

RESOLUTION 2021 - 57

RESOLUTION OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, (A) AUTHORIZING AN AMENDMENT TO THE MAY 17, 2019 REDEVELOPMENT AGREEMENT WITH HESP SOLAR, LLC, TO MODIFY BOTH THE PROJECT SCHEDULE AND THE FINANCING OBLIGATIONS OF HESP SOLAR, LLC AS REDEVELOPER; AND, (B) AUTHORIZING CONSENT TO HESP SOLAR, LLC'S ASSIGNMENT OF BOTH THE REDEVELOPMENT AGREEMENT AND ASSOCIATED GROUND LEASE TO A HESP SOLAR, LLC SUBSIDIARY PROJECT COMPANY

WHEREAS, on October 6, 2015, the Borough Council of the Borough of Mount Arlington (the "Borough Council") had adopted Ordinance No. 11-15, approving and adopting the Mount Arlington Landfill Redevelopment Plan (the "Redevelopment Plan") for the Mount Arlington Landfill ("Redevelopment Area") in accordance with the New Jersey Local Housing and Redevelopment Law; and

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

WHEREAS, on May 17, 2019, the Borough and the Redeveloper entered into a Redevelopment Agreement ("Redevelopment Agreement"), pursuant to which the Redeveloper will redevelop the Redevelopment Area in accordance with the Redevelopment Plan, and: (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" or the "Redevelopment Project"); and

WHEREAS, on March 28, 2017, the Borough and the Redeveloper entered into an accompanying Ground Lease, which was amended on May 17, 2019 by Amendment No. 1 to the Ground Lease (together, the "Ground Lease"); and

WHEREAS, subsequent to entry into the Redevelopment Agreement and the Ground Lease, the Borough and HESP now desire to amend the Redevelopment Agreement, to modify the time period within which HESP as Redeveloper may complete construction of the Project, and to modify the financing obligation that the Redeveloper is required to offer to the Borough. Specifically, the Borough and HESP wish to amend the Redevelopment Agreement to (1) have HESP as Redeveloper make a \$50,000.00 payment to the Borough in lieu of the financing payment option set forth in Section 5.01(a) of the Redevelopment Agreement; and, (2) to amend the Project schedule; and

WHEREAS, to memorialize the foregoing, the Borough and HESP desire to enter into Amendment No. 1 to the Redevelopment Agreement (the “First Amendment”), in substantially the form appended hereto as Exhibit A, and which shall be in such form as be agreed to by the Borough with the advice of the Borough Attorney; and

WHEREAS, in addition to authorizing entry and execution of the First Amendment as aforesaid, the Borough Council also wishes to authorize its consent to the assignment of the Redevelopment Agreement and the Ground Lease to a HESP subsidiary project company, all consistent with the terms and conditions of the Redevelopment Agreement and the Ground Lease; and

WHEREAS, HESP had furnished the Borough with indicia of the creation and incorporation of Mt. Arlington Solar 1, LLC (the “Subsidiary”), to which HESP intends to transfer and assign its interests, all as aforesaid; and,

WHEREAS, the Borough Council is desirous of adopting this Resolution to authorize all of the foregoing.

BE IT RESOLVED, BY THE BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, NEW JERSEY, AS FOLLOWS:

Section 1. The above Recitals are incorporated herein by reference as if set forth in full herein.

Section 2. The Borough hereby approves and authorizes entry into the First Amendment to the Redevelopment Agreement, in substantially the form appended hereto as Exhibit A, and which shall be in such form as be agreed to by the Borough with the advice of the Borough Attorney. The Borough Council further authorizes and directs such Borough personnel as may be necessary, including the Mayor, Business Administrator and Clerk, to execute the First Amendment and to do all things necessary to implement the provisions of the same.

Section 3. Consistent with the respective provisions of the Redevelopment Agreement and the Ground Lease, the Borough Council also consents to the assignment of both the Redevelopment Agreement (as amended by the First Amendment) and the Ground lease, to the Subsidiary, a HESP controlled affiliate, to serve as Project company. The foregoing consent is expressly conditioned upon the Borough’s reasonable satisfaction and assurance that the Subsidiary is qualified to undertake the obligations of the Redevelopment Agreement and the Ground Lease, respectively.

Section 4. This resolution shall take effect immediately.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Borough Council of the Borough of Mount Arlington and adopted on April 6, 2021.



Matthew N. Bansch, Borough Clerk