

ORDINANCE NO. 2023-3392

TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH

Ordinance Authorizing Entry Into Lease/Sublease Agreement With The County Of Monmouth And Port Belford Solar Farm, LLC, The Designated Sub-Redeveloper Of A Portion Of Block 306, Lot 66 Within The Port Of Belford Redevelopment Plan Area

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., (the "**LRHL**") provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment with a designated private redeveloper; and

WHEREAS, on February 1, 2016, by Resolution No. 16-84, the Township of Middletown (the "**Township**") designated Block 137, Lots 2.07, 3, 5, 6, 7; Block 281, Lots 3, 4, 5, 6, 7, 8, 15; Block 306, Lots 47, 48, 49, 50, 51, 52, 66, 110, 122, 123, 130, 131, 132, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 169, 170, 171, 172; Block 319, Lot 1; Block 320, Lot 1; Block 321, Lot 1; Block 322, Lot 1; Block 323, Lot 1, Block 324, Lot 1; and Block 325, Lot 1 on the tax map of the Township (the "**Redevelopment Area**") as an area in need of redevelopment for non-condemnation purposes under the LRHL; and

WHEREAS, on May 15, 2017, by Ordinance No. 2017-3197, the Township adopted the Port Belford Redevelopment Plan dated May 2017 (the "**Redevelopment Plan**") governing the Redevelopment Area, which may be amended from time to time; and

WHEREAS, on June 5, 2023, by Resolution No. 23-175, the Township conditionally designated Port Monmouth Residential Holdings, LLC as the redeveloper of the Redevelopment Area subject to entry into an acceptable Redevelopment Agreement with the Township; and

WHEREAS, Block 306, Lot 66 (the "**County Property**") within the Redevelopment Area is owned by the County of Monmouth (the "**County**") and is the site of the Belford Landfill (the "**Belford Landfill**"), as well as the parking lot for the Port Belford Ferry Terminal, a composting facility, and an area for depositing of dredge spoils; and

WHEREAS, on June 5, 2023, pursuant to Resolution No. 23-174, the Township designated and authorized the entry of a Sub-Redevelopment Agreement with Port Belford Solar Farm, LLC (the "**Solar Redeveloper**") as a sub-redeveloper of a portion of the County Property to develop a 20-megawatt solar farm (the "**Solar Project**") on the site of the Belford Landfill, delineated as "Lot 1 Solar Field 151.28 AC+/-" on the Conceptual Subdivision Plan attached hereto as **Exhibit A**, the precise boundary of which may be adjusted as necessary (the "**Premises**"); and

WHEREAS, pursuant to N.J.S.A. 40A:12-4(a), the Township may acquire any real property or any interest or estate therein, except that no such property belonging to, among other things, a County, shall be acquired without its express consent; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-8(b), the Township may lease property or improvements to any other party, such as the Solar Redeveloper, without public bidding and at such prices and upon such terms as it deems reasonable, provided that the lease is made in conjunction with a redevelopment plan and provided that, pursuant to N.J.S.A. 40A:12A-9(a), the lease includes a covenant running with the land requiring that the tenant construct only the uses established in the redevelopment plan, and certain other requirements; and

WHEREAS, the County as fee owner of the Premises, the Township as the redevelopment entity, and the Solar Redeveloper seek to enter into a lease/sublease agreement pursuant to which the County will lease the Premises to the Township, and the Township will sublease the Premises to the Solar Redeveloper to enable the Solar Redeveloper to construct the Solar Project as part of the Port Belford Redevelopment Project; and

WHEREAS, on September 12, 2023, pursuant to Resolution No. 2023-0724, the Board of County Commissioners for the County approved entry into the Solar Lease/Sublease Agreement in the form attached hereto as Exhibit B (the "**Lease Agreement**") with the Township and the Solar Redeveloper; and

WHEREAS, consistent with the Solar Redeveloper's Sub-Redevelopment Agreement with the Township and the Lease Agreement, the Solar Redeveloper has agreed to (i) obtain all approvals for, design, finance, and construct the Solar Project; (ii) apply for New Jersey Department of Environmental Protection approval of a modification of the Landfill Closure Plan and Post Closure Care Plan for the portion of the Belford Landfill being used for the Solar Project; and (iii) assume responsibility for the obligations and requirements reflected in the Landfill Closure and Post Closure Care Plan related to repair and maintenance of the landfill cap located on the Premises; and

WHEREAS, pursuant to the Lease Agreement, the County has agreed to remain responsible for all obligations and requirements reflected in the Landfill Closure and Post Closure Care Plan not related to the landfill cap including, but not limited to, all obligations and requirements related to landfill gas and groundwater; and

WHEREAS, it is the intent of the parties to the Lease Agreement that the Township will not have any obligations under the Lease Agreement, except as specifically set forth in the Lease Agreement, despite the Township leasing the Premises from the County and subleasing the Premises to the Solar Redeveloper.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey, as follows:

SECTION 1. Incorporation. The above recitals are incorporated by reference as if fully set forth herein.

SECTION 2. Lease/Sublease. The Solar Lease/Sublease Agreement in the form attached hereto as **Exhibit B** is hereby approved. The Mayor is hereby authorized and directed to execute the Solar Lease/Sublease Agreement in substantially such form and to negotiate any documents necessary to effectuate the Solar Lease/Sublease Agreement, subject to Township Committee approval of such documents and in consultation with the Township Attorney.

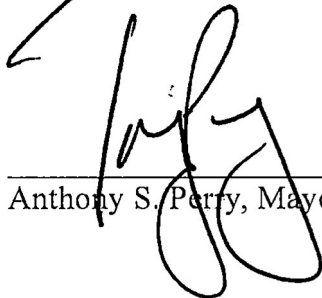
SECTION 3. Severability. If any chapter, section, subchapter or paragraph of this ordinance be declared unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such chapter, section, subchapter or paragraph shall, to the extent that is not held unconstitutional, invalid or inoperative, remain in full force and effect and shall not affect the remainder of this ordinance.

SECTION 4. Repealer. All ordinances and resolutions, and parts of ordinances and resolutions which are inconsistent with provisions of this ordinance shall be, and are hereby, repealed to the extent of any such inconsistency.

SECTION 5. Effective Date. This ordinance shall take effect immediately after final adoption and approval pursuant to law.

PASSED ON FIRST READING: September 18, 2023

PASSED AND APPROVED: October 16, 2023



Anthony S. Perry, Mayor

ATTEST:



Heidi R. Pieluc, Township Clerk