section 5. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the Borough's chief financial officer; provided that no bond anticipation note shall mature later than one year from its date. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of the Redevelopment Law. The chief financial officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 6. The Borough hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Borough is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 7. The following additional matters are hereby determined, declared, recited and stated:

(a) The purpose described in Section 4 of this bond ordinance is not a current expense. It is an improvement or purpose that the Borough may lawfully undertake as a general improvement described in the Redevelopment Plan and Redevelopment Agreement, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) Pursuant to N.J.S.A. 40A:12A-37(c), the obligations authorized herein shall mature in annual installments commencing not more than two and ending not more than forty years from the date of issuance.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and bond anticipation notes provided in this bond ordinance by \$4,750,000, and the obligations authorized herein will be within all debt limitations prescribed by that Law.

(d) An amount not exceeding \$1,000,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement.

(e) The obligations of the Borough authorized by this bond ordinance shall bear interest at a maximum rate of not to exceed six (6.00%) per centum per annum.

Section 8. Any grant moneys received for the purpose described in Section 4 hereof shall be applied either to direct payment of the cost of the improvement or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The Borough hereby declares the intent of the Borough to issue the bonds or bond anticipation notes in the amount authorized in Section 3 of this bond ordinance and to use proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 4 of this bond ordinance. This Section 9 is a declaration of intent within the meaning and for purposes of Treasury Regulations §1.150-2 or any successor provisions of federal income tax law.

Section 10. The chief financial officer of the Borough is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Borough and to execute such disclosure document on behalf of the Borough. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Borough and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof,

provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertaking, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 11. The full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the Borough for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 12. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption.

CLERK'S CERTIFICATE

I, Matthew N. Bansch, Borough Clerk of the Borough of Mount Arlington, in the County of Morris, State of New Jersey, HEREBY CERTIFY as follows:

1. I am the duly appointed Clerk of the Borough of Mount Arlington, in the County of Morris, State of New Jersey (herein called the "Borough"). In this capacity, I have the responsibility to maintain the minutes of the meetings of the governing body of the Borough and the records relative to all ordinances and resolutions of the Borough. The representations made herein are based upon the records of the Borough.

2. Attached hereto is a true and complete copy of a bond ordinance passed by the governing body of the Borough on first reading on January 5, 2021 and finally adopted by the governing body on January 19, 2021 and, where necessary, approved by the Mayor on January 19, 2021.

3. On January 6, 2021, a copy of the bond ordinance and a notice that copies of the bond ordinance would be made available to the members of the general public of the municipality who requested copies, up to and including the time of further consideration of the bond ordinance by the governing body, was posted in the principal municipal building of the Borough at the place where public notices are customarily posted. Copies of the bond ordinance were made available to all who requested them.

4. A certified copy of the bond ordinance and a copy of the amended capital budget form has been filed with the Director of the Division of Local Government Services.


5. After final passage, the bond ordinance, a copy of which is attached hereto, was duly published on January 22, 2021. No protest signed by any person against making the improvement or incurring the indebtedness authorized therein, nor any petition requesting that a referendum vote be taken on the action proposed in the bond ordinance has been presented to the

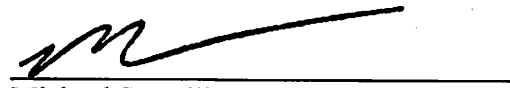
governing body or to me or filed in my office within 20 days after the publication or at any other time after the final passage thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Borough this 12th day of February, 2021.

ATTEST:

BOROUGH OF MOUNT ARLINGTON
COUNTY OF MORRIS
STATE OF NEW JERSEY


Matthew N. Bansch
Borough Clerk


Michael Stanzilis, Mayor
Borough of Mount Arlington

[SEAL]